In the United States Court of Appeals for the Ninth Circuit

No. 16-71380

TURLOCK IRRIGATION DISTRICT, *ET AL.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITION FOR REVIEW OF ORDERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

BRIEF OF RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

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GLOSSARY

Br.	Petitioners' Opening Brief
California-Oregon Project	California-Oregon Transmission Project
California System Operator	The California Independent System Operator
Commission or FERC	Federal Energy Regulatory Commission
Complaint Order	*Modesto Irrigation Dist. v. Pac. Gas & Elec. Co.*, 152 FERC ¶ 61,016 (2015), R. 19, PER 19
Int. Br.	Brief of Intervenors in support of Petitioners
Interconnection Agreements	The Interconnection Agreements between Pacific Gas & Electric Co. and Modesto Irrigation District and Turlock Irrigation District, PER 408-557
Modesto	Modesto Irrigation District
Modesto Agreement	Interconnection Agreement between Modesto and Pacific Gas & Electric, PER 408-87
Operation Agreement	Contract between Pacific Gas & Electric and Transmission Agency of Northern California, regarding operation of the California-Oregon Intertie
P	Paragraph in a Commission order
Pac. Gas & Elec.	Pacific Gas & Electric Co.
PER	Petitioners' Excerpts of the Record
R.	Record on appeal
Remedial Scheme	The remedial action scheme that allowed Pacific Gas & Electric to interrupt power flows to and from the California Department of Water Resources
Rehearing Order	*Modesto Irrigation Dist. v. Pac. Gas & Elec. Co.*, 154 FERC ¶ 61,215 (2016), R. 25, PER 1

State Water	California Department of Water Resources
State Water Contract	Lapsed contract between Pacific Gas & Electric and State Water regarding transmission services
Transmission Agency	Transmission Agency of Northern California
Turlock	Turlock Irrigation District
Turlock Agreement	Interconnection Agreement Between Turlock and Pacific Gas & Electric, PER 488-557
Water Districts	Modesto and Turlock
Water Districts' Systems	All properties and other assets, existing or future, that are leased to, licensed to, owned (or jointly-owned) by, or controlled by, the Water Districts

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STATEMENT OF THE ISSUE

This case addresses whether Petitioners Turlock Irrigation District (Turlock) and Modesto Irrigation District (Modesto) (collectively, Water Districts) met their burden to show that they were entitled to a study from Pacific Gas & Electric Co. under the parties' Interconnection Agreements. The Water Districts' complaint concerns the end of Pacific Gas & Electric's remedial action scheme (Remedial Scheme) with the California Department of Water Resources (State Water). Under

the Remedial Scheme, Pacific Gas & Electric could interrupt power flows to and from State Water. The Remedial Scheme expired by its own terms in 2014.

Pursuant to the Interconnection Agreements between the Water Districts and Pacific Gas & Electric, the Water Districts can demand a study from Pacific Gas & Electric regarding the end of the Remedial Scheme – if the Water Districts can first show that ending that Scheme "may result" in "Adverse Impacts" to the Water Districts' electrical systems (Systems), as defined in the Interconnection Agreements. The Federal Energy Regulatory Commission (Commission or FERC) found that the Water Districts had not carried their burden under the Federal Power Act to invoke that study provision because they had not provided sufficient evidence that ending the Remedial Scheme may result in such an Adverse Impact.

The issue presented for review is: Whether the Commission reasonably found that the Water Districts had not adequately demonstrated that ending the Remedial Scheme "may result" in an Adverse Impact on the Water Districts' Systems under the Interconnection Agreements between Pacific Gas & Electric and the Water Districts, such that a study by Pacific Gas & Electric was required.

STATUTES AND REGULATIONS

The pertinent statutes and regulations are reproduced in the Addendum.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

A. Statutory And Regulatory Background

Section 201 of the Federal Power Act, 16 U.S.C. § 824, gives the Commission jurisdiction over the transmission and wholesale sale of electricity in interstate commerce. *See generally New York v. FERC*, 535 U.S. 1 (2002) (discussing statutory framework and FERC jurisdiction).

Under section 205 of the Federal Power Act, all rates for or in connection with jurisdictional sales and transmission service are subject to Commission review to assure that they are just and reasonable, and not unduly discriminatory or preferential. 16 U.S.C. §§ 824d(e), 824e(a); *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 773-74 (2016). Once a rate has been set, section 206(a) of the Federal Power Act authorizes a complainant to challenge that existing rate. 16 U.S.C. § 824e(a). The complainant bears the burden to demonstrate that the existing rate has become unjust and unreasonable. *Id.* § 824e(b); *see FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353, 356 (D.C. Cir. 2014); *see also City of Redding v. FERC*, 693 F.3d 828, 838 (9th Cir. 2012) (FERC may alter a previously set just and reasonable rate when it finds that rate has become unjust and unreasonable).

B. The Water Districts And The California-Oregon Intertie

Modesto and Turlock are irrigation districts that own and operate electrical systems used to supply power to residents and businesses within their service areas. *See Modesto Irrigation Dist. v. Pac. Gas & Elec. Co.*, 154 FERC ¶ 61,215, P 1 (2016) (Rehearing Order), R. 25, PER 1; *Modesto Irrigation Dist. v. Pac. Gas & Elec. Co.*, 152 FERC ¶ 61,016, PP 4, 5 (2015) (Complaint Order), R. 19, PER 20.

