

(C) the ordered transmission services require enlargement of transmission capacity and the transmitting utility subject to the order has failed, after making a good faith effort, to obtain the necessary approvals or property rights under applicable Federal, State, and local laws.

No order shall be issued under this subsection pursuant to a finding under subparagraph (A) unless the Commission finds that such order is in the public interest.

(2) Any order issued under this subsection terminating or modifying an order issued under subsection (a) or (b) shall—

(A) provide for any appropriate compensation, and

(B) provide the affected electric utilities adequate opportunity and time to—

(i) make suitable alternative arrangements for any transmission services terminated or modified, and

(ii) insure that the interests of ratepayers of such utilities are adequately protected.

(3) No order may be issued under this subsection terminating or modifying any order issued under subsection (a) or (b) if the order under subsection (a) or (b) includes terms and conditions agreed upon by the parties which—

(A) fix a period during which transmission services are to be provided under the order under subsection (a) or (b), or

(B) otherwise provide procedures or methods for terminating or modifying such order (including, if appropriate, the return of the transmission capacity when necessary to take into account an increase, after the issuance of such order, in the needs of the transmitting utility subject to such order for transmission capacity).

#### (e) “Facilities” defined

As used in this section, the term “facilities” means only facilities used for the generation or transmission of electric energy.

(June 10, 1920, ch. 285, pt. II, §211, as added Pub. L. 95-617, title II, §203, Nov. 9, 1978, 92 Stat. 3136; amended Pub. L. 96-294, title VI, §643(a)(3), June 30, 1980, 94 Stat. 770; Pub. L. 99-495, §15, Oct. 16, 1986, 100 Stat. 1257; Pub. L. 102-486, title VII, §721, Oct. 24, 1992, 106 Stat. 2915; Pub. L. 109-58, title XII, §1295(c), Aug. 8, 2005, 119 Stat. 985.)

#### AMENDMENTS

2005—Subsec. (c). Pub. L. 109-58, §1295(c)(1), struck out par. (2) designation before introductory provisions, redesignated former subpars. (A) and (B) as pars. (1) and (2), respectively, and in par. (2) substituted “termination or modification” for “termination of modification”.

Subsec. (d)(1). Pub. L. 109-58, §1295(c)(2), substituted “if the transmitting utility providing” for “if the electric utility providing” in introductory provisions.

1992—Subsec. (a). Pub. L. 102-486, §721(1), amended first sentence generally. Prior to amendment, first sentence read as follows: “Any electric utility, geothermal power producer (including a producer which is not an electric utility), or Federal power marketing agency may apply to the Commission for an order under this subsection requiring any other electric utility to provide transmission services to the applicant (including any enlargement of transmission capacity necessary to provide such services).”

Pub. L. 102-486, §721(2), in second sentence, substituted “the Commission may issue such order if it finds that such order meets the requirements of section 824k of this title, and would otherwise be in the public interest. No order may be issued under this subsection unless the applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order.” for “the Commission may issue such order if it finds that such order—

“(1) is in the public interest,

“(2) would—

“(A) conserve a significant amount of energy,

“(B) significantly promote the efficient use of facilities and resources, or

“(C) improve the reliability of any electric utility system to which the order applies, and

“(3) meets the requirements of section 824k of this title.”

Subsec. (b). Pub. L. 102-486, §721(3), amended subsec. (b) generally, substituting provisions relating to reliability of electric service for provisions which related to transmission service by sellers of electric energy for resale and notice, hearing, and determinations by Commission.

Subsec. (c). Pub. L. 102-486, §721(4), struck out pars. (1), (3), and (4), and substituted “which requires the transmitting” for “which requires the electric” in introductory provisions of par. (2). Prior to amendment, pars. (1), (3), and (4) read as follows:

“(1) No order may be issued under subsection (a) of this section unless the Commission determines that such order would reasonably preserve existing competitive relationships.

“(3) No order may be issued under the authority of subsection (a) or (b) of this section which is inconsistent with any State law which governs the retail marketing areas of electric utilities.

“(4) No order may be issued under subsection (a) or (b) of this section which provides for the transmission of electric energy directly to an ultimate consumer.”

