DEPARTMENT OF ENERGY ORGANIZATION ACT

[Extracts from] An act to establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes. (Act of August 4, 1977, Public Law 95-91, 91 Stat. 565)

[Sec. 1 Short title.]—This act may be cited as the "Department of Energy Organization Act". (91 Stat. 565; 42 U.S.C. § 7101 note)

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DEFINITIONS

Sec. 2. (a) As used in this Act, unless otherwise provided or indicated by the context, the term the "Department" means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission.

(b) As used in this Act (1) reference to "function" includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to "perform", when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.

(c) As used in this Act, "Federal lease" means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and convenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction. (91 Stat. 567; 42 U.S.C. § 7101)

TITLE I—DECLARATION OF FINDINGS AND PURPOSES

FINDINGS

Sec. 101. The Congress of the United States finds that—

(1) the United States faces an increasing shortage of nonrenewable energy resources;

(2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;

(3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;

(4) responsibility for energy policy, regulation, and research, development and demonstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and

(5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch. (91 Stat. 567; 42 U.S.C. § 7111)

PURPOSES

Sec. 102. The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this Act—

(1) to establish a Department of Energy in the executive branch;

(2) to achieve, through the Department, effective management of energy functions of the Federal Government, including consultation with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions;

(3) to provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages;

(4) to create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program;

(5) to carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including—

(A) assessing the requirements for energy research and development;

(B) developing priorities necessary to meet those requirements;

(C) undertaking programs for the optimal development of the various forms of energy production, and conservation; and

(D) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies;

(6) to place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources;

(7) to continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department;

(8) to facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy supply reserve;

(9) to promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost;

(10) to establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President;

(11) to provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs;

(12) to foster and assure competition among parties engaged in the supply of energy and fuels;

(13) to assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety;

(14) to assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of this Act;

(15) to provide for, encourage, and assist public participation in the development and enforcement of national energy programs;

(16) to create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development;

(17) to foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising; and

(18) to provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this Act. (91 Stat. 567; 42 U.S.C. § 7112)

NOTES OF OPINION

1. Purpose

The trifurcated arrangement of the Secretary of Energy's Delegation Order No. 0204-33 of December 1978 delegating rate

development to the local Power Marketing Administration, rate approval and interim implementation to the Assistant Secretary of Energy, and final approval to the independent Federal Energy Regulatory Commission does as much as possible to resolve the command of section 5 of the Flood Control Act of 1944 that there be an independent check on ratemaking and the command of the Department of Energy Organization Act that ratemaking be made more efficient through the centralization of control in one officer, the Secretary of Energy. *United States v. Tex-La Electric Cooperative, Inc.*, 693 F.2d 392, 411-2 (5th Cir. 1982), reversing *United States v. Tex-La Electric Cooperative, Inc.*, 524 F. Supp. 409 (E.D. La. 1981), and *United States v. Northeast Texas Electric Cooperative, Inc.*, Civil Action No. H-81-604 (S.D. Tex. 1981).

The purpose of the Department of Energy Organization Act is to improve the efficiency of American energy production and unite the scattered governmental divisions with responsibility in the area under the leadership of a single new cabinet-level officer, the Secretary of Energy. *United States v. Tex-La Electric Cooperative, Inc.*, 693 F. 2d 392, 402 (5th Cir. 1982).

RELATIONSHIP WITH STATES

Sec. 103. Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this Act shall affect the authority of any State over matters exclusively within its jurisdiction. (91 Stat. 569; 42 U.S.C. § 7113)

NOTE OF OPINION

1. Compliance with State law

In constructing the Miles City/New Underwood transmission line, the Western Area Power Administration is not required by section 505 of the Federal Land Policy and Management Act or by section 103 of the Department of Energy Organization Act to obtain a permit from the State of South Dakota. *Citizens and Landowners Against the Miles City/New Underwood Powerline.* 683 F. 2nd 1171 (8th Cir. 1982), affirming 513 F. Supp. 257 (D.S. Dak. 1981).