As relevant here, the Water Districts use an external transmission supply line, the California-Oregon Transmission Project (California-Oregon Project), to import and export power into and out of their systems. The California-Oregon Project is the westernmost of three transmission lines that comprise the California-Oregon Intertie, a transmission system that delivers electric power from the Pacific Northwest to California markets. *See* Complaint Order P 7, PER 21. Those three transmission lines run roughly parallel to each other, extending from Oregon to California. *Id.*

The Transmission Agency of Northern California (Transmission Agency) is the majority owner of the California-Oregon Project, the westernmost line. *Id.* The Water Districts, as members of the Transmission Agency, are contractually entitled to receive a percentage share of the Transmission Agency's capacity on the California-Oregon Project. *Id.* at PP 4-5, PER 20. Pacific Gas & Electric, a

California public utility, owns the majority of the Pacific AC Intertie, the two easternmost lines. *Id.*; *see generally Transmission Agency v. FERC*, 628 F.3d 538, 541-42 (D.C. Cir. 2010) (describing the California-Oregon Intertie).

The first of three relevant sets of contracts to this matter is the "Operation Agreement." Pursuant to the Operation Agreement, Transmission Agency, Pacific Gas & Electric, and other parties with ownership interests have operated the California-Oregon Intertie on a coordinated basis for over twenty years to transfer electricity between the Pacific Northwest and California. *See Transmission Agency*, 628 F.3d at 546-47. The Operation Agreement was at issue in *Transmission Agency v. FERC*, 697 F. App'x 11, 12 (D.C. Cir. 2017) (affirming FERC's finding that the Operation Agreement did not require Pacific Gas & Electric to replace or mitigate the end of the Remedial Scheme).

C. The Cessation Of Pacific Gas & Electric's Remedial Scheme With State Water

The second relevant set of contracts is Pacific Gas & Electric's (now expired) contract with State Water. *See* Complaint Order P 18, PER 25. Under a contract originally executed in 1983, Pacific Gas & Electric provided interconnection and transmission service to State Water (the State Water Contract). *Id.*; Rehearing Order P 2, PER 1. The State Water Contract provided for the Remedial Scheme. In the event of unplanned simultaneous or near simultaneous outages of the Pacific AC Intertie lines, or unplanned outages at a Pacific Gas &

Electric nuclear power plant, Pacific Gas & Electric could cut off power flows to and from State Water pumps and generation facilities. *See Transmission Agency*, 697 F. App'x at 12 (describing the State Water Contract); *accord* Complaint Order P 18, PER 25; *Transmission Agency v. Pac. Gas & Elec. Co.*, 148 FERC ¶ 61,150, P 14 (2014).

The Remedial Scheme's system protection measures supported Pacific Gas & Electric's provision of transmission service to State Water. *See Transmission Agency*, 697 F. App'x at 12. It also provided benefits to the California-Oregon Intertie, by supporting the daily operating limits of the Intertie. *Id.* The State Water contract (including the Remedial Scheme) expired by its own terms in December 2014. *Id.*; Complaint Order P 18, PER 25.

D. The California System Operator

The California Independent System Operator (California System Operator) is an independent, non-profit entity created by California. *See Sacramento Mun. Util. Dist. v. FERC*, 428 F.3d 294, 296 (D.C. Cir. 2005). California created the California System Operator when it restructured its electricity markets. *Id.* That restructuring was in response to the Commission's 1996 directive that public utilities "unbundle" their electricity generation and transmission services and file new "open access" tariffs guaranteeing non-discriminatory access to their transmission facilities by competing generators. *See id.* at 295-96. The California

System Operator took over operational control of certain transmission facilities, including the portions of the Pacific AC Intertie owned by Pacific Gas & Electric, which became part of the California System Operator-controlled grid. *Sacramento Mun. Util. Dist. v. FERC*, 474 F.3d 797, 798-99 (D.C. Cir. 2007). The Water Districts are connected with the California System Operator-controlled grid through the Water Districts' interconnections with Pacific Gas & Electric. Complaint Order PP 4, 5, PER 20.

Under a FERC-approved tariff, the California System Operator does not offer long-term firm transmission service. It instead requires customers to request transmission capacity in "real time." *Sacramento Mun. Util. Dist.*, 474 F.3d at 799. While the State Water contract was in operation, the Commission permitted existing transmission contracts – such as the State Water contract – to continue until their expiration. *See id.* This required the California System Operator to honor State Water's firm transmission rights and set aside a portion of the transmission system capacity under its control to satisfy State Water's needs, despite the Commission's open-access transmission program. *See id.*

Since the State Water contract has expired, the California System Operator need not set aside State Water's share of transmission capacity. *See id.*; *see generally Transmission Agency*, 148 FERC ¶ 61,150, PP 43-44. The California

System Operator can instead manage that portion of the transmission grid. *See* Complaint Order P 58, PER 38.

E. The Turlock And Modesto Interconnection Agreements With Pacific Gas & Electric

The third relevant set of contracts – and the ones in dispute in this case – are the Water Districts' Interconnection Agreements with Pacific Gas & Electric (Interconnection Agreements).[1] The Interconnection Agreements govern the interconnection of Pacific Gas & Electric's electric transmission system with those of the Water Districts. *See id.* at P 10, PER 22. Pacific Gas & Electric connects with the Water Districts at the Water Districts' jointly-owned Westley Junction, where Pacific Gas & Electric's Tesla-Westley and Los Banos-Westley transmission lines separately connect with two Water Districts conductors. *Id.* at P 9, PER 22; Rehearing Order P 4, PER 3.

Several Interconnection Agreement terms are of relevance. At issue in this case are Section 9.11's study and notice provisions:

- **Notice: Section 9.11.1.1(a)** requires "a Primary Party" to notify the "Coordinating Party" if it intends to make a "Modification, New Facility Addition, or Long-Term Change to Operations" that "may

[1] Modesto and Turlock have separate, substantially similar interconnection agreements with Pacific Gas & Electric. *See* Interconnection Agreement Between Modesto and Pac. Gas & Elec. (Modesto Agreement), PER 408-87; Interconnection Agreement Between Turlock and Pac. Gas & Elec. (Turlock Agreement, PER 488-557). For ease of understanding, the two contracts will be referenced interchangeably unless any differences are relevant.

reasonably result in an Adverse Impact to the System of the Coordinating Party."