Subsec. (d). Pub. L. 102-486, §721(5), in first sentence substituted “transmitting” for “electric” before “utility” in two places, in second sentence inserted “each affected transmitting utility,” before “and each affected electric utility”, in par. (1) substituted “, or” for period at end of subpar. (B) and added subpar. (C), and in par. (3)(B) substituted “transmitting” for “electric” before “utility”.

1986—Subsec. (c)(2)(B). Pub. L. 99-495 inserted provisions that nothing in this subparagraph shall prevent an application for an order hereunder to be filed prior to termination or modification of an existing rate schedule, provided that such order shall not become effective until termination of such rate schedule or the modification becomes effective.

1980—Subsec. (a). Pub. L. 96-294 added applicability to geothermal power producers.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-495 effective with respect to each license, permit, or exemption issued under this chapter after Oct. 16, 1986, see section 18 of Pub. L. 99-495, set out as a note under section 797 of this title.

#### STATE AUTHORITIES; CONSTRUCTION

Nothing in amendment by Pub. L. 102-486 to be construed as affecting or intending to affect, or in any way to interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see section 731 of Pub. L. 102-486, set out as a note under section 796 of this title.

### § 824j-1. Open access by unregulated transmitting utilities

#### (a) Definition of unregulated transmitting utility

In this section, the term “unregulated transmitting utility” means an entity that—

(1) owns or operates facilities used for the transmission of electric energy in interstate commerce; and

(2) is an entity described in section 824(f) of this title.

**(b) Transmission operation services**

Subject to section 824k(h) of this title, the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

(2) on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

**(c) Exemption**

The Commission shall exempt from any rule or order under this section any unregulated transmitting utility that—

(1) sells not more than 4,000,000 megawatt hours of electricity per year;

(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion of the system); or

(3) meets other criteria the Commission determines to be in the public interest.

**(d) Local distribution facilities**

The requirements of subsection (b) shall not apply to facilities used in local distribution.

**(e) Exemption termination**

If the Commission, after an evidentiary hearing held on a complaint and after giving consideration to reliability standards established under section 824o of this title, finds on the basis of a preponderance of the evidence that any exemption granted pursuant to subsection (c) unreasonably impairs the continued reliability of an interconnected transmission system, the Commission shall revoke the exemption granted to the transmitting utility.

**(f) Application to unregulated transmitting utilities**

The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 824d of this title are applicable to unregulated transmitting utilities for purposes of this section.

**(g) Remand**

In exercising authority under subsection (b)(1), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision if necessary to meet the requirements of subsection (b).

**(h) Other requests**

The provision of transmission services under subsection (b) does not preclude a request for transmission services under section 824j of this title.

**(i) Limitation**

The Commission may not require a State or municipality to take action under this section

that would violate a private activity bond rule for purposes of section 141 of title 26.

**(j) Transfer of control of transmitting facilities**

Nothing in this section authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control of its transmitting facilities to a Transmission Organization that is designated to provide non-discriminatory transmission access.

(June 10, 1920, ch. 285, pt. II, §211A, as added Pub. L. 109-58, title XII, §1231, Aug. 8, 2005, 119 Stat. 955.)

**§ 824k. Orders requiring interconnection or wheeling**

**(a) Rates, charges, terms, and conditions for wholesale transmission services**

An order under section 824j of this title shall require the transmitting utility subject to the order to provide wholesale transmission services at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities. Such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section 824j of this title shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers.

**(b) Repealed. Pub. L. 102-486, title VII, § 722(1), Oct. 24, 1992, 106 Stat. 2916**

**(c) Issuance of proposed order; agreement by parties to terms and conditions of order; approval by Commission; inclusion in final order; failure to agree**

(1) Before issuing an order under section 824i of this title or subsection (a) or (b) of section 824j of this title, the Commission shall issue a proposed order and set a reasonable time for parties to the proposed interconnection or transmission order to agree to terms and conditions under which such order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them. Such proposed order shall not be reviewable or enforceable in any court. The time set for such parties to agree to such terms and conditions may be shortened if the Commission determines that delay would jeopardize the attainment of the purposes of any proposed order. Any terms and conditions agreed to by the parties shall be subject to the approval of the Commission.