

graphs (1) and (2) of subsection (b), issue an order requiring any action described in subsection (a)(1) if the Commission determines that such order meets the requirements of subsection (c). No such order may be issued upon the Commission's own motion with respect to a Federal power marketing agency.

**(e) Definitions**

(1) As used in this section, the term "facilities" means only facilities used for the generation or transmission of electric energy.

(2) With respect to an order issued pursuant to an application of a qualifying cogenerator or qualifying small power producer under subsection (a)(1), the term "facilities of such applicant" means the qualifying cogeneration facilities or qualifying small power production facilities of the applicant, as specified in the application. With respect to an order issued pursuant to an application under subsection (a)(2), the term "facilities of such applicant" means the qualifying cogeneration facilities, qualifying small power production facilities, or the transmission facilities of an electric utility, as specified in the application. With respect to an order issued by the Commission on its own motion under subsection (d), such term means the qualifying cogeneration facilities, qualifying small power production facilities, or the transmission facilities of an electric utility, as specified in the proposed order.

(June 10, 1920, ch. 285, pt. II, §210, as added Pub. L. 95-617, title II, §202, Nov. 9, 1978, 92 Stat. 3135; amended Pub. L. 96-294, title VI, §643(a)(2), June 30, 1980, 94 Stat. 770.)

AMENDMENTS

1980—Subsec. (a)(1). Pub. L. 96-294 added applicability to geothermal power producers.

STUDY AND REPORT TO CONGRESSIONAL COMMITTEES ON APPLICATION OF PROVISIONS RELATING TO COGENERATION, SMALL POWER PRODUCTION, AND INTERCONNECTION AUTHORITY TO HYDROELECTRIC POWER FACILITIES

For provisions requiring the Federal Energy Regulatory Commission to conduct a study and report to Congress on whether the benefits of this section and section 824a-3 of this title should be applied to hydroelectric power facilities utilizing new dams or diversions, within the meaning of section 824a-3(k) of this title, see section 8(d) of Pub. L. 99-495, set out as a note under section 824a-3 of this title.

**§ 824j. Wheeling authority**

**(a) Transmission service by any electric utility; notice, hearing and findings by Commission**

Any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale, may apply to the Commission for an order under this subsection requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) to the applicant. Upon receipt of such application, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, 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.

**(b) Reliability of electric service**

No order may be issued under this section or section 824i of this title if, after giving consideration to consistently applied regional or national reliability standards, guidelines, or criteria, the Commission finds that such order would unreasonably impair the continued reliability of electric systems affected by the order.

**(c) Replacement of electric energy**

No order may be issued under subsection (a) or (b) which requires the transmitting utility subject to the order to transmit, during any period, an amount of electric energy which replaces any amount of electric energy—

(1) required to be provided to such applicant pursuant to a contract during such period, or

(2) currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission: *Provided*, 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.

**(d) Termination or modification of order; notice, hearing and findings of Commission; contents of order; inclusion in order of terms and conditions agreed upon by parties**

(1) Any transmitting utility ordered under subsection (a) or (b) to provide transmission services may apply to the Commission for an order permitting such transmitting utility to cease providing all, or any portion of, such services. After public notice, notice to each affected State regulatory authority, each affected Federal power marketing agency, each affected transmitting utility, and each affected electric utility, and after an opportunity for an evidentiary hearing, the Commission shall issue an order terminating or modifying the order issued under subsection (a) or (b), if the transmitting utility providing such transmission services has demonstrated, and the Commission has found, that—

(A) due to changed circumstances, the requirements applicable, under this section and section 824k of this title, to the issuance of an order under subsection (a) or (b) are no longer met, or<sup>1</sup>

(B) any transmission capacity of the utility providing transmission services under such order which was, at the time such order was issued, in excess of the capacity necessary to serve its own customers is no longer in excess of the capacity necessary for such purposes, or

<sup>1</sup> So in original. The word "or" probably should not appear.

(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—