- **Study Mandate: Section 9.11.1(b)** provides that a "Coordinating Party" may demand a study when that party has a "reasonable belief" that a Primary Party did not provide the required notice, and instead proceeded with a "Modification . . . that may result or may have resulted in an Adverse Impact on the System of the Coordinating Party . . . ."

- **Joint Study: Section 9.11.2** provides that, "[i]f requested by either Party, the Parties shall conduct joint studies of any proposed Modification, New Facility Addition, or Long-Term Change to Operations of its System that may reasonably be expected to result in an Adverse Impact . . . ."

Complaint Order PP 11-13 (citing Turlock Agmt. §§ 9.11.1-9.11.2, PER 519-22, Modesto Agmt. §§ 9.11.1-9.11.2, PER 442-445), PER 22-23.

The Interconnection Agreements also define the relevant contract terms used in Section 9.11:

- A "**Primary Party**" is a "Party that proposes to make or makes a Modification, New Facility Addition, or Long-Term Change to Operations on its own System."

- A "**Coordinating Party**" is the Party "whose System is or may be subject to an Adverse Impact as a result" of that modification or change.

- An "**Adverse Impact**" is an effect on the Coordinating Party's "System" from a "Modification, New Facility Addition, or Long Term Change to Operations" to the Primary Party's System that either "materially degrades reliability" or "materially reduces" the ability of the Coordinating Party to "physically transfer power into, out of, or within" the Water Districts' Systems.

- A party's "**System**" consists of all "properties and other assets, now or hereafter existing, which are leased to, licensed to, owned (or jointly-owned) by, or controlled" by that party.

Complaint Order P 16 & nn.11-12 (citing Turlock Agmt. §§ 4.2, 4.11 4.30, 4.33, PER 496, 498, 504; Modesto Agmt. §§ 4.2, 4.11, 4.28, 4.32, PER 416, 418, 423, 424), PER 22-23, 25.

II. PROCEDURAL BACKGROUND

A. The Denial Of The Transmission Agency's Claim Under The Operation Agreement

Prior to the State Water Contract expiring, Pacific Gas & Electric informed the Transmission Agency that Pacific Gas & Electric did not intend to replace the loss of the Remedial Scheme. *See Transmission Agency*, 697 F. App'x at 12. In response, the Transmission Agency brought a complaint to the Commission, alleging that Pacific Gas & Electric anticipatorily breached its obligations under the Operation Agreement by not replacing or mitigating the end of the Remedial Scheme. *Id.*; *accord* Complaint Order P 19, PER 26. The Transmission Agency asserted that ending the Remedial Scheme would reduce transfer capability on the California-Oregon Project. *See* Complaint Order P 60 (citing *Transmission Agency*, 148 FERC ¶ 61,150, P 69), PER 39.

The Commission denied the Transmission Agency's complaint, finding that the Operation Agreement allowed Pacific Gas & Electric to let the Remedial Scheme expire without replacement or mitigation. *See* Complaint Order P 60,

PER 39. The Commission noted that the California System Operator concluded that termination of the Remedial Scheme "would not adversely affect [the] reliability" of the California System Operator-controlled grid, and that [n]o party disputes th[at] conclusion." *Transmission Agency*, 148 FERC ¶ 61,150, P 69. On appeal, the D.C. Circuit affirmed the Commission's interpretation of the Operation Agreement. *Transmission Agency*, 697 F. App'x at 13.

B. The Commission Orders On Review

The Water Districts filed a separate complaint pursuant to sections 202, 206, 306, and 309 of the Federal Power Act, 16 U.S.C. §§ 824a, 824e, 825e, and 825h, alleging that expiration of the Remedial Scheme also violated the Interconnection Agreements. *See* Complaint Order P 2, PER 20, Rehearing Order P 4, PER 2. The Water Districts asserted that Pacific Gas & Electric failed to provide notice as required by the Interconnection Agreements. *See* Complaint Order P 2, PER 20. The Water Districts asserted such notice was required because Pacific Gas & Electric was the "Primary Party" that made a "Modification, New Facility Addition, or Long-Term Change to Operations on its System," (in allowing the Remedial Scheme to end) that "may reasonably result in an Adverse Impact to the System of the Coordinating Party," *i.e.* the Water Districts' Systems. *See id.*; Rehearing Order P 5, PER 3.

Because Pacific Gas & Electric purportedly failed to provide such notice, the Water Districts further alleged that Pacific Gas & Electric breached Section 9.11.1(b) of the Interconnection Agreements by failing to conduct a study, as requested by the Water Districts. Rehearing Order P 5, PER 3. The Water Districts contend they were entitled to such a study because Pacific Gas & Electric, as the Primary Party, ended the Remedial Scheme, which "may result or may have resulted in an Adverse Impact on the [S]ystem" of the Water Districts. Complaint Order P 12, PER 23; *see id.* at P 20, PER 26. The Water Districts maintain that the lack of a Remedial Scheme between State Water and Pacific Gas & Electric "will cause reductions in transmission capacity" on the California-Oregon Project, that will "materially reduce" their ability to "transfer power into, out of, and within their" Systems and adversely affect reliability. *Id.* at P 20, PER 26.

The Commission denied the Water Districts' complaint and subsequent request for rehearing. *See* Rehearing Order P 1 (citing Complaint Order P 3, PER 20), PER 1. The Commission found that the Water Districts did not meet their burden as complainants to provide sufficient evidence that ending the Remedial Scheme "may result" in Adverse Impacts to the Water Districts' Systems to justify receiving a study. *See* Rehearing Order P 36, PER 18. The Commission noted that the Water Districts provided little evidence of impacts to the Water Districts' Systems. *See* Complaint Order P 55 ("no supporting evidence"),

PER 38; *see also* Rehearing Order P 27 ("scant information") (citing Complaint Order P 53, PER 37), PER 14. Instead, the record evidence showed that ending the Remedial Scheme would not affect the Water Districts' Systems. *See* Complaint Order PP 56-58, PER 38-39; *accord* Rehearing Order PP 30-31, PER 15.