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

ESTABLISHMENT

Sec. 201. There is hereby established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the "Secretary"), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this Act, under the supervision and direction of the Secretary. (91 Stat. 569; 42 U.S.C. § 7131)

PRINCIPAL OFFICERS

Sec. 202. (a) There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Deputy Secretary shall act for and exercise the functions of the Sec-

retary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(b) There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. (91 Stat. 569; 42 U.S.C. § 7132)

ASSISTANT SECRETARIES

Sec. 203. (a) There shall be in the Department eight Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this Act. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

* * * * *

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

* * * * *

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) (or any portion thereof) for which such individual will be responsible. (91 Stat. 570; 42 U.S.C. § 7133)

NOTE OF OPINION

1. Purpose

The legislative history of section 203(a)(10) of the Department of Energy Organization Act indicates that the purpose of listing functions was to assure that they receive high-level attention in the Department, but there was no intent to restrict other Department of Energy (DOE) officials, other than the assigned Assistant Secretary, from dealing with some aspects of the listed function. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for DOE's power marketing agencies.

FEDERAL ENERGY REGULATORY COMMISSION

Sec. 204. There shall be within the Department, a Federal Energy Regulatory Commission established by title IV of this Act (hereinafter referred to in this Act as the "Commission"). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. (91 Stat. 571; 42 U.S.C. § 7134)

* * * * *

TITLE III—TRANSFERS OF FUNCTIONS

GENERAL TRANSFERS

Sec. 301.

* * * * *

(b) [Transfer of miscellaneous functions from Federal Power Commission.]—Except as provided in title IV, there are hereby transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 402(a)(2) to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence. (91 Stat. 577; 42 U.S.C. § 7151)

NOTES OF OPINIONS

Interim rates 1
Rate approval authority 2
Ratemaking, generally 3

1. Interim rates

The Secretary of Energy is without authority under sections 301(b) and 501(a)(1) of the Department of Energy Organization Act to place power rates into effect on an interim basis without confirmation and approval by the Federal Energy Regulatory Commission, as successor to the Federal Power Commission, as required by section 5 of the Flood

Control Act of 1944. *City of Fulton v. United States,* 680 F. 2d 115 (Ct. Cl. 1982). [Editor's note: This decision was affirmed by the Federal Circuit, 751 F.2d 1255 (1985), but reversed by the Supreme Court sub nom *United States v. City of Fulton,* 475 U.S. ——— , 89 L. Ed. 2d 661, 106 S. Ct. 1422 (1986).]

The Federal Power Commission had the power to confirm Bonneville Power Administration rates on an interim basis. The Secretary of Energy inherited these powers through the Department of Energy Organization Act. *Montana Power Company v. Edwards,* 531 F. Supp. 9 (D. Ore. 1981).

The power to determine when interim rates are "necessary" lies within the discretion of the Secretary of Energy. *Pacific Power & Light Co. v. Duncan,* 499 F. Supp. 672, 678-79 (D. Ore. 1980).

Section 301(b) of the Department of Energy Organization Act, through section 402(a)(2) of the Act, authorizes the Secretary of Energy, in the exercise of the rate approval authority for the Bonneville Power Administration (BPA) formerly in the Federal Power Commission (FPC), to utilize the authority of the FPC under, among others, section 16 of the Natural Gas Act, 15 U.S.C. 717o, which authorizes the FPC to perform all acts necessary to carry out its functions. The Supreme Court has held that this includes the authority to set rates on an interim basis. Therefore, the Secretary of Energy has authority to promulgate interim rates for BPA. *Pacific Power & Light Co. v. Duncan,* 499 F. Supp. 672, 678-79 (D. Ore. 1980).

2. Rate approval authority

Section 301(b) of the Department of Energy Organization Act transfers to the Secretary of Energy the rate confirmation and approval function of the Federal Power Commission under section 5 of the Flood Control Act of 1944. *United States v. Tex-La Electric Cooperative, Inc.,* 693 F. 2d 392, 395-96 (5th Cir. 1982).

