

pay interest on the principal, only from the “Administrator’s net proceeds,” as defined in section 838k(b) of this title.

**(2) Payment of capital investment**

Except as provided in subsection (e) of this section, this section does not affect the authority of the Administrator to pay all or a portion of the principal amount associated with a capital investment before the repayment date for the principal amount.

(Pub. L. 104-134, title III, §3201, Apr. 26, 1996, 110 Stat. 1321-350.)

CODIFICATION

Section was enacted as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Federal Columbia River Transmission System Act which comprises this chapter.

Section is comprised of section 3201 of Pub. L. 104-134. Subsec. (h) of section 3201 of Pub. L. 104-134 amended section 6 of Pub. L. 103-436, which is not classified to the Code.

**CHAPTER 12H—PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION**

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**§ 839. Congressional declaration of purpose**

The purposes of this chapter, together with the provisions of other laws applicable to the Federal Columbia River Power System, are all intended to be construed in a consistent manner. Such purposes are also intended to be construed in a manner consistent with applicable environmental laws. Such purposes are:

(1) to encourage, through the unique opportunity provided by the Federal Columbia River Power System—

(A) conservation and efficiency in the use of electric power, and

(B) the development of renewable resources within the Pacific Northwest;

(2) to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply;

(3) to provide for the participation and consultation of the Pacific Northwest States, local governments, consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in—

(A) the development of regional plans and programs related to energy conservation, renewable resources, other resources, and protecting, mitigating and enhancing fish and wildlife resources,

(B) facilitating the orderly planning of the region’s power system, and

(C) providing environmental quality;

(4) to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region’s electric power requirements, including the amortization on a current basis of the Federal investment in the Federal Columbia River Power System;

(5) to insure, subject to the provisions of this chapter—

(A) that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and

(B) that Congress intends that this chapter not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this chapter; and

(6) to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of the Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries.

(Pub. L. 96-501, §2, Dec. 5, 1980, 94 Stat. 2697.)

REFERENCES IN TEXT

This chapter, referred to in provision preceding par. (1) and in par. (5), was in the original “this Act”, meaning Pub. L. 96-501, Dec. 5, 1980, 94 Stat. 2697, known as the Pacific Northwest Electric Power Planning and Conservation Act, which enacted this chapter, amended sections 837, 838i, and 838k of this title, and enacted provisions set out as notes under this section. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Pub. L. 96-501, §11, Dec. 5, 1980, 94 Stat. 2735, provided that: “This Act [enacting this chapter, amending sections 837, 838i, and 838k of this title, and enacting provisions set out as notes under this section] shall be effective on the date of enactment [Dec. 5, 1980], or October 1, 1980, whichever is later. For purposes of this Act, the term ‘date of the enactment of this Act’ means such date of enactment [Dec. 5, 1980] or October 1, 1980, whichever is later.”

SHORT TITLE

Pub. L. 96-501, §1, Dec. 5, 1980, 94 Stat. 2697, provided in part that: “This Act [enacting this chapter, amending sections 837, 838i, and 838k of this title, and enacting provisions set out as notes under this section] may be cited as the ‘Pacific Northwest Electric Power Planning and Conservation Act’.”

**§ 839a. Definitions**

As used in this chapter, the term—

(1) “Acquire” and “acquisition” shall not be construed as authorizing the Administrator to construct, or have ownership of, under this chapter or any other law, any electric generating facility.

(2) “Administrator” means the Administrator of the Bonneville Power Administration.

(3) “Conservation” means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.

(4)(A) “Cost-effective”, when applied to any measure or resource referred to in this chapter, means that such measure or resource must be forecast—

(i) to be reliable and available within the time it is needed, and

(ii) to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.

(B) For purposes of this paragraph, the term “system cost” means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.

(C) In determining the amount of power that a conservation measure or other resource may be expected to save or to produce, the Council or the Administrator, as the case may be, shall take into account projected realization factors and plant factors, including appropriate historical experience with similar measures or resources.

(D) For purposes of this paragraph, the “estimated incremental system cost” of any conservation measure or resource shall not be treated as greater than that of any nonconservation measure or resource unless the incremental system cost of such conservation measure or resource is in excess of 110 per centum of the incremental system cost of the nonconservation measure or resource.

(5) “Consumer” means any end user of electric power.

(6) “Council” means, unless otherwise specifically provided, the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council established pursuant to section 839b of this title.

(7) “Customer” means anyone who contracts for the purchase of power from the Administrator pursuant to this chapter.

(8) “Direct service industrial customer” means an industrial customer that contracts for the purchase of power from the Administrator for direct consumption.

(9) “Electric power” means electric peaking capacity, or electric energy, or both.

(10) “Federal base system resources” means—

(A) the Federal Columbia River Power System hydroelectric projects;

(B) resources acquired by the Administrator under long-term contracts in force on December 5, 1980; and

(C) resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources referred to in subparagraphs (A) and (B) of this paragraph.

(11) “Indian tribe” means any Indian tribe or band which is located in whole or in part in the region and which has a governing body which is recognized by the Secretary of the Interior.

(12) “Major resource” means any resource that—

(A) has a planned capability greater than fifty average megawatts, and

(B) if acquired by the Administrator, is acquired for a period of more than five years.