The Water Districts' focus was instead on potential transmission constraints on the California-Oregon Project. *See* Rehearing Order P 27, PER 14. But the Commission found that the Water Districts could only trigger the study requirement if the Adverse Impact that "may result" was to the Water Districts' Systems. *See* Complaint Order P 54, PER 38. The California-Oregon Project was not part of the Water Districts' "Systems," as defined in the Interconnection Agreements. *Id.* at P 53, PER 37. The Water Districts failed to show how alleged capacity restraints on the California-Oregon Project "may result" in Adverse Impacts to the Water Districts' Systems themselves, *i.e.*, materially reduce reliability or limit the ability to physically transfer power. *See* Rehearing Order PP 28-29, PER 14.

The Water Districts subsequently brought their petition to this Court, asking the Court to direct the Commission to require Pacific Gas & Electric to conduct an Adverse Impact study. *See* Br. 50.

SUMMARY OF ARGUMENT

Based on the record before it, and its experience and expertise with regional electricity markets and the contracts at issue here, the Commission reasonably determined that the Water Districts had not shown that they were entitled to a system impact study from Pacific Gas & Electric. The Commission agreed that the Water Districts could contractually demand a study – if the Water Districts could show that ending the Remedial Scheme "may result" in an Adverse Impact on the Water Districts' Systems. But the Commission reasonably found that the Water Districts must make such a claim on facts and not mere belief.

Reviewing the record evidence before it, the Commission reasonably determined that the Water Districts could not demand a study – because the Water Districts did not provide evidence that an Adverse Impact "may result" to the Water Districts' Systems from ending the Remedial Scheme. The record evidence, offered by Pacific Gas & Electric, the California System Operator, and the Water Districts' affidavits, showed otherwise:

- The Remedial Scheme never safeguarded the Water Districts' Systems, as State Water pumps were never interrupted for outages on the Water Districts' interconnections with Pacific Gas & Electric;

- Pacific Gas & Electric has reprogrammed the Remedial Scheme to respond to the same contingencies and achieve the same results – even without State Water's participation; and

- The California System Operator can manage its transmission grid – including the California-Oregon Intertie – even without the Remedial Scheme, to ensure no net effect on the Water Districts' Systems.

The Water Districts' real focus is on how ending the Remedial Scheme will purportedly result in transmission constraints on the California-Oregon Project, limiting the Water Districts' access to that capacity. Yet, as the Commission reasonably found, the Interconnection Agreements' study mandate is limited to Adverse Impacts to the Water Districts' Systems. The California-Oregon Project is not part of those Systems, as defined in the Interconnection Agreements. The Water Districts failed to provide evidence as to how alleged capacity constraints on the California-Oregon Project "may result" in Adverse Impacts to the Water Districts' Systems – that is, reduce the reliability of, or the ability to physically transfer power in or out of, those Systems.

In light of these findings, the Commission reasonably concluded that the Water Districts failed to meet their burden as complainants under section 206 of the Federal Power Act, 16 U.S.C. § 824e(a). That conclusion is entitled to judicial respect.

ARGUMENT

I. STANDARD OF REVIEW

The Commission's determinations are reviewed under the Administrative Procedure Act's "arbitrary and capricious" standard. 5 U.S.C. § 706(2)(A).

Review under this standard is narrow. *Elec. Power Supply Ass'n*, 136 S. Ct. at 782; *see also Cal. Trout v. FERC*, 572 F.3d 1003, 1012 (9th Cir. 2009) (arbitrary and capricious review is "highly deferential"). "A court is not to ask whether a regulatory decision is the best one possible or even whether it is better than the alternatives." *Elec. Power Supply Ass'n*, 136 S. Ct. at 782. "Rather, the court must uphold a rule if the agency has 'examine[d] the relevant [considerations] and articulate[d] a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made.'" *Id.* (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)) (alterations by Court); *see also Snoqualmie Indian Tribe v. FERC*, 545 F.3d 1207, 1212 (9th Cir. 2008) (The court may only "reverse under the arbitrary and capricious standard if the agency relied on factors that Congress did not intend it to consider, or offered an explanation for its decision that runs counter to the evidence or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.").

"'The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive.'" *Elec. Power Supply Ass'n*, 136 S. Ct. at 782 (quoting FPA § 313(b), 16 U.S.C. § 825*l*(b)). "'Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *MPS Merchant Servs. v. FERC*, 836 F.3d 1155, 1168 (9th Cir. 2016)

(quoting *Cal. Pub. Utils. Comm'n v. FERC*, 462 F.3d 1027, 1045 (9th Cir. 2006)). "If the evidence is susceptible of more than one rational interpretation, [the Court] must uphold FERC's findings." *Cal. Pub. Utils. Comm'n*, 462 F.3d at 1045.

Contrary to the Water Districts' contention, Br. 13, courts "give substantial deference to the Commission's interpretation of filed" tariffs or contracts, "[r]ecognizing that Congress explicitly delegated to FERC broad powers over ratemaking, including the power to analyze relevant contracts." *Williams Nat. Gas Co. v. FERC*, 90 F.3d 531, 533 (D.C. Cir. 1996) (internal citation omitted); *accord MPS Merchant Servs.*, 836 F.3d at 1163 (the Court "review[s] FERC's interpretation of a tariff with a 'two-step *Chevron*-like analysis'") (quoting *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208 (D.C. Cir. 2011)); *see also Ameren Servs. Co. v. FERC*, 330 F.3d 494, 498 (D.C. Cir. 2003) (applying *Chevron* "two-step" to the agency's interpretation of a contract). This Court provides such deference because it recognizes that the Commission's "special expertise in this area helps it to perceive the plain meaning of the language used." *City of Seattle v. FERC*, 923 F.2d 713, 716 (9th Cir. 1991).

