TRANSFER OF FUNCTIONS

Power marketing functions of Bureau of Reclamation, including construction, operation, and maintenance of transmission lines and attendant facilities, transferred to Secretary of Energy by section 7152(a)(1)(E), (3) of Title 42, The Public Health and Welfare, and are to be exercised by Secretary through a separate Administration within Department of Energy.

§ 835*l*. Congressional declaration of financial policy; limitations on assistance; analyses and studies; "net revenues" defined

It is declared to be the policy of the Congress that reclamation projects hereafter authorized in the Pacific Northwest to receive financial assistance from the Federal Columbia River power system shall receive such assistance only from the net revenues of that system as provided in this section, and that their construction shall be so scheduled that such assistance, together with similar assistance for previously authorized reclamation projects (including projects not now receiving such assistance for which the Congress may hereafter authorize financial assistance) will not cause increases in the rates and charges of the Bonneville Power Administration. It is further declared to be the policy of the Congress that the total assistance to all irrigation projects, both existing and future, in the Pacific Northwest shall not average more than $30,000,000 annually in any period of twenty consecutive years. Any analyses and studies authorized by the Congress for reclamation projects in the Pacific Northwest shall be prepared in accordance with the provisions of sections 835j to 835m of this title. As used in sections 835j to 835m of this title, the term ''net revenues'' means revenues as determined from time to time which are not required for the repayment of (1) all costs allocated to power at projects in the Pacific Northwest then existing or authorized, including the cost of acquiring power by purchase or exchange, and (2) presently authorized assistance from power to irrigation at projects in the Pacific Northwest existing and authorized prior to September 7, 1966.

(Pub. L. 89–448, § 2(b), as added Pub. L. 89–561, § 6(3), Sept. 7, 1966, 80 Stat. 714.)

CODIFICATION

Section is comprised of subsec. (b) of section 2 of Pub. L. 89–448, as added by Pub. L. 89–561. Subsecs. (a) and (c) of section 2 are classified to sections 835j and 835k, and 835m of this title, respectively.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior with respect to Bonneville Power Administration transferred to Secretary of Energy by section 7152(a)(1)(D), (2) of Title 42, The Public Health and Welfare, with Bonneville Power Administration to be preserved as a distinct organizational entity within Department of Energy and headed by an Administrator.

§ 835m. Recommendations for changes in limitations on financial assistance; time and frequency of submission

On December 20, 1974, and thereafter at intervals coinciding with anniversary dates of Federal Energy Regulatory Commission general review of the rates and charges of the Bonneville Power Administration, the Secretary of the Interior shall recommend to the Congress any changes in the dollar limitations herein placed upon financial assistance to Pacific Northwest reclamation projects that he believes justified by changes in the cost-price levels existing on July 1, 1966, or by other relevant changes of circumstances.

(Pub. L. 89–448, § 2(c), as added Pub. L. 89–561, § 6(3), Sept. 7, 1966, 80 Stat. 715; amended Pub. L. 95–91, title IV, § 402(a)(1)(B), Aug. 4, 1977, 91 Stat. 583.)

CODIFICATION

Section is comprised of subsec. (c) of section 2 of Pub. L. 89–448, as added by Pub. L. 89–561. Subsecs. (a) and (b) of section 2 are classified to sections 835j and 835k, and 835*l* of this title, respectively.

TRANSFER OF FUNCTIONS

''Federal Energy Regulatory Commission'' substituted in text for ''Federal Power Commission'' pursuant to Pub. L. 95–91, § 402(a)(1)(B), which is classified to section 7172(a)(1)(B) of Title 42, The Public Health and Welfare.

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

Functions of Secretary of the Interior with respect to Bonneville Power Administration transferred to Secretary of Energy by section 7152(a)(1)(D), (2) of Title 42, with Bonneville Power Administration to be preserved as a distinct organizational entity within Department of Energy and headed by an Administrator.

CHAPTER 12E—NIAGARA POWER PROJECT

Sec.
836. Authorization to license construction and operation; licensing conditions.
836a. Rules governing issuance of license.

§ 836. Authorization to license construction and operation; licensing conditions

(a) The Federal Energy Regulatory Commission is expressly authorized and directed to issue a license to the Power Authority of the State of New York for the construction and operation of a power project with capacity to utilize all of the United States share of the water of the Niagara River permitted to be used by international agreement.

(b) The Federal Energy Regulatory Commission shall include among the licensing conditions, in addition to those deemed necessary and required under the terms of the Federal Power Act [16 U.S.C. 791a et seq.], the following:

(1) In order to assure that at least 50 per centum of the project power shall be available for sale and distribution primarily for the benefit of the people as consumers, particularly domestic and rural consumers, to whom such power shall be made available at the lowest rates reasonably possible and in such manner as to encourage the widest possible use, the licensee in disposing of 50 per centum of the project power shall give preference and priority to public bodies and nonprofit cooperatives within economic transmission distance. In any case in which project power subject to the preference provisions of this paragraph is sold to utility companies organized and adminis-

tered for profit, the licensee shall make flexible arrangements and contracts providing for the withdrawal upon reasonable notice and fair terms of enough power to meet the reasonably foreseeable needs of the preference customers.

