

(2) review of any action in the Supreme Court of the United States in accordance with sections 1257 and 1258 of title 28.

(b) Enforcement of intervention right

(1) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene and participate under section 2631(a) of this title, and such court shall have jurisdiction to grant appropriate relief.

(2) If any electric utility or electric consumer having a right to intervene under section 2631(a) of this title is denied such right by any State court, such electric utility or electric consumer may bring an action in the appropriate United States district court to require the State regulatory authority or nonregulated electric utility to permit such intervention and participation, and such court shall have jurisdiction to grant appropriate relief.

(3) Nothing in this subsection prohibits any person bringing any action under this subsection in a court of the United States from seeking review and enforcement at any time in any State court of any rights he may have with respect to any motion to intervene or participate in any proceeding.

(c) Review and enforcement

(1) Any person (including the Secretary) may obtain review of any determination made under subchapter I or II or under this subchapter with respect to any electric utility (other than a utility which is a Federal agency) in the appropriate State court if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if State law otherwise permits such review. Any person (including the Secretary) may bring an action to enforce the requirements of this chapter in the appropriate State court, except that no such action may be brought in a State court with respect to a utility which is a Federal agency. Such review or action in a State court shall be pursuant to any applicable State procedures.

(2) Any person (including the Secretary) may obtain review in the appropriate court of the United States of any determination made under subchapter I or II or this subchapter by a Federal agency if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if otherwise applicable law permits such review. Such court shall have jurisdiction to grant appropriate relief. Any person (including the Secretary) may bring an action to enforce the requirements of subchapter I or II or this subchapter with respect to any Federal agency in the appropriate court of the United States and such court shall have jurisdiction to grant appropriate relief.

(3) In addition to his authority to obtain review under paragraph (1) or (2), the Secretary may also participate as an amicus curiae in any review by any court of an action arising under the provisions of subchapter I or II or this subchapter.

(d) Other authority of Secretary

Nothing in this section prohibits the Secretary from—

(1) intervening and participating in any proceeding, or

(2) intervening and participating in any review by any court of any action

under section 6804 of title 42.

(Pub. L. 95-617, title I, § 123, Nov. 9, 1978, 92 Stat. 3130.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), 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.

§ 2634. Prior and pending proceedings

For purposes of subchapters I and II, and this subchapter, proceedings commenced by State regulatory authorities (with respect to electric utilities for which it has ratemaking authority) and nonregulated electric utilities before November 9, 1978, and actions taken before such date in such proceedings shall be treated as complying with the requirements of subchapters I and II, and this subchapter if such proceedings and actions substantially conform to such requirements. For purposes of subchapters I and II, and this subchapter, any such proceeding or action commenced before November 9, 1978, but not completed before such date, shall comply with the requirements of subchapters I and II, and this subchapter, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date, except as otherwise provided in section 2631(c) of this title. In the case of each standard established by paragraphs (11) through (13) of section 2621(d) of this title, the reference contained in this subsection¹ to November 9, 1978, shall be deemed to be a reference to August 8, 2005. In the case of the standard established by paragraph (14) of section 2621(d) of this title, the reference contained in this subsection¹ to November 9, 1978, shall be deemed to be a reference to August 8, 2005. In the case of each standard established by paragraph (15) of section 2621(d) of this title, the reference contained in this subsection¹ to November 9, 1978, shall be deemed to be a reference to August 8, 2005.

(Pub. L. 95-617, title I, § 124, Nov. 9, 1978, 92 Stat. 3131; Pub. L. 109-58, title XII, §§ 1251(b)(3)(B), 1252(i)(2), 1254(b)(3)(B), Aug. 8, 2005, 119 Stat. 963, 967, 971.)

AMENDMENTS

2005—Pub. L. 109-58, § 1254(b)(3)(B), inserted at end "In the case of each standard established by paragraph (15) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005."