II. THE COMMISSION REASONABLY FOUND THAT THE WATER DISTRICTS DID NOT PROVIDE SUFFICIENT EVIDENCE TO INVOKE THE INTERCONNECTION AGREEEMENTS' STUDY PROVISION

The Commission reasonably found that the Water Districts did not adequately show that the cancellation of the Remedial Scheme "may result" in

Adverse Impacts on the Water Districts' Systems, such that it would compel Pacific Gas & Electric to conduct a study under the Interconnection Agreements. The Commission based this determination on substantial evidence.

A. The Commission Reasonably Found That The Water Districts Had Not Met Their Burden To Show That Ending The Remedial Scheme May Result In Adverse Impacts On The Water Districts' Systems

Before demanding a study from Pacific Gas & Electric, the Water Districts had to satisfy the conditions contained in Section 9.11.1(b) of the Interconnection Agreements. *See, e.g.*, Rehearing Order P 26 (finding that this showing is a condition precedent for a study or mitigation), PER 13; *see also supra* pp. 8-10 (detailing the Interconnection Agreements' prerequisites to demand a study). Specifically, the Water Districts had to show how the end of the Remedial Scheme – which allowed Pacific Gas & Electric to cut off power supplies to State Water to manage transmission contingencies – was:

- a "Modification, New Facility Addition or Long-Term Change to Operations" on Pacific Gas & Electric's transmission system,
- that "may result or may have resulted," in an
- "Adverse Impact" to the Water Districts' transmission Systems.

See Complaint Order PP 11-13, PER 22-24; *see, e.g.*, Turlock Agmt. § 9.11.1(b), PER 519-21; *see also* Complaint Order P 16 (an Adverse Impact is one that materially degrades reliability, or materially reduces the ability of the Water

Districts to "physically transfer power into, out of, or within" the Water Districts' Systems) (citations omitted), PER 25.

That is, the Water Districts had to demonstrate first that ending the Remedial Scheme "may result" in an Adverse Impact on the Water Districts' Systems. *See* Rehearing Order P 36, PER 18; *see also* Complaint Order P 11 (notice of a modification only required if it "may reasonably result" in an Adverse Impact), PER 22; *id.* at P 13 (joint study only required of a change that "may reasonably be expected to result" in an Adverse Impact), PER 23. As the complainants, the Water Districts had the burden under Section 206 of the Federal Power Act, 16 U.S.C. § 824e(a), to make this demonstration. *See* Rehearing Order P 24 (citing *Buckeye Power, Inc. v. Am. Transmission Sys. Inc.*, 148 FERC ¶ 61,174, P 12 (2014)), PER 12.

1. The Commission Reasonably Found That Alleged Adverse Impacts On The California-Oregon Project, Standing Alone, Do Not Trigger The Interconnection Agreements

The Commission here reasonably found that the Water Districts did not meet their burden. The Water Districts "failed to present evidence sufficient to establish that an Adverse Impact may reasonably result" on the Water Districts' Systems from ending the Remedial Scheme. Rehearing Order P 36, PER 18; *see also id.* at P 27 (finding that Pacific Gas & Electric was not required to provide notice of the Remedial Scheme's end), PER 14.

The Commission found that the only evidence offered by the Water Districts of the potential adverse effects from the Remedial Scheme's end was the supposed resulting transmission constraints on the California-Oregon Project. *See, e.g.*, Complaint Order P 52 & n.67 (noting that the Water Districts' complaint focused on how ending the Remedial Scheme "will cause reductions in transmission Capacity" on the California-Oregon Project) (citing Water Districts' Compl. at 2, R. 1, PER 257), PER 37; *see also* Water Districts' Compl. at 50 (referencing evidence addressing purported reductions in the Water Districts' share of capacity on the California-Oregon Project) (citing Gilbertson Aff. ¶¶ 76-78, PER 362-63), PER 305. *But see* Rehearing Order P 34 (reaffirming that the Remedial Scheme's termination would not adversely affect the reliability of the California-Oregon Intertie, because the previous potential system overloads that were managed through the Remedial Scheme could be addressed through the California System Operator's congestion management procedures) (citing California System Operator, Board-Approved 2014-2015 Transmission Plan, at 51[2]), PER 17.

Yet, even assuming that the Water Districts' contentions regarding the impact on the California-Oregon Project were accurate, the Commission reasonably found that the Water Districts could not invoke the study mandate of

[2] Available at http://www.caiso.com/Documents/Board-Approved2014-2015TransmissionPlan.pdf.

the Interconnection Agreements based solely on concerns about the California-Oregon Project. *See* Complaint Order P 54, PER 38; *accord* Rehearing Order P 27, PER 14.

As the Commission concluded, the study requirement in Section 9.11.1(b) of the Interconnection Agreements is only triggered when the Water Districts show that an Adverse Impact "may result" on the **Water Districts' own Systems**. *See* Complaint Order PP 52-53, PER 37; *accord* Rehearing Order P 26, PER 13. And here, the California-Oregon Project is not part of the Water Districts' Systems, as defined in the Interconnection Agreements. *See* Rehearing Order P 26, PER 13; Complaint Order P 54, PER 38.

Section 9.11 of the Interconnection Agreements limits the study requirements to modifications or changes that "may result" or "may reasonably be expected to result" in Adverse Impacts on the "System[s]" of the Water Districts. *See, e.g.*, Turlock Agmt. §§ 9.11.1(b), 9.11.2, PER 520, 522. An "Adverse Impact" is one that materially degrades the reliability of the Water Districts' "System," or materially reduces the ability to "physically transfer power into, out of, or within the [Water Districts'] System." *Id.* at § 4.2, PER 496. The Water Districts' "Systems" are all "properties and other assets, now or hereafter existing, which are leased to, licensed to, owned (or jointly-owned) by, or controlled" by the

Water Districts. Complaint Order P 17 (citing Turlock Agmt. § 4.33, PER 504; Modesto Agmt. § 4.32, PER 424), PER 25.