In plain and unambiguous language, Congress, in section 301(b) of the Department of Energy Organization Act, granted the rate approval authority of the Federal Power Commission for the Bonneville Power Administration to the Secretary of Energy, not to the Federal Energy Regulatory Commission. *Pacific Power & Light Co. v. Duncan,* 499 F. Supp. 672, 677-78 (D. Ore. 1980).

Pursuant to section 301(b) of the Department of Energy Organization Act, the confirmation and approval authority of the Federal Power Commission for Federal power marketing rates is vested in the Secretary of Energy. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for the Department of Energy's power marketing agencies.

3. Ratemaking, generally

Despite the implication in sections 301(b)(2) and 501(a)(1) to the contrary, the unification in the hands of the Secretary of Energy of the separate functions of the Secretary of the Interior to prepare rates and of the Federal Power Commission to confirm and approve rates, amends section 5 of the Flood Control Act of 1944 to alter the strict procedural requirements of a bifurcated rate implementation scheme. *United States v. Tex-La Electric Cooperative, Inc.,* 693 F. 2d 392, 404 (5th Cir. 1982).

TRANSFERS FROM THE DEPARTMENT OF THE INTERIOR

Sec. 302. [Transfer of power marketing functions from Interior.]—(a)(1) There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 5 of the Flood Control Act of 1944, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

(C) the Alaska Power Administration;

(D) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 and the Federal Columbia River Transmission System Act;

(E) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(F) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, the Bonneville Power Administration, and the Alaska Power Administration shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

* * * * *

(91 Stat. 578; 42 U.S.C. § 7152)

EXPLANATORY NOTES

References in the Text. Section 5 of the Flood Contract Act of 1944 (58 Stat. 887, 890), referred to in subsection (a)(1) of the text, appears in Volume II at page 800. The Bonneville Project Act of 1937 (Act of August 20, 1937, 50 Stat. 731), referred to in subsection (a)(1)(D) of the text, appears on Volume I at page 568. The Act of June 18, 1954 (68 Stat. 255), referred to in subsection (a)(1)(F) of the text, appears in Volume II at page 1139.

Western Area Power Administration. The Western Area Power Administration was created within the Department of Energy in accordance with section 302(a)(3).

Popular Name. The last sentence of section 302(a)(3), relating to cost allocations, is sometimes referred to as the McGovern Amendment, after Senator George McGovern, who authored it.

NOTES OF OPINIONS

Changes in cost allocations 1
Power marketing administrations 2
Rates and charges 3
Transmission facilities 10

1. Changes in cost allocations

It was the intent of Congress in authorizing the Pick-Sloan Missouri Basin Program (P-SMBP) in the Flood Control Act of 1944 that the "ultimate development" concept be used to establish cost allocations and repayment obligations and Congress reaffirmed that intent in 1965 by enacting the Department's interest

rate recommendation in the form of section 4(b) of the Garrison Diversion Unit reauthorization Act. The "current development" concept cannot be used for P-SMBP cost allocation and repayment purposes without approval of Congress because such a change would violate both the intent of Congress with regard to P-SMBP and section 302 of the Energy Organization Act of 1977 requiring Congressional approval of changes in cost allocations or project evaluation standards which result in a reallocation of the joint costs of completed, operational multipurpose facilities. Congressional approval of such changes can validly be secured through the appropriations process if sufficient care is taken to highlight the specific action requested distinctly and discretely, so that Congress as a whole knows exactly what is before it and can act in positive and concrete fashion. Memorandum of Solicitor Coldiron to Secretary, December 15, 1982, in re Pick-Sloan Missouri Basin Program; open audit findings.

Section 302 requires the approval of Congress before changes can be made in cost allocations or project evaluation standards which result in a reallocation of the joint costs of completed, operational multipurpose facilities. Memorandum of Solicitor Coldiron to Secretary, December 15, 1982, in re Pick-Sloan Missouri Basin Program; open audit findings.