(2) The licensee shall make a reasonable portion of the project power subject to the preference provisions of paragraph (1) of this subsection available for use within reasonable economic transmission distance in neighboring States, but this paragraph shall not be construed to require more than 20 per centum of the project power subject to such preference provisions to be made available for use in such States. The licensee shall cooperate with the appropriate agencies in such States to insure compliance with this requirement. In the event of disagreement between the licensee and the power-marketing agencies of any of such States, the Federal Energy Regulatory Commission may, after public hearings, determine and fix the applicable portion of power to be made available and the terms applicable thereto: *Provided*, That if any such State shall have designated a bargaining agency for the procurement of such power on behalf of such State, the licensee shall deal only with such agency in that State. The arrangements made by the licensee for the sale of power to or in such States shall include observance of the preferences in paragraph (1) of this subsection.

(3) The licensee shall contract, with the approval of the Governor of the State of New York, pursuant to the procedure established by New York law, to sell to the licensee of Federal Energy Regulatory Commission project 16 for a period ending not later than the final maturity date of the bonds initially issued to finance the project works herein specifically authorized, four hundred and forty-five thousand kilowatts of the remaining project power, which is equivalent to the amount produced by project 16 prior to June 7, 1956, for resale generally to the industries which purchased power produced by project 16 prior to such date, or their successors, in order as nearly as possible to restore low power costs to such industries and for the same general purposes for which power from project 16 was utilized: *Provided*, That the licensee of project 16 consents to the surrender of its license at the completion of the construction of such project works upon terms agreed to by both licensees and approved by the Federal Energy Regulatory Commission which shall include the following: (a) the licensee of project 16 shall waive and release any claim for compensation or damages from the Power Authority of the State of New York or from the State of New York, except just compensation for tangible property and rights-of-way actually taken, and (b) without limiting the generality of the foregoing, the licensee of project 16 shall waive all claims to compensation or damages based upon loss of or damage to riparian rights, diversionary rights, or other rights relating to the diversion or use of water, whether founded on legislative grant or otherwise.

(4) The licensee shall, if available on reasonable terms and conditions, acquire by purchase or other agreement, the ownership or use of, or if unable to do so, construct such transmission lines as may be necessary to make the power and energy generated at the project available in wholesale quantities for sale on fair and reasonable terms and conditions to privately owned companies, to the preference customers enumerated in paragraph (1) of this subsection, and to the neighboring States in accordance with paragraph (2) of this subsection.

(5) In the event project power is sold to any purchaser for resale, contracts for such sale shall include adequate provisions for establishing resale rates, to be approved by the licensee, consistent with paragraphs (1) and (3) of this subsection.

(6) The licensee, in cooperation with the appropriate agency of the State of New York which is concerned with the development of parks in such State, may construct a scenic drive and park on the American side of the Niagara River, near the Niagara Falls, pursuant to a plan the general outlines of which shall be approved by the Federal Energy Regulatory Commission; and the cost of such drive and park shall be considered a part of the cost of the power project and part of the licensee's net investment in said project: *Provided*, That the maximum part of the cost of such drive and park to be borne by the power project and to be considered a part of the licensee's net investment shall not exceed $15,000,000.

(7) The licensee shall pay to the United States and include in its net investment in the project herein authorized the United States share of the cost of the construction of the remedial works, including engineering and economic investigations, undertaken in accordance with article II of the treaty between the United States of America and Canada concerning uses of the waters of the Niagara River signed February 27, 1950, whenever such remedial works are constructed.

(Pub. L. 85–159, § 1, Aug. 21, 1957, 71 Stat. 401; Pub. L. 95–91, title IV, § 402(a)(1)(A), Aug. 4, 1977, 91 Stat. 583.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (b), is act June 10, 1920, ch. 285, 41 Stat. 1063, which is classified generally to chapter 12 (§ 791a et seq.) of this title. For complete classification of this Act to the Code, see section 791a of this title and Tables.

TRANSFER OF FUNCTIONS

"Federal Energy Regulatory Commission" substituted in text for "Federal Power Commission" pursuant to Pub. L. 95–91, § 402(a)(1)(A), which is classified to section 7172(a)(1)(A) of Title 42, The Public Health and Welfare.

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

§ 836a. Rules governing issuance of license

The license issued under the terms of this chapter shall be granted in conformance with Rules of Practice and Procedure of the Federal

Energy Regulatory Commission, but in the event of any conflict, the provisions of this chapter shall govern in respect of the project herein authorized.