Such term does not include any resource acquired pursuant to section 838i(b)(6) of this title.

(13) “New large single load” means any load associated with a new facility, an existing facility, or an expansion of an existing facility—

(A) which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or Federal agency customer prior to September 1, 1979, and

(B) which will result in an increase in power requirements of such customer of ten average megawatts or more in any consecutive twelve-month period.

(14) “Pacific Northwest”, “region”, or “regional” means—

(A) the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(B) any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on December 5, 1980, which has a distribution system from which it serves both within and without such region.

(15) “Plan” means the Regional Electric Power and Conservation plan (including any amendments thereto) adopted pursuant to this chapter and such plan shall apply to actions of the Administrator as specified in this chapter.

(16) “Renewable resource” means a resource which utilizes solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.

(17) “Reserves” means the electric power needed to avert particular planning or operat-

ing shortages for the benefit of firm power customers of the Administrator and available to the Administrator (A) from resources or (B) from rights to interrupt, curtail, or otherwise withdraw, as provided by specific contract provisions, portions of the electric power supplied to customers.

(18) "Residential use" or "residential load" means all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.

(19) "Resource" means—

(A) electric power, including the actual or planned electric power capability of generating facilities, or

(B) actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer, or from a conservation measure.

(20) "Secretary" means the Secretary of Energy.

(Pub. L. 96-501, §3, Dec. 5, 1980, 94 Stat. 2698.)

### § 839b. Regional planning and participation

#### (a) Pacific Northwest Electric Power and Conservation Planning Council; establishment and operation as regional agency

(1) The purposes of this section are to provide for the prompt establishment and effective operation of the Pacific Northwest Electric Power and Conservation Planning Council, to further the purposes of this chapter by the Council promptly preparing and adopting (A) a regional conservation and electric power plan and (B) a program to protect, mitigate, and enhance fish and wildlife, and to otherwise expeditiously and effectively carry out the Council's responsibilities and functions under this chapter.

(2) To achieve such purposes and facilitate cooperation among the States of Idaho, Montana, Oregon, and Washington, and with the Bonneville Power Administration, the consent of Congress is given for an agreement described in this paragraph and not in conflict with this chapter, pursuant to which—

(A) there shall be established a regional agency known as the "Pacific Northwest Electric Power and Conservation Planning Council" which (i) shall have its offices in the Pacific Northwest, (ii) shall carry out its functions and responsibilities in accordance with the provisions of this chapter, (iii) shall continue in force and effect in accordance with the provisions of this chapter, and (iv) except as otherwise provided in this chapter, shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law; and

(B) two persons from each State may be appointed, subject to the applicable laws of each such State, to undertake the functions and duties of members of the Council.

The State may fill any vacancy occurring prior to the expiration of the term of any member. The appointment of six initial members, subject to applicable State law, by June 30, 1981, by at least three of such States shall constitute an

agreement by the States establishing the Council and such agreement is hereby consented to by the Congress. Upon request of the Governors of two of the States, the Secretary shall extend the June 30, 1981, date for six additional months to provide more time for the States to make such appointments.

(3) Except as otherwise provided by State law, each member appointed to the Council shall serve for a term of three years, except that, with respect to members initially appointed, each Governor shall designate one member to serve a term of two years and one member to serve a term of three years. The members of the Council shall select from among themselves a chairman. The members and officers and employees of the Council shall not be deemed to be officers or employees of the United States for any purpose. The Council shall appoint, fix compensation, assign and delegate duties to such executive and additional personnel as the Council deems necessary to fulfill its functions under this chapter, taking into account such information and analyses as are, or are likely to be, available from other sources pursuant to provisions of this chapter. The compensation of the members shall be fixed by State law. The compensation of the members and the officers shall not exceed the rate prescribed for Federal officers and positions at step 1 of level GS-18 of the General Schedule.

(4) For the purpose of providing a uniform system of laws, in addition to this chapter, applicable to the Council relating to the making of contracts, conflicts-of-interest, financial disclosure, open meetings of the Council, advisory committees, disclosure of information, judicial review of Council functions and actions under this chapter, and related matters, the Federal laws applicable to such matters in the case of the Bonneville Power Administration shall apply to the Council to the extent appropriate, except that with respect to open meetings, the Federal laws applicable to open meetings in the case of the Federal Energy Regulatory Commission shall apply to the Council to the extent appropriate. In applying the Federal laws applicable to financial disclosure under the preceding sentence, such laws shall be applied to members of the Council without regard to the duration of their service on the Council or the amount of compensation received for such service. No contract, obligation, or other action of the Council shall be construed as an obligation of the United States or an obligation secured by the full faith and credit of the United States. For the purpose of judicial review of any action of the Council or challenging any provision of this chapter relating to functions and responsibilities of the Council, notwithstanding any other provision of law, the courts of the United States shall have exclusive jurisdiction of any such review.

#### (b) Alternative establishment of Council as Federal agency

(1) If the Council is not established and its members are not timely appointed in accordance with subsection (a) of this section, or if, at any time after such Council is established and its members are appointed in accordance with subsection (a) of this section—