The legislative history of the Flood Control Act of 1944, authorizing the Pick-Sloan Missouri Basin Program (P-SMBP), reflects a Congressional intent that an ultimate use type concept be used in the financial reporting of P-SMBP. In addition, section 302 of the DOE Organization Act specifically precludes changes in cost allocation for Reclamation projects without Congressional approval. Accordingly, Congressional approval would be necessary before the Secretary could change the basis for suballocations of power costs between commercial power and project use from ultimate use to current use, as recommended by a July 1978 audit report prepared by the Department's Office of Audit and Investigation. Memorandum of Assistant Solicitor Mauro to Commissioner, October 14, 1980.

2. Power marketing administrations

It is clear from the legislative history of the "separate and distinct" and "acting by and through" provisions of sections 302(a) (2) and (3) of the Department of Energy Organization Act that Congress intended to preserve the status quo of having separate power marketing agencies (PMAs) under the supervision of the Secretary of Energy, and did not intend to divest the Secretary of policy level supervision over the PMAs or diminish the previously existing Secretarial authority to establish power marketing rates. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for Department of Energy's power marketing agencies.

3. Rates and charges

The grant to the Secretary of Energy, by section 9(c) of the Reclamation Project Act of 1939 and section 302(a) of the Department of Energy Organization Act, of complete power over ratemaking provides sufficient authority to establish rates on an interim basis. Explicit statutory authority to set rates on an interim basis is not required. The broad authority of 9(c) to set the terms on the sale of power also permits the Secretary to require, as one of the terms of the sale of Colorado River Storage Project power, that interim rates be collected, subject to refund with interest. *Colorado River Energy Distributors Association v. Lewis*, 516 F. Supp. 926, 930–31 (D.D.C. 1981), case dismissed sub. nom. *Colorado River Energy Distributors Association v. Edwards*, 516 F. Supp. 933 (D.D.C. 1981).

The establishment of a confirm and approve power regarding rates of the Western Area Power Administration, and rates of the Alaska Power Administration for the Snettisham project, constitutes an appropriate action by the Secretary of Energy to subdivide his basic rate-making function in a manner designated to encourage uniformity and objective decision-making regarding rate-making for all the power marketing administrations. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for the Department of Energy's power marketing agencies.

It is well within the Secretary of Energy's broad discretion under the Department of Energy Organization Act to delegate to the Assistant Secretary the authority to confirm and approve rates on an interim basis and to delegate or assign to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve rates on a final basis.

Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to FERC of rate confirmation authority for the Department of Energy's power marketing agencies.

The authority to establish rates on an interim basis is a necessary corollary of, and inherent in, the basic authority to set rates. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for the Department of Energy's power marketing agencies.

10. Transmission facilities

To the extent that electrical transmission facilities are required to accomplish Central Arizona Project purposes and not power marketing purposes, the Secretary continues to have the authority to construct, operate, and maintain those facilities and such authority is unaffected by section 302 of the Department of Energy Organization Act. Memorandum of Solicitor Krulitz to Assistant Secretary, Land and Water Resources and Commissioner, September 24, 1979.

* * * * *

TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

APPOINTMENT AND ADMINISTRATION

Sec. 401. (a) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of four years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(c) The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, United States Code, (2) the selection, appointment and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select

and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5, United States Code. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5, United States Code relating to hearing examiners.

(h) The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this Act or as otherwise authorized by law.

(j) In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the commission (1) showing the amount requested by the Commission in its budgetary presentation to

the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress. (91 Stat. 582; 42 U.S.C. § 7171)

JURISDICTION OF THE COMMISSION

Sec. 402. (a)(1) There are hereby transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act;

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act, and the interconnection, under section 202(b), of such Act, of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

* * * * *

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4,301,302,306 through 309, and 312 through 316 of the Federal Power Act; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act.

* * * * *

(d) The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 105 and 106 of the Energy Policy and Conservation Act shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 404 of this Act.

