

ries in accordance with chapter 51 and subchapter III of chapter 53 of title 5. The commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army, to serve the commission as engineer officer or officers, or in any other capacity, in field work outside the seat of government, their duties to be prescribed by the commission; and such detail is authorized. The President may also, at the request of the commission, detail, assign, or transfer to the commission, engineers in or under the Departments of the Interior or Agriculture for field work outside the seat of government under the direction of the commission.

The commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding) as are necessary to execute its functions. Expenditures by the commission shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the commission or by such other member or officer as may be authorized by the commission for that purpose subject to applicable regulations under chapters 1 to 11 of title 40 and division C (except sections 3302, 3306(f), 3307(e), 3501(b), 3509, 3906, 4104, 4710, and 4711) of subtitle I of title 41.

(June 10, 1920, ch. 285, pt. I, §2, 41 Stat. 1063; June 23, 1930, ch. 572, §1, 46 Stat. 798; renumbered pt. I, Aug. 26, 1935, ch. 687, title II, §212, 49 Stat. 847; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Oct. 31, 1951, ch. 654, §2(14), 65 Stat. 707.)

#### Editorial Notes

##### CODIFICATION

All appointments referred to in the first sentence are subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed Pub. L. 89-554, Sept. 6, 1966, §8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

In text, “chapter 51 and subchapter III of chapter 53 of title 5” substituted for “the Classification Act of 1949, as amended” on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In text, “chapters 1 to 11 of title 40 and division C (except sections 3302, 3306(f), 3307(e), 3501(b), 3509, 3906, 4104, 4710, and 4711) of subtitle I of title 41” substituted for “the Federal Property and Administrative Services Act of 1949, as amended” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

#### AMENDMENTS

1951—Act Oct. 31, 1951, inserted reference to applicable regulations of the Federal Property and Administrative Services Act of 1949, as amended, at end of section.

1949—Act Oct. 28, 1949, substituted “Classification Act of 1949” for “Classification Act of 1923”.

1930—Act June 23, 1930, substituted provisions permitting the commission to appoint, prescribe the duties, and fix the salaries of, a secretary, a chief engineer, a general counsel, a solicitor, and a chief accountant, and to appoint such other officers and employees as are necessary in the execution of its functions and fix their salaries, and authorizing the detail of officers from the Corps of Engineers, or other branches of the United States Army, to serve the commission as engineer officers, or in any other capacity, in field work outside the seat of government, and the detail, assignment or transfer to the commission of engineers in or under the Departments of the Interior or Agriculture for work outside the seat of government for provisions which required the commission to appoint an executive secretary at a salary of \$5,000 per year and prescribe his duties, and which permitted the detail of an officer from the United States Engineer Corps to serve the commission as engineer officer; and inserted provisions permitting the commission to make certain expenditures necessary in the execution of its functions, and allowing the payment of expenditures upon the presentation of itemized vouchers approved by authorized persons.

#### Statutory Notes and Related Subsidiaries

##### REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

#### § 793a. Repealed. Pub. L. 87-367, title I, § 103(5), Oct. 4, 1961, 75 Stat. 787

Section, Pub. L. 86-626, title I, §101, July 12, 1960, 74 Stat. 430, authorized the Federal Power Commission to place four additional positions in grade 18, one in grade 17 and one in grade 16 of the General Schedule of the Classification Act of 1949.

#### §§ 794, 795. Omitted

#### Editorial Notes

##### CODIFICATION

Section 794, which required the work of the commission to be performed by and through the Departments of War, Interior, and Agriculture and their personnel, consisted of the second paragraph of section 2 of act June 10, 1920, ch. 285, 41 Stat. 1063, which was omitted in the revision of said section 2 by act June 23, 1930, ch. 572, §1, 46 Stat. 798. The first and third paragraphs of said section 2 were formerly classified to sections 793 and 795 of this title.

Section 795, which related to expenses of the commission generally, consisted of the third paragraph of section 2 of act June 10, 1920, ch. 285, 41 Stat. 1063. Such section 2 was amended generally by act June 23, 1930, ch. 572, §1, 46 Stat. 798, and is classified to section 793 of this title. The first and second paragraphs of said section 2 were formerly classified to sections 793 and 794 of this title.