Pub. L. 109-58, § 1252(i)(2), inserted at end "In the case of the standard established by paragraph (14) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005."

Pub. L. 109-58, § 1251(b)(3)(B), inserted at end "In the case of each standard established by paragraphs (11) through (13) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005."

¹ So in original. Probably should be "section".

SUBCHAPTER IV—ADMINISTRATIVE
PROVISIONS

§ 2641. Voluntary guidelines

The Secretary may prescribe voluntary guidelines respecting the standards established by sections 2621(d) and 2623(b) of this title. Such guidelines may not expand the scope or legal effect of such standards or establish additional standards respecting electric utility rates.

(Pub. L. 95–617, title I, §131, Nov. 9, 1978, 92 Stat. 3131.)

§ 2642. Responsibilities of Secretary

(a) Authority

The Secretary may periodically notify the State regulatory authorities, and electric utilities identified pursuant to section 2612(c) of this title, of—

- (1) load management techniques and the results of studies and experiments concerning load management techniques;
- (2) developments and innovations in electric utility ratemaking throughout the United States, including the results of studies and experiments in rate structure and rate reform;
- (3) methods for determining cost of service;
- (4) any other data or information which the Secretary determines would assist such authorities and utilities in carrying out the provisions of this chapter; and
- (5) technologies, techniques, and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.

(b) Technical assistance

The Secretary may provide such technical assistance as he determines appropriate to assist the State regulatory authorities in carrying out their responsibilities under subchapter II and as is requested by any State regulatory authority relating to the standards established by subchapter II.

(c) Appropriations

There are authorized to be appropriated to carry out the purposes of subsection (b) not to exceed \$1,000,000 for each of the fiscal years 1979 and 1980.

(d) Demand response

The Secretary shall be responsible for—

- (1) educating consumers on the availability, advantages, and benefits of advanced metering and communications technologies, including the funding of demonstration or pilot projects;
- (2) working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs; and
- (3) not later than 180 days after August 8, 2005, providing Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2007.

(Pub. L. 95–617, title I, §132, Nov. 9, 1978, 92 Stat. 3131; Pub. L. 109–58, title XII, §1252(c), (d), Aug. 8, 2005, 119 Stat. 965.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4), 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.

AMENDMENTS

2005—Subsec. (a)(5). Pub. L. 109–58, §1252(c), added par. (5).

Subsec. (d). Pub. L. 109–58, §1252(d), added subsec. (d).

DEMAND RESPONSE ASSISTANCE

Pub. L. 109–58, title XII, §1252(e), (f), Aug. 8, 2005, 119 Stat. 965, 966, provided that:

“(e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

“(1) IN GENERAL.—It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public.

“(2) TECHNICAL ASSISTANCE.—The Secretary [of Energy] shall provide technical assistance to States and regional organizations formed by two or more States to assist them in—

“(A) identifying the areas with the greatest demand response potential;

“(B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response;

“(C) developing plans and programs to use demand response to respond to peak demand or emergency needs; and

“(D) identifying specific measures consumers can take to participate in these demand response programs.

“(3) REPORT.—Not later than 1 year after the date of enactment of the Energy Policy Act of 2005 [Aug. 8, 2005], the [Federal Energy Regulatory] Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews—

“(A) saturation and penetration rate of advanced meters and communications technologies, devices and systems;

“(B) existing demand response programs and time-based rate programs;

“(C) the annual resource contribution of demand resources;

“(D) the potential for demand response as a quantifiable, reliable resource for regional planning purposes;

“(E) steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party; and

“(F) regulatory barriers to improve customer participation in demand response, peak reduction and critical period pricing programs.

“(f) FEDERAL ENCOURAGEMENT OF DEMAND RESPONSE DEVICES.—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated, and unnecessary barriers to demand response participation in energy, capacity and ancillary service markets shall be eliminated. It is further the policy of the United States that the benefits of such demand response that accrue to those not deploying such technology and devices, but