

Editorial Notes

REFERENCES IN TEXT

The National Forest Management Act of 1976, referred to in subsec. (h)(6)(D)(i), is Pub. L. 94-588, Oct. 22, 1976, 90 Stat. 2949, which enacted sections 472a, 521b, 1600, and 1611 to 1614 of this title, amended sections 500, 515, 516, 518, 576b, and 1601 to 1610 of this title, repealed sections 476, 513, and 514 of this title, and enacted provisions set out as notes under sections 476, 513, 528, 594-2, and 1600 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 1600 of this title and Tables.

The Endangered Species Act of 1973, referred to in subsec. (h)(6)(D)(ii), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (h)(6)(D)(iii), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The National Environmental Policy Act of 1969, referred to in subssecs. (h)(6)(D)(iv) and (j), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Federal Land Policy and Management Act of 1976, referred to in subsec. (h)(6)(D)(v), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, which is classified principally to chapter 35 (§1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117-58, §40105(a)(1), inserted “and Indian Tribes” after “affected States” and “capacity constraints and” before “congestion”.

Subsec. (a)(2). Pub. L. 117-58, §40105(a)(2), substituted “Not less frequently than once every 3 years, the Secretary, after” for “After” and “affected States and Indian Tribes), shall issue a report, based on the study under paragraph (1) or other information relating to electric transmission capacity constraints and congestion, which may designate as a national interest electric transmission corridor any geographic area that—” for “affected States), the Secretary shall issue a report, based on the study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor.” and added subpars. (i) and (ii).

Subsec. (a)(3). Pub. L. 117-58, §40105(a)(3), substituted “Not less frequently than once every 3 years, the Secretary, in conducting the study under paragraph (1) and issuing the report under paragraph (2), shall consult” for “The Secretary shall conduct the study and issue the report in consultation”.

Subsec. (a)(4)(C). Pub. L. 117-58, §40105(a)(4)(A), inserted “or energy security” after “independence”.

Subsec. (a)(4)(F) to (H). Pub. L. 117-58, §40105(a)(4)(B)–(D), added subpars. (F) to (H).

Subsec. (b)(1)(A)(ii). Pub. L. 117-58, §40105(b)(1)(A), inserted “or interregional benefits” after “interstate benefits”.

Subsec. (b)(1)(C). Pub. L. 117-58, §40105(b)(1)(B), added subpar. (C) and struck out former subpar. (C) which related to State commission or other authority withholding approval of construction or giving conditional approval that will not result in significant reduction of transmission congestion in interstate commerce or is not economically feasible.

Subsec. (e)(1). Pub. L. 117-58, §40105(c), substituted “modify, and operate and maintain, the transmission facilities and, in the determination of the Commission, the permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process, the” for “modify the transmission facilities, the”.

Subsec. (i)(2). Pub. L. 117-58, §40105(d)(1), substituted “shall provide” for “may provide”.

Subsec. (i)(4). Pub. L. 117-58, §40105(d)(2), substituted “the Secretary determines that the members of the compact are in disagreement after the later of—” and subpars. (A) and (B) for “the members of the compact are in disagreement and the Secretary makes, after notice and an opportunity for a hearing, the finding described in subsection (b)(1)(C).”

Statutory Notes and Related Subsidiaries

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117-58, including authority of Secretary of Labor, see section 18851 of Title 42, The Public Health and Welfare.

§ 824q. Native load service obligation**(a) Definitions**

In this section:

(1) The term “distribution utility” means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through one or more additional State utilities or electric cooperatives, provides electric service to end-users.

(2) The term “load-serving entity” means a distribution utility or an electric utility that has a service obligation.

(3) The term “service obligation” means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

(4) The term “State utility” means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power.

(b) Meeting service obligations

(1) Paragraph (2) applies to any load-serving entity that, as of August 8, 2005—

(A) owns generation facilities, markets the output of Federal generation facilities, or holds rights under one or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation; and

(B) by reason of ownership of transmission facilities, or one or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of the output of the generation facilities or the purchased energy to meet the service obligation.

(2) Any load-serving entity described in paragraph (1) is entitled to use the firm transmission rights, or, equivalent tradable or financial

transmission rights, in order to deliver the output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using the rights, to the extent required to meet the service obligation of the load-serving entity.

(3)(A) To the extent that all or a portion of the service obligation covered by the firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation.

(B) Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

(4) The Commission shall exercise the authority of the Commission under this chapter in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.

(c) Allocation of transmission rights

Nothing in subsections (b)(1), (b)(2), and (b)(3) of this section shall affect any existing or future methodology employed by a Transmission Organization for allocating or auctioning transmission rights if such Transmission Organization was authorized by the Commission to allocate or auction financial transmission rights on its system as of January 1, 2005, and the Commission determines that any future allocation or auction is just, reasonable and not unduly discriminatory or preferential, provided, however, that if such a Transmission Organization never allocated financial transmission rights on its system that pertained to a period before January 1, 2005, with respect to any application by such Transmission Organization that would change its methodology the Commission shall exercise its authority in a manner consistent with the¹ chapter and that takes into account the policies expressed in subsections (b)(1), (b)(2), and (b)(3) as applied to firm transmission rights held by a load-serving entity as of January 1, 2005, to the extent the associated generation ownership or power purchase arrangements remain in effect.

(d) Certain transmission rights

The Commission may exercise authority under this chapter to make transmission rights not used to meet an obligation covered by subsection (b) available to other entities in a manner determined by the Commission to be just, reasonable, and not unduly discriminatory or preferential.

(e) Obligation to build

Nothing in this chapter relieves a load-serving entity from any obligation under State or local law to build transmission or distribution facili-

ties adequate to meet the service obligations of the load-serving entity.