#### § 796. Definitions

The words defined in this section shall have the following meanings for purposes of this chapter, to wit:

(1) “public lands” means such lands and interest in lands owned by the United States as

are subject to private appropriation and disposal under public land laws. It shall not include "reservations", as hereinafter defined;

(2) "reservations" means national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws; also lands and interests in lands acquired and held for any public purposes; but shall not include national monuments or national parks;

(3) "corporation" means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include "municipalities" as hereinafter defined;

(4) "person" means an individual or a corporation;

(5) "licensee" means any person, State, or municipality licensed under the provisions of section 797 of this title, and any assignee or successor in interest thereof;

(6) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States;

(7) "municipality" means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;

(8) "navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority;

(9) "municipal purposes" means and includes all purposes within municipal powers as defined by the constitution or laws of the State or by the charter of the municipality;

(10) "Government dam" means a dam or other work constructed or owned by the United States for Government purposes with or without contribution from others;

(11) "project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the dis-

tribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

(12) "project works" means the physical structures of a project;

(13) "net investment" in a project means the actual legitimate original cost thereof as defined and interpreted in the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission", plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term "cost" shall include, insofar as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by States, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall insofar as applicable be published and promulgated as a part of the rules and regulations of the Commission;

(14) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively;

(15) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or municipality;

(16) "security" means any note, stock, treasury stock, bond, debenture, or other evidence of interest in or indebtedness of a corporation subject to the provisions of this chapter;

(17)(A) "small power production facility" means a facility which is an eligible solar, wind, waste, or geothermal facility, or a facility which—

(i) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal resources, or any combination thereof; and

(ii) has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), is not greater than 80 megawatts;

(B) "primary energy source" means the fuel or fuels used for the generation of electric energy, except that such term does not include, as determined under rules prescribed by the Commission, in consultation with the Secretary of Energy—

(i) the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and

(ii) the minimum amounts of fuel required to alleviate or prevent—

- (I) unanticipated equipment outages, and
- (II) emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages;

(C) “qualifying small power production facility” means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe;

(D) “qualifying small power producer” means the owner or operator of a qualifying small power production facility;

(E) “eligible solar, wind, waste or geothermal facility” means a facility which produces electric energy solely by the use, as a primary energy source, of solar energy, wind energy, waste resources or geothermal resources; but only if—

(i) either of the following is submitted to the Commission not later than December 31, 1994:

(I) an application for certification of the facility as a qualifying small power production facility; or

(II) notice that the facility meets the requirements for qualification; and

(ii) construction of such facility commences not later than December 31, 1999, or, if not, reasonable diligence is exercised toward the completion of such facility taking into account all factors relevant to construction of the facility.<sup>1</sup>

(18)(A) “cogeneration facility” means a facility which produces—

(i) electric energy, and

(ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes;

(B) “qualifying cogeneration facility” means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe;

(C) “qualifying cogenerator” means the owner or operator of a qualifying cogeneration facility;

(19) “Federal power marketing agency” means any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy;

(20) “evidentiary hearings” and “evidentiary proceeding” mean a proceeding conducted as provided in sections 554, 556, and 557 of title 5;

(21) “State regulatory authority” has the same meaning as the term “State commission”, except that in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority (as defined in section 2602 of this title), such term means the Tennessee Valley Authority;

(22) ELECTRIC UTILITY.—(A) The term “electric utility” means a person or Federal or

State agency (including an entity described in section 824(f) of this title) that sells electric energy.<sup>1</sup>

(B) The term “electric utility” includes the Tennessee Valley Authority and each Federal power marketing administration.<sup>1</sup>

(23) TRANSMITTING UTILITY.—The term “transmitting utility” means an entity (including an entity described in section 824(f) of this title) that owns, operates, or controls facilities used for the transmission of electric energy—

(A) in interstate commerce;

(B) for the sale of electric energy at wholesale.<sup>1</sup>

(24) WHOLESALE TRANSMISSION SERVICES.—The term “wholesale transmission services” means the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.<sup>1</sup>

(25) EXEMPT WHOLESALE GENERATOR.—The term “exempt wholesale generator” shall have the meaning provided by section 79z-5a<sup>2</sup> of title 15.<sup>1</sup>

(26) ELECTRIC COOPERATIVE.—The term “electric cooperative” means a cooperatively owned electric utility.<sup>1</sup>

(27) RTO.—The term “Regional Transmission Organization” or “RTO” means an entity of sufficient regional scope approved by the Commission—

(A) to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce; and

(B) to ensure nondiscriminatory access to the facilities.<sup>1</sup>

(28) ISO.—The term “Independent System Operator” or “ISO” means an entity approved by the Commission—

(A) to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce; and

(B) to ensure nondiscriminatory access to the facilities.<sup>3</sup>

(29) TRANSMISSION ORGANIZATION.—The term “Transmission Organization” means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

(June 10, 1920, ch. 285, pt. I, § 3, 41 Stat. 1063; renumbered pt. I and amended, Aug. 26, 1935, ch. 687, title II, §§201, 212, 49 Stat. 838, 847; Pub. L. 95-617, title II, §201, Nov. 9, 1978, 92 Stat. 3134; Pub. L. 96-294, title VI, §643(a)(1), June 30, 1980, 94 Stat. 770; Pub. L. 101-575, §3, Nov. 15, 1990, 104 Stat. 2834; Pub. L. 102-46, May 17, 1991, 105 Stat. 249; Pub. L. 102-486, title VII, §726, Oct. 24, 1992, 106 Stat. 2921; Pub. L. 109-58, title XII, §§1253(b), 1291(b), Aug. 8, 2005, 119 Stat. 970, 984.)

