

(A) The term “advertising” means the commercial use, by an electric utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility’s electric consumers.

(B) The term “political advertising” means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(C) The term “promotional advertising” means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation of any appliance or equipment designed to use such utility’s service.

(2) For purposes of this subsection and section 2623(b)(5) of this title, the terms “political advertising” and “promotional advertising” do not include—

(A) advertising which informs electric consumers how they can conserve energy or can reduce peak demand for electric energy,

(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act [42 U.S.C. 8211 et seq.],

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.

**(i) Time-based metering and communications**

In making a determination with respect to the standard established by section 2621(d)(14) of this title, the investigation requirement of section 2621(d)(14)(F) of this title shall be as follows: Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.

(Pub. L. 95–617, title I, §115, Nov. 9, 1978, 92 Stat. 3125; Pub. L. 109–58, title XII, §1252(b), Aug. 8, 2005, 119 Stat. 965.)

REFERENCES IN TEXT

The National Energy Conservation Policy Act, referred to in subsec. (h)(2)(B), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, as amended. Part 1 of title II of the National Energy Conservation Policy Act was classified generally to part A (§8211 et seq.) of subchapter II of chapter 91 of Title 42, The Public Health and Welfare, and was omitted from the Code pursuant to section 8229 of Title 42 which terminated authority under that part June 30, 1989. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of Title 42 and Tables.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58, §1252(b)(1), (2), inserted “and the standard for time-based metering and communications established by section 2621(d)(14) of this title” after “section 2621(d)(3) of this title” and substituted “metering and communications costs” for “metering costs”.

Subsec. (i). Pub. L. 109–58, §1252(b)(3), added subsec. (i).

**§ 2626. Reports respecting standards**

**(a) State authorities and nonregulated utilities**

Not later than one year after November 9, 1978, and annually thereafter for ten years, each State regulatory authority (with respect to each State regulated electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall report to the Secretary, in such manner as the Secretary shall prescribe, respecting its consideration of the standards established by sections 2621(d) and 2623(b) of this title. Such report shall include a summary of the determinations made and actions taken with respect to each such standard on a utility-by-utility basis.

**(b) Secretary**

Not later than eighteen months after November 9, 1978, and annually thereafter for ten years, the Secretary shall submit a report to the President and the Congress containing—

(1) a summary of the reports submitted under subsection (a),

(2) his analysis of such reports, and

(3) his actions under this chapter, and his recommendations for such further Federal actions, including any legislation, regarding retail electric utility rates (and other practices) as may be necessary to carry out the purposes of this chapter.

(Pub. L. 95–617, title I, §116, Nov. 9, 1978, 92 Stat. 3128.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(3), 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.

**§ 2627. Relationship to State law**

**(a) Revenue and rate of return**

Nothing in this chapter shall authorize or require the recovery by an electric utility of revenues, or of a rate of return, in excess of, or less than, the amount of revenues or the rate of return determined to be lawful under any other provision of law.

**(b) State authority**

Nothing in this chapter prohibits any State regulatory authority or nonregulated electric utility from adopting, pursuant to State law, any standard or rule affecting electric utilities which is different from any standard established by this subchapter.

**(c) Federal agencies**

With respect to any electric utility which is a Federal agency, and with respect to the Ten-

nessee Valley Authority when it is treated as a State regulatory authority as provided in section 2602(17) of this title, any reference in section 2621 or 2623 of this title to State law shall be treated as a reference to Federal law.

(Pub. L. 95-617, title I, § 117, Nov. 9, 1978, 92 Stat. 3128.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), 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.

### SUBCHAPTER III—INTERVENTION AND JUDICIAL REVIEW

#### § 2631. Intervention in proceedings

##### (a) Authority to intervene and participate

In order to initiate and participate in the consideration of one or more of the standards established by subchapter II or other concepts which contribute to the achievement of the purposes of this chapter, the Secretary, any affected electric utility, or any electric consumer of an affected electric utility may intervene and participate as a matter of right in any ratemaking proceeding or other appropriate regulatory proceeding relating to rates or rate design which is conducted by a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by a nonregulated electric utility.

##### (b) Access to information

Any intervenor or participant in a proceeding described in subsection (a) shall have access to information available to other parties to the proceeding if such information is relevant to the issues to which his intervention or participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State regulatory authority (in the case of proceedings concerning electric utilities for which it has ratemaking authority) or by the nonregulated electric utility (in the case of a proceeding conducted by a nonregulated electric utility).

##### (c) Effective date; procedures

Any intervention or participation under this section, in any proceeding commenced before November 9, 1978, but not completed before such date, shall be permitted under this section only to the extent such intervention or participation is timely under otherwise applicable law.

(Pub. L. 95-617, title I, § 121, Nov. 9, 1978, 92 Stat. 3128.)

#### REFERENCES IN TEXT

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

#### § 2632. Consumer representation

##### (a) Compensation for costs of participation or intervention

(1) If no alternative means for assuring representation of electric consumers is adopted in accordance with subsection (b) and if an electric consumer of an electric utility substantially contributed to the approval, in whole or in part, of a position advocated by such consumer in a proceeding concerning such utility, and relating to any standard set forth in subchapter II, such utility shall be liable to compensate such consumer (pursuant to paragraph (2)) for reasonable attorneys' fees, expert witness fees, and other reasonable costs incurred in preparation and advocacy of such position in such proceeding (including fees and costs of obtaining judicial review of any determination made in such proceeding with respect to such position).

(2) A consumer entitled to fees and costs under paragraph (1) may collect such fees and costs from an electric utility by bringing a civil action in any State court of competent jurisdiction, unless the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility) or nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has adopted a reasonable procedure pursuant to which such authority or nonregulated electric utility—

(A) determines the amount of such fees and costs, and

(B) includes an award of such fees and costs in its order in the proceeding.

(3) The procedure adopted by such State regulatory authority or nonregulated utility under paragraph (2) may include a preliminary proceeding to require that—

(A) as a condition of receiving compensation under such procedure such consumer demonstrate that, but for the ability to receive such award, participation or intervention in such proceeding may be a significant financial hardship for such consumer, and

(B) persons with the same or similar interests have a common legal representative in the proceeding as a condition to receiving compensation.

##### (b) Alternative means

Compensation shall not be required under subsection (a) if the State, the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility), or the nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has provided an alternative means for providing adequate compensation to persons—

(1) who have, or represent, an interest—

(A) which would not otherwise be adequately represented in the proceeding, and

(B) representation of which is necessary for a fair determination in the proceeding, and

(2) who are, or represent an interest which is, unable to effectively participate or intervene in the proceeding because such persons cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of preparing for, and participating or in-