

(iii) The Secretary shall act in accordance with subparagraphs (D) and (E) only if the Indian tribe—

(I) denies, or fails to respond to, each claim made in the petition within the period described in clause (ii); or

(II) fails, refuses, or is unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the Secretary, after the expiration of the period described in clause (ii).

(D)(i) Not later than 120 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall determine whether the Indian tribe is not in compliance with the tribal energy resource agreement.

(ii) The Secretary may adopt procedures under paragraph (8) authorizing an extension of time, not to exceed 120 days, for making the determination under clause (i) in any case in which the Secretary determines that additional time is necessary to evaluate the allegations of the petition.

(iii) Subject to subparagraph (E), if the Secretary determines that the Indian tribe is not in compliance with the tribal energy resource agreement, the Secretary shall take such action as the Secretary determines to be necessary to ensure compliance with the tribal energy resource agreement, including—

(I) temporarily suspending any activity under a lease, business agreement, or right-of-way under this section until the Indian tribe is in compliance with the approved tribal energy resource agreement; or

(II) rescinding approval of all or part of the tribal energy resource agreement, and if all of the agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way described in subsection (a) or (b).

(E) Before taking an action described in subparagraph (D)(iii), the Secretary shall—

(i) make a written determination that describes the manner in which the tribal energy resource agreement has been violated;

(ii) provide the Indian tribe with a written notice of the violations together with the written determination; and

(iii) before taking any action described in subparagraph (D)(iii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.

(F) An Indian tribe described in subparagraph (E) shall retain all rights to appeal under any regulation promulgated by the Secretary.

(8) Not later than 1 year after August 8, 2005, the Secretary shall promulgate regulations that implement this subsection, including—

(A) criteria to be used in determining the capacity of an Indian tribe under paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe;

(B) a process and requirements in accordance with which an Indian tribe may—

(i) voluntarily rescind a tribal energy resource agreement approved by the Secretary under this subsection; and

(ii) return to the Secretary the responsibility to approve any future lease, business agreement, or right-of-way under this subsection;

(C) provisions establishing the scope of, and procedures for, the periodic review and evaluation described in subparagraphs (D) and (E) of paragraph (2), including provisions for review of transactions, reports, site inspections, and any other review activities the Secretary determines to be appropriate; and

(D) provisions describing final agency actions after exhaustion of administrative appeals from determinations of the Secretary under paragraph (7).

(f) No effect on other law

Nothing in this section affects the application of—

(1) any Federal environmental law;

(2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

(3) except as otherwise provided in this chapter, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

(g) Authorization of appropriations

There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2006 through 2016 to carry out this section and to make grants or provide other appropriate assistance to Indian tribes to assist the Indian tribes in developing and implementing tribal energy resource agreements in accordance with this section.

(Pub. L. 102-486, title XXVI, §2604, as added Pub. L. 109-58, title V, §503(a), Aug. 8, 2005, 119 Stat. 769.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (f)(2), is Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

The Indian Mineral Development Act of 1982, referred to in subsec. (f)(3), is Pub. L. 97-382, Dec. 22, 1982, 96 Stat. 1938, which is classified generally to chapter 23 (§2101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of this title and Tables.

PRIOR PROVISIONS

A prior section 3504, Pub. L. 102-486, title XXVI, §2604, Oct. 24, 1992, 106 Stat. 3114, related to Indian energy resource regulation, prior to the general amendment of this chapter by Pub. L. 109-58.

§ 3505. Federal power marketing administrations

(a) Definitions

In this section:

(1) The term “Administrator” means the Administrator of the Bonneville Power Administration and the Administrator of the Western Area Power Administration.

(2) The term “power marketing administration” means—

- (A) the Bonneville Power Administration;
- (B) the Western Area Power Administration; and
- (C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

(b) Encouragement of Indian tribal energy development

Each Administrator shall encourage Indian tribal energy development by taking such actions as the Administrators determine to be appropriate, including administration of programs of the power marketing administration, in accordance with this section.

(c) Action by Administrators

In carrying out this section, in accordance with laws in existence on August 8, 2005—

- (1) each Administrator shall consider the unique relationship that exists between the United States and Indian tribes;
- (2) power allocations from the Western Area Power Administration to Indian tribes may be used to meet firming and reserve needs of Indian-owned energy projects on Indian land;
- (3) the Administrator of the Western Area Power Administration may purchase non-federally generated power from Indian tribes to meet the firming and reserve requirements of the Western Area Power Administration; and
- (4) each Administrator shall not—
 - (A) pay more than the prevailing market price for an energy product; or
 - (B) obtain less than prevailing market terms and conditions.

(d) Assistance for transmission system use

- (1) An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.
- (2) The costs of technical assistance provided under paragraph (1) shall be funded—
 - (A) by the Secretary of Energy using non-reimbursable funds appropriated for that purpose; or
 - (B) by any appropriate Indian tribe.

(e) Power allocation study

Not later than 2 years after August 8, 2005, the Secretary of Energy shall submit to Congress a report that—

- (1) describes the use by Indian tribes of Federal power allocations of the power marketing administration (or power sold by the Southwestern Power Administration) to or for the benefit of Indian tribes in a service area of the power marketing administration; and
- (2) identifies—
 - (A) the quantity of power allocated to, or used for the benefit of, Indian tribes by the Western Area Power Administration;
 - (B) the quantity of power sold to Indian tribes by any other power marketing administration; and
 - (C) barriers that impede tribal access to and use of Federal power, including an assessment of opportunities to remove those barriers and improve the ability of power marketing administrations to deliver Federal power.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$750,000, non-reimbursable, to remain available until expended.

(Pub. L. 102-486, title XXVI, §2605, as added Pub. L. 109-58, title V, §503(a), Aug. 8, 2005, 119 Stat. 776.)

PRIOR PROVISIONS

A prior section 3505, Pub. L. 102-486, title XXVI, §2605, Oct. 24, 1992, 106 Stat. 3115; Pub. L. 103-437, §10(e)(1), (2)(D), Nov. 2, 1994, 108 Stat. 4589, related to Indian Energy Resource Commission, prior to the general amendment of this chapter by Pub. L. 109-58.

§ 3506. Wind and hydropower feasibility study

(a) Study

The Secretary of Energy, in coordination with the Secretary of the Army and the Secretary, shall conduct a study of the cost and feasibility of developing a demonstration project that uses wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

(b) Scope of study

The study shall—

- (1) determine the economic and engineering feasibility of blending wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers, including an assessment of the costs and benefits of blending wind energy and hydropower compared to current sources used for firming power to the Western Area Power Administration;
- (2) review historical and projected requirements for, patterns of availability and use of, and reasons for historical patterns concerning the availability of firming power;
- (3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;
- (4) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation and identify costs associated with these activities;
- (5) include an independent tribal engineer and a Western Area Power Administration customer representative as study team members; and
- (6) incorporate, to the extent appropriate, the results of the Dakotas Wind Transmission study prepared by the Western Area Power Administration.

(c) Report

Not later than 1 year after August 8, 2005, the Secretary of Energy, the Secretary, and the Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

- (1) an analysis and comparison of the potential energy cost or benefits to the customers of the Western Area Power Administration through the use of combined wind and hydropower;
- (2) an economic and engineering evaluation of whether a combined wind and hydropower