<sup>2</sup> See References in Text note below.

<sup>3</sup> So in original. The period probably should be “; and”.

<sup>1</sup> So in original. The period probably should be a semicolon.

**Editorial Notes****REFERENCES IN TEXT**

Section 79z-5a of title 15, referred to in par. (25), was repealed by Pub. L. 109-58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974.

**AMENDMENTS**

2005—Par. (17)(C). Pub. L. 109-58, §1253(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “‘qualifying small power production facility’ means a small power production facility—

“(i) which the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe; and

“(ii) which is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);”.

Par. (18)(B). Pub. L. 109-58, §1253(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “‘qualifying cogeneration facility’ means a cogeneration facility which—

“(i) the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe; and

“(ii) is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);”.

Pars. (22), (23). Pub. L. 109-58, §1291(b)(1), added pars. (22) and (23) and struck out former pars. (22) and (23) which read as follows:

“(22) ‘electric utility’ means any person or State agency (including any municipality) which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency.

“(23) TRANSMITTING UTILITY.—The term ‘transmitting utility’ means any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.”

Pars. (26) to (29). Pub. L. 109-58, §1291(b)(2), added pars. (26) to (29).

1992—Par. (22). Pub. L. 102-486, §726(b), inserted “(including any municipality)” after “State agency”.

Pars. (23) to (25). Pub. L. 102-486, §726(a), added pars. (23) to (25).

1991—Par. (17)(E). Pub. L. 102-46 struck out “, and which would otherwise not qualify as a small power production facility because of the power production capacity limitation contained in subparagraph (A)(ii)” after “geothermal resources” in introductory provisions.

1990—Par. (17)(A). Pub. L. 101-575, §3(a), inserted “a facility which is an eligible solar, wind, waste, or geothermal facility, or”.

Par. (17)(E). Pub. L. 101-575, §3(b), added subpar. (E).

1980—Par. (17)(A)(i). Pub. L. 96-294 added applicability to geothermal resources.

1978—Pars. (17) to (22). Pub. L. 95-617 added pars. (17) to (22).

1935—Act Aug. 26, 1935, §201, amended definitions of “reservations” and “corporations”, and inserted definitions of “person”, “licensee”, “commission”, “commissioner”, “State commission” and “security”.

**Statutory Notes and Related Subsidiaries****FERC REGULATIONS**

Pub. L. 101-575, §4, Nov. 15, 1990, 104 Stat. 2834, provided that: “Unless the Federal Energy Regulatory Commission otherwise specifies, by rule after enactment of this Act [Nov. 15, 1990], any eligible solar, wind, waste, or geothermal facility (as defined in section

3(17)(E) of the Federal Power Act as amended by this Act [16 U.S.C. 796(17)(E)]], which is a qualifying small power production facility (as defined in subparagraph (C) of section 3(17) of the Federal Power Act as amended by this Act)—

“(1) shall be considered a qualifying small power production facility for purposes of part 292 of title 18, Code of Federal Regulations, notwithstanding any size limitations contained in such part, and

“(2) shall not be subject to the size limitation contained in section 292.601(b) of such part.”

**STATE AUTHORITIES; CONSTRUCTION**

Pub. L. 102-486, title VII, §731, Oct. 24, 1992, 106 Stat. 2921, provided that: “Nothing in this title [enacting sections 824l, 824m, and 825o-1 of this title and former sections 79z-5a and 79z-5b of Title 15, Commerce and Trade, and amending this section, sections 824, 824j, 824k, 825n, 825o, and 2621 of this title, and provisions formerly set out as a note under former section 79k of Title 15] or in any amendment made by this title shall be construed as affecting or intending to affect, or in any way to interfere with, the authority of any State or local government relating to environmental protection or the siting of facilities.”

**TERMINATION OF FEDERAL POWER COMMISSION;  
TRANSFER OF FUNCTIONS**

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

**ABOLITION OF INTERSTATE COMMERCE COMMISSION AND  
TRANSFER OF FUNCTIONS**

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 1301 of Title 49.

**§ 797. General powers of Commission**

The Commission is authorized and empowered—

**(a) Investigations and data**

To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water-power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites, and whether the power from Government dams can be advantageously used by the United States for its public purposes, and what is a fair value of such power, to the extent the Commission may deem necessary or useful for the purposes of this chapter.

**(b) Statements as to investment of licensees in projects; access to projects, maps, etc.**

To determine the actual legitimate original cost of and the net investment in a licensed project, and to aid the Commission in such determinations, each licensee shall, upon oath, within a reasonable period of time to be fixed by