(f) No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 404, shall be final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) The Commission is authorized to prescribe rules, regulations, and statement of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to section 402. (91 Stat. 583; 42 U.S.C. § 7172)

NOTES OF OPINIONS

1. Interim rates

Section 301(b) of the Department of Energy Organization Act, through section 402(a)(2) of the Act, authorizes the Secretary of Energy, in the exercise of the rate approval authority for the Bonneville Power Administration (BPA) formerly in the Federal Power Commission (FPC), to utilize the authority of the FPC under, among others, section 16 of the Natural Gas Act, 15 U.S.C. 717o, which authorizes the FPC to perform all acts necessary to carry out its functions. The Supreme Court has held that this includes the authority to set rates on an interim basis. Therefore, the Secretary of Energy has authority to promulgate interim rates for BPA. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp. 672, 678–79 (D. Ore. 1980).

2. Rate approval authority

It is well within the Secretary of Energy's broad discretion under the Department of Energy Organization Act to delegate to the Assistant Secretary the authority to confirm and approve rates on an interim basis and to delegate or assign to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve rates on a final basis. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to FERC of rate confirmation authority for the Department of Energy's power marketing agencies.

INITIATION OF RULEMAKING PROCEEDINGS BEFORE COMMISSION

Sec. 403. (a) The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act.

(b) The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the

Natural Gas Act, may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

* * * * *

(91 Stat. 585; 42 U.S.C. § 7173)

REFERRAL OF OTHER RULEMAKING PROCEEDINGS TO COMMISSION

Sec. 404. (a) Except as provided in section 403, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 301 or 306 of this Act, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 402(a)(1), (b), and (c)(1), the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

(1) concur in adoption of the rule or statement as proposed by the Secretary;

(2) concur in adoption of the rule or statement only with such changes as it may recommend; or

(3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendation, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Following publication of the Commission's recommendations the Secretary shall have the option of—

(1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1);

(2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2); or

(3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5, United States Code. (91 Stat. 586; 42 U.S.C. § 7174)

RIGHT OF SECRETARY TO INTERVENE IN COMMISSION PROCEEDINGS

Sec. 405. The Secretary may as a matter or right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall

comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants. (91 Stat. 586; 42 U.S.C. § 7175)

REORGANIZATION

Sec. 406. For the purposes of chapter 9 of title 5, United States Code, the Commission shall be deemed to be an independent regulatory agency. (91 Stat. 586; 42 U.S.C. § 7176)

ACCESS TO INFORMATION

Sec. 407. (a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the commission determines is necessary to carry out its responsibilities under this Act.

(b) The Secretary, in formulating the information to be requested in the reports and investigations under section 304 and section 311 of the Federal Power Act and section 10 and section 11 of the Natural Gas Act, shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission. (91 Stat. 587; 42 U.S.C. § 7177)

TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

PROCEDURES

Sec. 501. (a)(1) Subject to the other requirements of this title, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5, United States Code), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this Act or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this title. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this Act, provides administrative procedure requirements in addition to the requirements provided in this title, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this title shall apply to the Commission to the same extent this title applies to the Secretary in the exercise of any of the Commission's functions under section 402(c) (1) or which the Secretary has assigned under section 402(e).

(b)(1) In addition to the requirements of subsection (a) of this section, notice of any proposed title, regulation, or order described in subsection (a) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

(2) Public notice of all rules, regulations, or orders described in subsection (a) which are promulgated by officers of a State or local government agency pursuant to a delegation under this Act shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.

(3) For the purposes of this title, the exception from the requirements of section 553 of title 5, United States Code, provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available.

(c)(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a)) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5, United States Code. If the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a).

(d) Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule

if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period.

(e) The requirements of subsections (b), (c), and (d) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

(f)(1) With respect to any rule, regulation, or order described in subsection (a), the effects of which except for indirect effects of an inconsequential nature, are confined to—

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(g) Where authorized by any law vested, transferred, or delegated pursuant to this Act, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action. (91 Stat. 587; 42 U.S.C. § 7191)

NOTES OF OPINIONS

Interim rates 1
Ratemaking, generally 2
Rulemaking 3

1. Interim rates

The Secretary of Energy is without authority under sections 301(b) and 501(a)(1) of the Department of Energy Organization Act to place power rates into effect on an interim basis without confirmation and approval by the Federal Energy Regulatory Commission, as successor to the Federal Power commission, as required by section 5 of the Flood Control

Act of 1944. *City of Fulton v. United States*, 680 F. 2d 115 (Ct. Cl. 1982). [Editor's note: This decision was affirmed by the Federal Circuit, 751 F.2d 1255 (1985) but reversed by the Supreme Court sub. nom. *United States v. City of Fulton*, 475 U.S. _____, 89 L. Ed 2d 661, 106 S.Ct. 1422 (1986).]