The Water Districts do not "lease, license, own or control" any portion of the California-Oregon Project. Complaint Order P 53 (citing Water Districts' Compl. at 2, 9-12, 55, PER 257, 264-67, 310), PER 53; *see also* Rehearing Order P 27 (finding that the Water Districts' contract rights to capacity on the California-Oregon Project "are not considered part of the Districts' Systems as defined in the Interconnection Agreements"), PER 14. The Water Districts concede that the California-Oregon Project is not part of the Water Districts' Systems. *See* Br. 35. The Commission found this "dispositive" of the Water Districts' complaint, Complaint Order P 53, PER 37, because concerns about the California-Oregon Project, standing alone, do not activate the Interconnection Agreements' study mandate. *Id.* at P 54, PER 38.

2. The Water Districts Did Not Present Evidence Of How Alleged Constraints On The California-Oregon Project May Result In Adverse Impacts To The Water Districts' Systems

Instead, if the Water Districts sought to rely on alleged constraints on the California-Oregon Project, the Commission found that the Water Districts had to show how those supposed capacity limitations "may result" in Adverse Impacts on the Water Districts' Systems themselves. That is, the Water Districts had to show how those transmission constraints – or any other supposed effects from ending the

Remedial Scheme – may "materially degrade reliability or materially limit the ability to transfer power in and out of the Water Districts' Systems." Rehearing Order P 29 (citing Pandey Aff. ¶ 9, PER 212), PER 14.

And the Commission found that the Water Districts provided "no supporting evidence" as to how the Remedial Scheme's termination may result in Adverse Impacts on the Water Districts' Systems. Rehearing Order P 30 (citing Complaint Order P 55, PER 38), PER 15; *accord* Rehearing Order P 6 (same) (citing Complaint Order PP 55, 58, PER 38, 39), PER 5. The Water Districts did not identify any other transmission facility beyond the California-Oregon Project that might be affected by ending the Remedial Scheme. *See* Rehearing Order P 26 & n.51, (citing Water Districts' Compl. at 49-50 (citing Gilbertson Aff. ¶¶ 76-78, PER 362-63), PER 304-05), PER 13.

The Water Districts conceded that removing the Remedial Scheme would not impact the Water Districts' ability to transfer power in and out of their Systems – including over the Los Banos-Westley interconnection with Pacific Gas & Electric. *See* Rehearing Order n.51 (citing Water Districts' Compl. at 25-28, 30, PER 280-83, 285), PER 13; Rehearing Order P 36 (conceding that a study of these interconnections was unnecessary), PER 18; *see also* Br. 45 ("this reprogramming does not cause overloads on the Los-Banos-Westley line"). At most, the Water Districts only provided "unsubstantiated allegations," Rehearing Order P 25,

PER 13, with "scant information regarding effects on the Districts' Systems themselves." *Id.* at P 27 (citing Complaint Order P 52, PER 37), PER 14.

The Commission instead found that that the available evidence from Pacific Gas & Electric, the California System Operator, and the Water Districts' affidavits adequately demonstrated that ending the Remedial Scheme would not affect the Water Districts' Systems. *See* Rehearing Order P 32 & n.62, PER 16.[3] The Water Districts did not rely on the Remedial Scheme while it was in effect. *See id.* at P 31, PER 15. State Water pumps were never interrupted under the Remedial Scheme for potential outages on Pacific Gas & Electric lines that interconnect to the Water Districts' Systems. *See* Complaint Order P 57 (State Water pumps were never halted for outages on Pacific Gas & Electric 's "double lines" that interconnect with the Water Districts) (citing Pac. Gas & Elec. Ltr. to Water Districts, PER 391), PER 38; *see also* Gilbertson Aff. ¶ 50 (Turlock engineer acknowledged that the Remedial Scheme was not used for double line outages that would overload the Los Banos-Westley connection), PER 357.

Nor would the Water Districts' reliability or ability to transfer power in and out of their Systems be adversely affected by ending the Remedial Scheme. *See* Rehearing Order P 34, PER 17. Even assuming potential overloads on a portion of

[3] Citing the California System Operator, *2014-2015 Transmission Planning Process*, available at http://www.caiso.com/planning/TransmissionPlanning/2014-2015TransmissionPlanningProcess.aspx.

the Los Banos-Westley line, the California System Operator could manage any such overloads through grid management procedures, resulting in no reduction in the Water Districts' ability to transfer power in or out of their Systems. *See id.*; *see also id.* at P 31 & n.61 (noting that the California System Operator's 2014-2015 Transmission Plan found that it could mitigate any relevant overloads with "short-term emergency rating, re-dispatching generation, and congestion management") (citation omitted), PER 16. The California System Operator could likewise minimize impacts to the transmission system south of the Water Districts with congestion management techniques – preventing any effect on the Water Districts. *See* Complaint Order P 58 (citing Pandey Aff. ¶ 9, PER 212), PER 39.

Alleged California-Oregon Project transmission constraints only, at most, "limit the ability [of the Water Districts] to transfer power over the [California-Oregon Project]." Pac. Gas & Elec. Answer at 31, R. 15, PER 144; *see also id.* at 30 (stating that the "only appreciable impact from the loss of [the Remedial Scheme] was the potential for curtailments of the [California-Oregon Project] under the limited occasions when there is both high northern California hydroelectric generation and high flow across" the California-Oregon Intertie) (citing Pandey Aff. ¶¶ 9, 20-24, 31-32, PER 212, 217-19, 228), PER 143. *But see* Complaint Order P 44 (Pacific Gas & Electric stated that, due to upgrades to its System, there will be minimal curtailments on the California-Oregon Project, and

the impact of any such reduction had declined) (citing Pac. Gas & Elec. Answer at 44, PER 157), PER 34.