(f) Contracts

Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of August 8, 2005. If an ISO in the Western Interconnection had allocated financial transmission rights prior to August 8, 2005, but had not done so with respect to one or more load-serving entities' firm transmission rights held under contracts to which the preceding sentence applies (or held by reason of ownership or future ownership of transmission facilities), such load-serving entities may not be required, without their consent, to convert such firm transmission rights to tradable or financial rights, except where the load-serving entity has voluntarily joined the ISO as a participating transmission owner (or its successor) in accordance with the ISO tariff.

(g) Water pumping facilities

The Commission shall ensure that any entity described in section 824(f) of this title that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to the facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

(h) ERCOT

This section shall not apply within the area referred to in section 824(k)(2)(A) of this title.

(i) Jurisdiction

This section does not authorize the Commission to take any action not otherwise within the jurisdiction of the Commission.

(j) TVA area

(1) Subject to paragraphs (2) and (3), for purposes of subsection (b)(1)(B), a load-serving entity that is located within the service area of the Tennessee Valley Authority and that has a firm wholesale power supply contract with the Tennessee Valley Authority shall be considered to hold firm transmission rights for the transmission of the power provided.

(2) Nothing in this subsection affects the requirements of section 824(k)(j) of this title.

(3) The Commission shall not issue an order on the basis of this subsection that is contrary to the purposes of section 824(k)(j) of this title.

(k) Effect of exercising rights

An entity that to the extent required to meet its service obligations exercises rights described in subsection (b) shall not be considered by such action as engaging in undue discrimination or preference under this chapter.

(June 10, 1920, ch. 285, pt. II, §217, as added Pub. L. 109-58, title XII, §1233(a), Aug. 8, 2005, 119 Stat. 957.)

Statutory Notes and Related Subsidiaries

FERC RULEMAKING ON LONG-TERM TRANSMISSION RIGHTS IN ORGANIZED MARKETS

Pub. L. 109-58, title XII, §1233(b), Aug. 8, 2005, 119 Stat. 960, provided that: "Within 1 year after the date

¹ So in original. Probably should be "this".

of enactment of this section [Aug. 8, 2005] and after notice and an opportunity for comment, the [Federal Energy Regulatory] Commission shall by rule or order, implement section 217(b)(4) of the Federal Power Act [16 U.S.C. 824q(b)(4)] in Transmission Organizations, as defined by that Act [16 U.S.C. 791a et seq.] with organized electricity markets.”

§ 824r. Protection of transmission contracts in the Pacific Northwest

(a) Definition of electric utility or person

In this section, the term “electric utility or person” means an electric utility or person that—

(1) as of August 8, 2005, holds firm transmission rights pursuant to contract or by reason of ownership of transmission facilities; and

(2) is located—

(A) in the Pacific Northwest, as that region is defined in section 839a of this title; or

(B) in that portion of a State included in the geographic area proposed for a regional transmission organization in Commission Docket Number RT01-35 on the date on which that docket was opened.

(b) Protection of transmission contracts

Nothing in this chapter confers on the Commission the authority to require an electric utility or person to convert to tradable or financial rights—

(1) firm transmission rights described in subsection (a); or

(2) firm transmission rights obtained by exercising contract or tariff rights associated with the firm transmission rights described in subsection (a).

(June 10, 1920, ch. 285, pt. II, §218, as added Pub. L. 109-58, title XII, §1235, Aug. 8, 2005, 119 Stat. 960.)

§ 824s. Transmission infrastructure investment

(a) Rulemaking requirement

Not later than 1 year after August 8, 2005, the Commission shall establish, by rule, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.

(b) Contents

The rule shall—

(1) promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce, regardless of the ownership of the facilities;

(2) provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies);

(3) encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities; and

(4) allow recovery of—

(A) all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 824o of this title; and

(B) all prudently incurred costs related to transmission infrastructure development pursuant to section 824p of this title.

(c) Incentives

In the rule issued under this section, the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization. The Commission shall ensure that any costs recoverable pursuant to this subsection may be recovered by such utility through the transmission rates charged by such utility or through the transmission rates charged by the Transmission Organization that provides transmission service to such utility.

(d) Just and reasonable rates

All rates approved under the rules adopted pursuant to this section, including any revisions to the rules, are subject to the requirements of sections 824d and 824e of this title that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.

(June 10, 1920, ch. 285, pt. II, §219, as added Pub. L. 109-58, title XII, §1241, Aug. 8, 2005, 119 Stat. 961.)

§ 824s-1. Incentives for cybersecurity investments

(a) Definitions

In this section:

(1) Advanced cybersecurity technology

The term “advanced cybersecurity technology” means any technology, operational capability, or service, including computer hardware, software, or a related asset, that enhances the security posture of public utilities through improvements in the ability to protect against, detect, respond to, or recover from a cybersecurity threat (as defined in section 650 of title 6).

(2) Advanced cybersecurity technology information

The term “advanced cybersecurity technology information” means information relating to advanced cybersecurity technology or proposed advanced cybersecurity technology that is generated by or provided to the Commission or another Federal agency.

(b) Study

Not later than 180 days after November 15, 2021, the Commission, in consultation with the Secretary of Energy, the North American Electric Reliability Corporation, the Electricity Subsector Coordinating Council, and the National Association of Regulatory Utility Commissioners, shall conduct a study to identify incentive-based, including performance-based, rate treatments for the transmission and sale of electric energy subject to the jurisdiction of the Commission that could be used to encourage—

(1) investment by public utilities in advanced cybersecurity technology; and