2. Ratemaking, generally

Despite the implication in sections 301(b)(2) and 501(a)(1) to the contrary, the unification in the hands of the Secretary of Energy of the separate functions of the Secretary of the Interior to prepare rates and of the Federal Power Commission to confirm and approve rates, amends section 5 of the Flood Control Act of 1944 to alter the strict procedural requirements of a bifurcated rate implementation scheme. *United States v. Tex-La Electric Cooperative, Inc.*, 693 F. 2d. 392, 404 (5th Cir. 1982).

3. Rulemaking

Power from Federal hydroelectric projects is "public property" and thus was exempt from the rulemaking requirement of section 553 of the Administrative Procedure Act (APA) before the exemption was eliminated by section 501(b)(3) of the Department of Energy Organization Act. However, if the criteria used by the Southeastern Power Administration for allocating power had become so "crystallized" as to be considered a "rule" or "regulation" within the meaning of section 552 of the APA, they would have to be published. *Greenwood Utilities Commission v. Schlesinger*, 515 F. Supp. 653, 659–61 (M.D. Ga. 1981). [Editor's note: The court's decision was affirmed, 764 F.2d 1459 (11th Cir. 1985); however, the annotated holding was not discussed.]

JUDICIAL REVIEW

Sec. 502. (a) Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission of any officer, employee, or component of the Department shall notwithstanding such vesting transfer, or delegation, be made in the manner specified in or for such law.

(b) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this Act, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this Act, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this Act or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

(c) Subject to the provisions of section 401(i) of this Act, and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28,

United States Code. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court. (91 Stat. 589; 42 U.S.C. § 7192)

* * * * *

TITLE VI—ADMINISTRATIVE PROVISIONS

* * * * *

PART C—GENERAL ADMINISTRATIVE PROVISIONS

GENERAL AUTHORITY

Sec. 641. To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred. (91 Stat. 598; 42 U.S.C. § 7252)

NOTE OF OPINION

1. Rates and charges

It is well within the Secretary of Energy's broad discretion under the Department of Energy Organization Act to delegate to the Assistant Secretary the authority to confirm and approve rates on an interim basis and to delegate or assign to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve rates on a final basis. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to FERC of rate confirmation authority for the Department of Energy's power marketing agencies.

DELEGATION

Sec. 642. Except as otherwise expressly prohibited by law, and except as otherwise provided in this Act, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate. (91 Stat. 599; 42 U.S.C. § 7252)

NOTE OF OPINION

1. Rates and charges

It is well within the Secretary of Energy's broad discretion under the Department of Energy Organization Act to delegate to the Assistant Secretary the authority to confirm and approve rates on an interim basis and to delegate or assign to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve rates on a final basis. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to FERC of rate confirmation authority for the Department of Energy's power marketing agencies.

REORGANIZATION

Sec. 643. The Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department

as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this Act, or to the transfer of functions vested by this Act in any organizational unit or component. (91 Stat. 599; 42 U.S.C. § 7253)

RULES

Sec. 644. The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him. (91 Stat. 599; 42 U.S.C. § 7254)

SUBPENA

Sec. 645. For the purpose of carrying out the provisions of this chapter, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 9 of the Federal Trade Commission Act with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this chapter. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978, the Commission shall have the same powers and authority as the Secretary has under this section. (91 Stat. 599; Act of November 9, 1978, 92 Stat. 3408; 42 U.S.C. § 7255)

EXPLANATORY NOTE

1978 Amendment. Section 508(a) of the Act of November 9, 1978 (Public Law 95–621, 92 Stat. 3408) amended section 645 by adding the last sentence. The 1978 Act does not appear herein.

