

Subsec. (e)(7). Pub. L. 115-325, §105(d)(5)(A), inserted heading.

Subsec. (e)(7)(A). Pub. L. 115-325, §§103(a)(4)(E)(i), 105(d)(5)(B), substituted “the Secretary determines has demonstrated with substantial evidence” for “has demonstrated” and “in effect” for “approved by the Secretary”.

Subsec. (e)(7)(B). Pub. L. 115-325, §§103(a)(4)(E)(ii), 105(d)(5)(C), substituted “all remedies (if any) provided under the laws of the Indian tribe” for “any tribal remedy” and “in effect” for “approved by the Secretary”.

Subsec. (e)(7)(D)(i). Pub. L. 115-325, §103(a)(4)(E)(iii)(I), substituted “determine—” for “determine whether the Indian tribe is not in compliance with the tribal energy resource agreement.” and added subcls. (I) and (II).

Subsec. (e)(7)(D)(ii). Pub. L. 115-325, §103(a)(4)(E)(iii)(II), substituted “determinations” for “determination”.

Subsec. (e)(7)(D)(iii). Pub. L. 115-325, §103(a)(4)(E)(iii)(III), in introductory provisions, substituted “agreement pursuant to clause (i), the Secretary shall only take such action as the Secretary determines necessary to address the claims of noncompliance made in the petition, including” for “agreement, the Secretary shall take such action as the Secretary determines to be necessary to ensure compliance with the tribal energy resource agreement, including”.

Subsec. (e)(7)(D)(iii)(I). Pub. L. 115-325, §105(d)(5)(D)(i), struck out “approved” before “tribal energy resource agreement”.

Subsec. (e)(7)(D)(iii)(II). Pub. L. 115-325, §105(d)(5)(D)(ii), struck out “approval of” before “all or part of” and substituted “subsection (a)(2)(A)(i) or (b)(2)(A)” for “subsection (a) or (b)”.

Subsec. (e)(7)(E)(i). Pub. L. 115-325, §103(a)(4)(E)(iv), substituted “, with respect to each claim made in the petition, how” for “the manner in which”.

Subsec. (e)(7)(G). Pub. L. 115-325, §103(a)(4)(E)(v), added subpar. (G).

Subsec. (e)(8). Pub. L. 115-325, §103(a)(4)(F)(i), (ii), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: “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;”.

Subsec. (e)(8)(A)(iii). Pub. L. 115-325, §103(a)(4)(F)(iii), added cl. (iii).

Subsec. (e)(9). Pub. L. 115-325, §103(a)(4)(G), added par. (9).

Subsecs. (g) to (j). Pub. L. 115-325, §103(a)(5), (6), added subsecs. (g) to (i) and redesignated former subsec. (g) as (j).

#### REGULATIONS

Pub. L. 115-325, title I, §103(b), Dec. 18, 2018, 132 Stat. 4454, provided that: “Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 [Dec. 18, 2018], the Secretary shall promulgate or update any regulations that are necessary to implement this section, including provisions to implement—

“(1) section 2604(e)(8) of the Energy Policy Act of 1992 (25 U.S.C. 3504(e)(8)), including the process to be followed by an Indian tribe amending an existing tribal energy resource agreement to assume authority for approving leases, business agreements, or rights-of-way for development of an energy resource that is not included in the tribal energy resource agreement;

“(2) section 2604(g) of the Energy Policy Act of 1992 (25 U.S.C. 3504(g)) including the manner in which the Secretary, at the request of an Indian tribe, shall—

“(A) identify the programs, functions, services, and activities (or any portions of programs, functions, services, or activities) that the Secretary

will not have to operate or carry out as a result of the Indian tribe carrying out activities under a tribal energy resource agreement;

“(B) identify the amounts that the Secretary would have otherwise expended to operate or carry out each program, function, service, and activity (or any portion of a program, function, service, or activity) identified pursuant to subparagraph (A); and

“(C) provide to the Indian tribe a list of the programs, functions, services, and activities (or any portions of programs, functions, services, or activities) identified pursuant [to] subparagraph (A) and the amounts associated with each program, function, service, and activity (or any portion of a program, function, service, or activity) identified pursuant to subparagraph (B); and

“(3) section 2604(h) of the Energy Policy Act of 1992 (25 U.S.C. 3504(h)), including the process to be followed by, and any applicable criteria and documentation required for, an Indian tribe to request and obtain the certification described in that section.”

### § 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 system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

(3) if found feasible, recommendations for a demonstration project to be carried out by the Western Area Power Administration, in partnership with an Indian tribal government or tribal energy development organization, and Western Area Power Administration customers to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration; and

(4) an identification of—

(A) the economic and environmental costs of, or benefits to be realized through, a Federal-tribal-customer partnership; and

(B) the manner in which a Federal-tribal-customer partnership could contribute to the energy security of the United States.

**(d) Funding**

**(1) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$1,000,000, to remain available until expended.

**(2) Nonreimbursability**

Costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

(Pub. L. 102-486, title XXVI, §2606, as added Pub. L. 109-58, title V, §503(a), Aug. 8, 2005, 119 Stat. 777; amended Pub. L. 115-325, title I, §105(c), Dec. 18, 2018, 132 Stat. 4456.)

PRIOR PROVISIONS

A prior section 3506, Pub. L. 102-486, title XXVI, §2606, Oct. 24, 1992, 106 Stat. 3118, related to tribal government