

shall set forth the factual basis upon which the application is based and describe why the conditions set forth in Paragraph (b)(1) and (b)(2) of this section are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to sell electric energy under this section if the Commission finds that the conditions set forth in paragraphs (b)(1) and (b)(2) of this section are no longer met.

[Order 688, 71 FR 64372, Nov. 1, 2006]

§ 292.314 Existing rights and remedies.

Nothing in this section affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on or before August 8, 2005, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

[Order 688, 71 FR 64372, Nov. 1, 2006]

Subpart D—Implementation

AUTHORITY: Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et seq.*, Federal Power Act, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, E.O. 12009, 42 FR 46267.

SOURCE: Order 69, 45 FR 12236, Feb. 25, 1980, unless otherwise noted.

§ 292.401 Implementation of certain reporting requirements.

Any electric utility which fails to comply with the requirements of § 292.302(b) shall be subject to the same penalties to which it may be subjected for failure to comply with the requirements of the Commission's regulations issued under section 133 of PURPA.

[45 FR 12236, Feb. 25, 1980. Redesignated by Order 541, 57 FR 21734, May 22, 1992]

§ 292.402 Waivers.

(a) *State regulatory authority and non-regulated electric utility waivers.* Any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or non-regulated electric utility may, after public notice in the area served by the electric utility, apply for a waiver from the application of any of the requirements of subpart C (other than § 292.302 thereof).

(b) *Commission action.* The Commission will grant such a waiver only if an applicant under paragraph (a) of this section demonstrates that compliance with any of the requirements of subpart C is not necessary to encourage cogeneration and small power production and is not otherwise required under section 210 of PURPA.

[45 FR 12236, Feb. 25, 1980. Redesignated by Order 541, 57 FR 21734, May 22, 1992]

Subpart E [Reserved]

Subpart F—Exemption of Qualifying Small Power Production Facilities and Cogeneration Facilities from Certain Federal and State Laws and Regulations

§ 292.601 Exemption to qualifying facilities from the Federal Power Act.

(a) *Applicability.* This section applies to qualifying facilities, other than those described in paragraph (b) of this section. This section also applies to qualifying facilities that meet the criteria of section 3(17)(E) of the Federal Power Act (16 U.S.C. 796(17)(E)), notwithstanding paragraph (b).

(b) *Exclusion.* This section does not apply to a qualifying small power production facility with a power production capacity which exceeds 30 megawatts, if such facility uses any primary energy source other than geothermal resources.

(c) *General rule.* Any qualifying facility described in paragraph (a) of this section shall be exempt from all sections of the Federal Power Act, except:

(1) Sections 205 and 206; however, sales of energy or capacity made by qualifying facilities 20 MW or smaller,

or made pursuant to a contract executed on or before March 17, 2006 or made pursuant to a state regulatory authority's implementation of section 210 the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a–1, shall be exempt from scrutiny under sections 205 and 206;

(2) Section 1–18, and 21–30;

(3) Sections 202(c), 210, 211, 212, 213, 214, 215, 220, 221 and 222;

(4) Sections 305(c); and

(5) Any necessary enforcement provision of part III of the Federal Power Act (including but not limited to sections 306, 307, 308, 309, 314, 315, 316 and 316A) with regard to the sections listed in paragraphs (c)(1), (2), (3) and (4) of this section.

(Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (1980) Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601, *et seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.*, Federal Power Act, as amended, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; E.O. 12009, 42 FR 46267)

[Order 135, 46 FR 19232, Mar. 30, 1981, as amended by Order 569, 59 FR 40470, Aug. 9, 1994; Order 671, 71 FR 7868, Feb. 15, 2006; 72 FR 29063, May 24, 2007; Order 732, 75 FR 15966, Mar. 30, 2010]

§ 292.602 Exemption to qualifying facilities from the Public Utility Holding Company Act of 2005 and certain State laws and regulations.

(a) *Applicability.* This section applies to any qualifying facility described in § 292.601(a), and to any qualifying small power production facility with a power production capacity over 30 megawatts if such facility produces electric energy solely by the use of biomass as a primary energy source.

(b) *Exemption from the Public Utility Holding Company Act of 2005.* A qualifying facility described in paragraph (a) of this section or a utility geothermal small power production facility shall be exempt from the Public Utility Holding Company Act of 2005, 42 U.S.C. 16,451–63.

(c) *Exemption from certain State laws and regulations.* (1) Any qualifying facility described in paragraph (a) of this section shall be exempted (except as provided in paragraph (c)(2) of this section) from State laws or regulations respecting:

(i) The rates of electric utilities; and
(ii) The financial and organizational regulation of electric utilities.

(2) A qualifying facility may not be exempted from State laws and regulations implementing subpart C.

(3) Upon request of a state regulatory authority or nonregulated electric utility, the Commission may consider a limitation on the exemptions specified in paragraph (b)(1) of this section.

(4) Upon request of any person, the Commission may determine whether a qualifying facility is exempt from a particular State law or regulation.

(Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (1980) Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601, *et seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.*, Federal Power Act, as amended, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; E.O. 12009, 42 FR 46267)

[45 FR 12237, Feb. 25, 1980, as amended by Order 135, 46 FR 19232, Mar. 30, 1981; Order 671, 71 FR 7869, Feb. 15, 2006; Order 671–A, 71 FR 30589, May 30, 2006; Order 732, 75 FR 15966, Mar. 30, 2010; 77 FR 9842, Feb. 21, 2012]

PART 294—PROCEDURES FOR SHORTAGES OF ELECTRIC ENERGY AND CAPACITY UNDER SECTION 206 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

AUTHORITY: 5 U.S.C. 553; 16 U.S.C. 791a–825r; 42 U.S.C. 7107–7352.

§ 294.101 Shortages of electric energy and capacity.

(a) *Definition of shortages of electric energy and capacity.* For purposes of this section, the term *anticipated shortages of electric or energy* means:

(1) Any situation anticipated to occur in which the generating and bulk purchased power capability of a public utility will not be sufficient to meet its anticipated demand plus appropriate reserve margins and this shortage would affect the utility's capability adequately to supply electric services to its firm power wholesale customers; or