(Pub. L. 85–159, § 2, Aug. 21, 1957, 71 Stat. 402; Pub. L. 95–91, title IV, § 402(a)(1)(A), Aug. 4, 1977, 91 Stat. 583.)

TRANSFER OF FUNCTIONS

''Federal Energy Regulatory Commission'' substituted for ''Federal Power Commission'' in subsecs. (a) and (b) pursuant to Pub. L. 95–91, § 402(a)(1)(A), which is classified to section 7172(a)(1)(A) of Title 42, The Public Health and Welfare.

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

CHAPTER 12F—PACIFIC NORTHWEST CONSUMER POWER PREFERENCE; RECIPROCAL PRIORITY IN OTHER REGIONS

Sec.
837. Definitions.
837a. Limitation of sale, delivery, and exchange of electric energy and electric peaking capacity for use outside Pacific Northwest to surplus energy and surplus peaking capacity; notice to customers; inspection of contract drafts.
837b. Contract terms and conditions for use of electric energy outside Pacific Northwest.
837c. Contract limitations and conditions for use of electric energy and peaking capacity of plants in other marketing areas for use within Pacific Northwest.
837d. Exchange contracts.
837e. Transmission lines for other electric energy; rates.
837f. Purchaser priority on Pacific Northwest power; amendment of existing contracts and new contracts to include priority provisions.
837g. Transmission lines between Pacific Northwest and Pacific Southwest; prohibition against construction of lines or related facilities; exceptions of lines and facilities recommended by Secretary or authorized by Congress; authority of Secretary to construct other transmission lines unaffected.
837g–1. Construction of additional facilities by Secretary of Energy for mutually beneficial power sales between Pacific Northwest and California; contribution of funds by non-Federal entities.
837h. Provisions not applicable to Canyon Ferry project or benefits and exchanges under Treaty between Canada and United States; preference of power users in Montana not modified.

§ 837. Definitions

As used in this chapter—

(a) ''Secretary'' means the Secretary of Energy.

(b) ''Pacific Northwest'' means (1) the region consisting of the States of Oregon and Washington, the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming within the Columbia drainage basin and of the State of Idaho as the Secretary may determine to be within the marketing area of the Federal Columbia River power system, and (2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a rural electric cooperative served by the Administrator on December 5, 1980, which has a distribution system from which it serves both within and without said region.

(c) ''Surplus energy'' means electric energy generated at Federal hydroelectric plants in the Pacific Northwest which would otherwise be wasted because of the lack of a market therefor in the Pacific Northwest at any established rate.

(d) ''Surplus peaking capacity'' means electric peaking capacity at Federal hydroelectric plants in the Pacific Northwest for which there is no demand in the Pacific Northwest at any established rate.

(e) ''Non-Federal utility'' means any utility not owned or controlled by the United States, including any entity (1) which such a utility owns or controls, in whole or in part, or is controlled by, (2) which is controlled by those controlling such utility, or (3) of which such utility is a member.

(f) ''Energy requirements of any Pacific Northwest customer'' means the full requirements for electric energy of (1) any purchaser from the United States for direct consumption in the Pacific Northwest, and (2) any non-Federal utility in that region in excess of (i) the hydroelectric energy available for its own use from its generating plants in the Pacific Northwest, and (ii) any additional energy available for use in the Pacific Northwest which, under a then existing contract, the utility (A) can obtain at no higher incremental cost than the rate charged by the United States, or (B) is required to accept.

(g) Terms not defined herein shall, unless the context requires otherwise, have the meaning given them in the March 1949 Glossary of Important Power and Rate Terms prepared under the supervision of the Federal Power Commission.

(Pub. L. 88–552, § 1, Aug. 31, 1964, 78 Stat. 756; Pub. L. 95–91, title III, § 302(a), Aug. 4, 1977, 91 Stat. 578; Pub. L. 96–501, § 8(e), Dec. 5, 1980, 94 Stat. 2729.)

AMENDMENTS

1980—Subsec. (b)(2). Pub. L. 96–501 substituted ''(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a rural electric cooperative served by the Administrator on December 5, 1980, which has a distribution system from which it serves both within and without said region'' for ''(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a distribution cooperative which has (i) no generating facilities, and (ii) a distribution system from which it serves both within and without said region''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–501 effective Dec. 5, 1980, see section 11 of Pub. L. 96–501, set out as an Effective Date note under section 839 of this title.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted for ''Secretary of the Interior'' in subsec. (a) pursuant to Pub. L. 95–91, § 302(a), which is classified to section 7152(a) of Title 42, The Public Health and Welfare.

Federal Power Commission terminated and the functions, personnel, property, funds, etc., thereof trans-