

classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

The Sherman Antitrust Act (15 U.S.C. 1 and following), referred to in par. (1), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which enacted sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act (15 U.S.C. 12 and following), referred to in par. (1), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act (15 U.S.C. 14 and following), referred to in par. (1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Wilson Tariff Act (15 U.S.C. 8 and 9), referred to in par. (1), is sections 73 to 77 of act Aug. 27, 1894, ch. 349, 28 Stat. 570. Sections 73 to 76 enacted sections 8 to 11 of Title 15, Commerce and Trade. Section 77 of said Act was not classified to the Code. For complete classification of this Act to the Code, see Short Title note under section 8 of Title 15 and Tables.

Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21A), referred to in par. (1), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

#### CODIFICATION

This section was not enacted as part of title I of Pub. L. 95-617 which comprises this chapter.

#### AMENDMENTS

1992—Pars. (19) to (21). Pub. L. 102-486 added pars. (19) to (21).

### § 2603. Relationship to antitrust laws

Nothing in this Act or in any amendment made by this Act affects—

(1) the applicability of the antitrust laws to any electric utility or gas utility (as defined in section 3202 of title 15), or

(2) any authority of the Secretary or of the Commission under any other provision of law (including the Federal Power Act [16 U.S.C. 791a et seq.] and the Natural Gas Act [15 U.S.C. 717 et seq.]) respecting unfair methods of competition or anticompetitive acts or practices.

(Pub. L. 95-617, §4, Nov. 9, 1978, 92 Stat. 3120.)

#### REFERENCES IN TEXT

This Act, referred to in text, is act Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3117, as amended, known as the Public Utility Regulatory Policies Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

The Federal Power Act, referred to in par. (2), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§791a et seq.) of this title. For complete classification of this Act to the Code, see section 791a of this title and Tables.

The Natural Gas Act, referred to in par. (2), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is

classified generally to chapter 15B (§717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

#### CODIFICATION

This section was not enacted as part of title I of Pub. L. 95-617 which comprises this chapter.

### SUBCHAPTER I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

#### § 2611. Purposes

The purposes of this chapter are to encourage—

(1) conservation of energy supplied by electric utilities;

(2) the optimization of the efficiency of use of facilities and resources by electric utilities; and

(3) equitable rates to electric consumers.

(Pub. L. 95-617, title I, §101, Nov. 9, 1978, 92 Stat. 3120.)

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title I (§101 et seq.) of Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3120, which enacted subchapters I to IV of this chapter and section 6808 of Title 42, The Public Health and Welfare, and amended sections 6802 to 6807 of Title 42. For complete classification of title I to the Code, see Tables.

#### § 2612. Coverage

##### (a) Volume of total retail sales

This chapter applies to each electric utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

##### (b) Exclusion of wholesale sales

The requirements of this chapter do not apply to the operations of an electric utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of electric energy for purposes of resale.

##### (c) List of covered utilities

Before the beginning of each calendar year, the Secretary shall publish a list identifying each electric utility to which this chapter applies during such calendar year. Promptly after publication of such list each State regulatory authority shall notify the Secretary of each electric utility on the list for which such State regulatory authority has ratemaking authority.

(Pub. L. 95-617, title I, §102, Nov. 9, 1978, 92 Stat. 3121.)

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title I (§101 et seq.) of Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3120, which enacted subchapters I to IV of this chapter and section 6808 of Title 42, The Public Health and Welfare, and amended sections 6802 to 6807 of Title 42. For complete classification of title I to the Code, see Tables.

**§ 2613. Federal contracts**

Notwithstanding the limitation contained in section 2612(b) of this title, no contract between a Federal agency and any electric utility for the sale of electric energy by such Federal agency for resale which is entered into or renewed after November 9, 1978, may contain any provision which will have the effect of preventing the implementation of any requirement of subchapter II or III. Any provision in any such contract which has such effect shall be null and void.

(Pub. L. 95-617, title I, § 103, Nov. 9, 1978, 92 Stat. 3121.)

SUBCHAPTER II—STANDARDS FOR  
ELECTRIC UTILITIES

**§ 2621. Consideration and determination respecting certain ratemaking standards****(a) Consideration and determination**

Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall consider each standard established by subsection (d) of this section and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this chapter. For purposes of such consideration and determination in accordance with subsections (b) and (c) of this section, and for purposes of any review of such consideration and determination in any court in accordance with section 2633 of this title, the purposes of this chapter supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

**(b) Procedural requirements for consideration and determination**

(1) The consideration referred to in subsection (a) of this section shall be made after public notice and hearing. The determination referred to in subsection (a) of this section shall be—

(A) in writing,

(B) based upon findings included in such determination and upon the evidence presented at the hearing, and

(C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 2622(a) of this title, and in sections 2631 and 2632 of this title, the procedures for the consideration and determination referred to in subsection (a) of this section shall be those established by the State regulatory authority or the nonregulated electric utility.

**(c) Implementation**

(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law—

(A) implement any such standard determined under subsection (a) of this section to be appropriate to carry out the purposes of this chapter, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) of this section which is determined under subsection (a) of this section to be appropriate to carry out the purposes of this chapter, such authority or nonregulated electric utility shall state in writing the reasons therefor. Such statement of reasons shall be available to the public.

(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8) of this section, such authority shall—

(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures, and

(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

**(d) Establishment**

The following Federal standards are hereby established:

**(1) Cost of service**

Rates charged by any electric utility for providing electric service to each class of electric consumers shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such class, as determined under section 2625(a) of this title.

**(2) Declining block rates**

The energy component of a rate, or the amount attributable to the energy component in a rate, charged by any electric utility for providing electric service during any period to any class of electric consumers may not decrease as kilowatt-hour consumption by such class increases during such period except to the extent that such utility demonstrates that the costs to such utility of providing electric service to such class, which costs are attributable to such energy component, decrease as such consumption increases during such period.

**(3) Time-of-day rates**

The rates charged by any electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class, as determined under section 2625(b) of this title.

**(4) Seasonal rates**

The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflects the costs of providing service to such class of consumers at different seasons of the year to the extent that such costs vary seasonally for such utility.