But since the expiration of the State Water Contract, Pacific Gas & Electric has reprogrammed the Remedial Scheme to maintain the same daily operating limits on the California-Oregon Intertie – even without State Water's participation – ensuring that there will be no reduction in reliability to the Water Districts' Systems. *See* Complaint Order P 56, PER 38; *see also* Rehearing Order P 31 (determining that the Pacific Gas & Electric and California System Operator analyses supported this finding), PER 16. The California System Operator likewise found that ending the Remedial Scheme would not adversely affect the reliability of the California System Operator-controlled grid. *See* Rehearing Order P 34, PER 17; *see also* Complaint Order P 57 (noting that Pacific Gas & Electric found that there was no "reasonable likelihood of Adverse Impacts" to the Water Districts' Systems) (citing Pandey Aff. ¶ 9, PER 212), PER 38.

The Commission thus found that the Water Districts did "not meet the burden of proof required to prevail in a [Federal Power Act section 206] complaint proceeding." Rehearing Order P 31, PER 16; *see also Pub. Citizen, Inc. v. FERC*, 839 F.3d 1165, 1171 n.4 (D.C. Cir. 2016) (under section 206, the burden of proof is on the complainant); *La. Pub. Serv. Comm'n v. FERC*, 761 F.3d 540, 545 (5th

Cir. 2014) (affirming FERC's finding that the challenger had not "met its burden of proof under section 206" of the Federal Power Act) (citation omitted).

B. The Commission Reasonably Interpreted And Applied The Interconnection Agreements

The Water Districts' arguments regarding the Interconnection Agreements – and its evidence of supposed transmission constraints on the California-Oregon Project – do not alter the reasonableness of the Commission's findings.

1. The Water Districts Wrongfully Contend That The Commission Applied Improper Contractual Standards

The Water Districts incorrectly state that the Commission held that the Water Districts could not rely upon transmission constraints on the California-Oregon Project solely because it is external to the Water Districts' Systems. Br. 28. The Commission instead sensibly determined that, if the Water Districts are relying on evidence of transmission constraints on the California-Oregon Project to demand a study, the Water Districts needed to show how those constraints "may result" in Adverse Impacts on the Water Districts' Systems, pursuant to the Interconnection Agreements' language. *See* Rehearing Order P 29, PER 14; *see also City of Seattle*, 923 F.2d at 716 (deferring to FERC's interpretation, where the agency relied upon its expertise to determine the plain meaning of a contract).

The Water Districts later acknowledge this, noting that the Commission found that "transmission constraints on facilities outside the [Water] Districts' Systems could present reliability concerns" to the Water Districts' Systems. Br. 40 (citing Rehearing Order P 28, PER 14). But as the Commission continued, merely because this is theoretically possible does not mean that the Water Districts met their burden to show that here. *See* Rehearing Order P 28, PER 14. The Commission found that the Water Districts did not provide evidence of how supposed transmission constraints on the California-Oregon Project materially degrade the Districts' reliability, or the Water Districts' ability to physically transfer power into or out of their respective Systems. *See id.* at P 29, PER 14; *see also id.* n.55 (citing Pandey Aff. ¶¶ 5-6, PER 210-11, as to how Pacific Gas & Electric has minimized any effects on the California-Oregon Intertie from ending the Remedial Scheme), PER 15.

The Water Districts' focus on Appendix B of the Interconnection Agreements does not alter this shortcoming. Br. 33. Appendix B provides that certain listed facilities will not have an "Adverse Impact." *See* Turlock Agmt., App. B, PER 557; Modesto Agmt., App. B, PER 484. The Remedial Scheme is not included. *Id.* Yet, again, the Commission acknowledged that external transmission constraints – including the Remedial Scheme – "could present reliability concerns" to the Water Districts' Systems. Rehearing Order P 28

(noting that the Remedial Scheme's termination was not included Appendix B's list of possible adverse external events – despite its impending expiration), PER 14. The Commission merely found that the Water Districts did not make a sufficient showing here. *Id.*

The Commission likewise reasonably read the Interconnection Agreements to require more than an unsubstantiated belief by the Water Districts that Adverse Impacts to the Water Districts' systems potentially could result from the loss of the Remedial Scheme. *See, e.g.*, *id.* at P 36 (finding that the Water Districts could not show that the end of the Remedial Scheme "may reasonably result" in Adverse Impacts), PER 18; *see also id.* at P 26 (reading sections 4.2, 9.11.1(a), and 9.11.1(b) together to find that "may result" requires a showing of "reasonable possibility"), PER 13.

The Water Districts rely on the "may result or may have resulted" language in section 9.11.1(b) of the Interconnection Agreements to argue that the Commission improperly required the Water Districts to demonstrate some degree of certainty before demanding a study. Br. 21. The Interconnection Agreements' notice (section 9.11.1(a)) and study (section 9.11.2) provisions do use slightly different language ("may reasonably result" and "may reasonably be expected to result" in sections 9.11.1(a) and 9.11.2, and "may result" in section 9.11.1(b)).

But the Commission reasonably read these provisions together to require the Water Districts to show how an Adverse Impact may "reasonably" occur before mandating a study. Rehearing Order PP 26, 36, PER 13, 18; *see generally Miranda v. Anchondo*, 684 F.3d 844, 849 (9th Cir. 2011) (words in different sections of the same agreement should be construed similarly). The Commission's interpretation of what is needed to show that a change "may result" in an "Adverse Impact" should be afforded deference. *See Pac. Gas & Elec. Co. v. FERC*, 746 F.2d 1383, 1387 (9th Cir. 1984) (deferring to FERC"s "application of its expertise" in electricity transmission regulation in determining "the meaning of [an] agreement's language"); *see also MPS Merchant Servs.*, 836 F.3d at 1164 (deferring to the agency's reasonable interpretation of a tariff).