CONTRACTS

Sec. 646. (a) The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Notwithstanding any other provision of this title, no authority to enter into contracts or to make payments under this title shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts. (91 Stat. 599; 42 U.S.C. § 7256)

ACQUISITION AND MAINTENANCE OF PROPERTY

Sec. 647. The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise

for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor. (91 Stat. 599; 42 U.S.C. § 7257)

FACILITIES CONSTRUCTION

Sec. 648. (a) As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

(1) Emergency medical services and supplies;

(2) Food and other subsistence supplies;

(3) Messing facilities;

(4) Audio-visual equipment, accessories, and supplies for recreation and training;

(5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) Living and working quarters and facilities; and

(7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received. (91 Stat. 600; 42 U.S.C. § 7258)

USE OF FACILITIES

Sec. 649. (a) With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private

agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in 3(e) of the Federal Property and Administrative Services Act of 1949.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved. (91 Stat. 600; 42 U.S.C. § 7259)

EXPLANATORY NOTE

Reference in the Text. Section 3(e) of the Federal Property and Administrative Services Act of 1949 (Act of June 30, 1949, 63 Stat. 377) referred to in subsection (b), appears in Volume II at page 956.

FIELD OFFICES

Sec. 650. The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him. (91 Stat. 601; 42 U.S.C. § 7260)

COPYRIGHTS

Sec. 651. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights. (91 Stat. 601; 42 U.S.C. § 7261)

GIFTS AND BEQUESTS

Sec. 652. The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property

received as gifts, bequests, or devises shall be deposited in the Treasury and shall be disbursed upon the order of the Secretary. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or devise. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States. (91 Stat. 601; 42 U.S.C. § 7262)

* * * * *

TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL

Sec. 701. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedure Act of 1950, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out function transferred by this Act, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312–5316) on the effective date of this Act, shall be subject to the provisions of section 703 of this Act. (91 Stat. 605; 42 U.S.C. § 7291)

* * * * *

AGENCY TERMINATIONS

Sec. 703. Except as otherwise provided in this Act, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall terminate. (91 Stat. 606; 42 U.S.C. § 7293)

INCIDENTAL TRANSFERS

Sec. 704. The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, as he may deem necessary to accomplish the purposes of this Act. (91 Stat. 606; 42 U.S.C. § 7294)

SAVINGS PROVISIONS

Sec. 705. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Department or the Commission after the date of enactment of this Act, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b)(1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(e) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted. (91 Stat. 606; 42 U.S.C. § 7295)

SEPARABILITY

Sec. 706. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby. (91 Stat. 607; 42 U.S.C. § 7296)

REFERENCE

Sec. 707. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this Act vests such functions. (91 Stat. 607; 42 U.S.C. § 7297)

PRESIDENTIAL AUTHORITY

Sec. 708. Except as provided in title IV, nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions. (91 Stat. 607; 42 U.S.C. § 7298)

TITLE IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

EFFECTIVE DATE

Sec. 901. The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as

the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II and title IV of this Act may be nominated and appointed, as provided in those titles, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 705(b) (2) of this Act at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available. (91 Stat. 612; 42 U.S.C. § 7341)

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EXPLANATORY NOTES

Effective Date. Executive Order 12009, issued September 13, 1977, established October 1, 1977 as the effective date of the Department of Energy Organization Act.

Editor's Note, Annotations. Annotations of opinions are included only to the extent deemed relevant to the programs and activities of Bureau of Reclamation or the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations under this statute.

EXPLANATORY NOTE

Legislative History. S. 826, Public Law 95–91 in the 95th Congress. Reported in Senate from Governmental Affairs May 14, 1977; S. Rept. No. 95–164. H.R. 6804 reported in House from Government Operations May 16, 1977 (H.R. Rept. No. 95–346, Part I) and Post Office and Civil Service May 24, 1977 (H.R. Rept. No. 95–346, Part II). House conference report H.R. Rept. No. 95–539, July 26, 1977. Senate conference report S. Rept. No. 95–367, July 27, 1977. S. 826 passed in lieu of H.R. 6804 by House and Senate August 2, 1977.