By contrast, the Water Districts do not offer any basis for why their contrasting standard of "merely a belief" is sufficient to satisfy the "may result" standard. Br. 29; *see also id.* at 40 (stating that the Water Districts requested a study because they "reasonably believed"). Even assuming – as the Water Districts argue – that the "may result" standard is a "low threshold," *id.* at 21, it is still a threshold. The Commission reasonably found that the Water Districts could not meet this standard to show a possibility, *see, e.g.*, Rehearing Order P 36, PER 18, because the Water Districts provided "no supporting evidence" of Adverse Impacts to their electric systems from ending the Remedial Scheme. *Id.* at

P 30, PER 15. The Commission likewise found that the Water Districts could not demand a study to try to gather sufficient evidence to satisfy the "may result" standard – after the study's completion. *See id.* at P 31 (finding this argument "circular"), PER 16.

Contrary to the Water Districts' contention, the Commission did not alter the Interconnection Agreements' "may result" standard to apply a higher burden of proof for the Water Districts to demand a study. *See* Br. 40. The Commission reasonably applied those contract terms, *see, e.g.*, Rehearing Order P 4 & n.7, PER 2-3, and found that the Water Districts did not satisfy the contractual requirements. *See id.* at P 36, PER 18.

Although the Commission did not recite the "may result" language throughout the orders, the agency did not purport to alter that threshold. When the Commission used statements of greater certitude, it simply reflected the agency's finding that the record evidence showed no effect on the Water Districts' Systems from ending the Remedial Scheme. *See, e.g.*, *id.* at P 28 (finding that the record did not demonstrate that ending the Remedial Scheme would have an Adverse Impact), PER 14. Regardless, "no supporting evidence" cannot satisfy the "may result" threshold. *Id.* at P 30, PER 15; *see In re Polar Bear Endangered Species Act Listing & Section 4(d) Rule Litig.*, 709 F.3d 1, 10 (D.C. Cir. 2013) (holding that courts defer when an agency provides a "discernible path of decisionmaking").

2. The Water Districts' Evidence Regarding The California-Oregon Project Does Not Alter The Commission's Conclusion

The Water Districts likewise cannot alter the Commission's record-based findings. The Water Districts misunderstand the Commission's reliance on the California System Operator's study. The Commission did not determine that the California System Operator's analysis could serve in place of a mandated study under the Interconnection Agreements. *See* Br. 40-41.

The Commission instead relied up on the California System Operator's analysis, "together with [Pacific Gas & Electric's] own technical analysis and the affidavits submitted by the [Water] Districts" to assess the effects of ending the Remedial Scheme on the Water Districts. Rehearing Order P 32 & n.62 (noting that the California System Operator study provided relevant evidence because it "identif[ed] potential transmission system limitations as well as examine[d] the [California System Operator]-controlled grid and reliability requirements, and identif[ied] mitigation solutions") (citing California System Operator 2014-2015 *Transmission Planning Process*), PER 16.

The Commission concluded that these analyses, taken together, were "persuasive record evidence" that the Water Districts did not demonstrate that ending the Remedial Scheme "may result" in Adverse Impacts to the Water Districts' Systems. Rehearing Order P 32, PER 16; *see Fla. Mun. Power Agency v. FERC*, 602 F.3d 454, 461 (D.C. Cir. 2010) (The relevant question "is not whether

record evidence supports [petitioner's] version of events, but whether it supports FERC's."). The Water Districts may wish that the Commission did not rely upon these analyses, Br. 38, but the Commission is entrusted to weigh expert evidence. *See Hoopa Valley Tribe v. FERC*, 629 F.3d 209, 213 (D.C. Cir. 2010).

In response, the Water Districts continue to rely upon evidence regarding the California-Oregon Project. The affidavits referenced by the Water Districts, Br. 39, 43-44, focus solely on alleged California-Oregon Project transmission constraints – without any indication of how those constraints would reduce the reliability or physical capacity of the Water Districts' Systems. *See, e.g.*, Gilbertson Aff. ¶¶ 6-8, 76 (explaining how transmission reductions on the California-Oregon Project would affect the ability of the Water Districts to meet their capacity obligations, not the physical ability to transfer power in and out of the Water Districts' Systems), PER 334-35, 362; Salyer Aff. ¶¶ 26-27 (discussing decreased "transfer capability over the [California-Oregon Intertie], and therefore the [California-Oregon Project]," not the Water Districts' Systems), PER 380.

The Pacific Gas & Electric findings cited by the Water Districts, Br. 37, explicitly conclude that ending the Remedial Scheme would have "no impact" on the ability of the Water Districts to "transfer power into, out of, or within" the Water Districts' Systems. Pac. Gas & Elec. Answer at 31 (citing Pandey Aff. ¶ 9, PER 212), PER 144; *accord* Pac. Gas & Elec. Answer at 5 (same), PER 118-19.

The Water Districts acknowledge as much. *See* Br. 45 (noting that ending the Remedial Scheme "does not cause overloads on the Los-Banos-Westley line").

Although the Water Districts contend that the California-Oregon Project transmission constraints could cause reliability concerns on the Water Districts' Systems, *id.* at 43, the Commission reasonably found otherwise, based on the analyses by the California System Operator and Pacific Gas & Electric. *See* Rehearing Order PP 31-32, PER 16; *see also* Complaint Order P 56 (Pacific Gas & Electric reprogramming the Remedial Scheme without State Water's participation ensures no change in reliability for the Water Districts), PER 38; *see generally Cal. Pub. Utils. Comm'n*, 462 F.3d at 1045 (record evidence need only support FERC).

The Water Districts' "reliability" concern is actually a concern about the Water Districts' access to capacity on the California-Oregon Project. *See* Br. 43 (citing Gilbertson Aff. ¶ 8, PER 335). The Water Districts ultimately admit that their worry is the available capacity that the Districts can access on that Project. *See* Br. 44, 45 ("[California-Oregon Project] transmission constraints caused by [Remedial Scheme] reprogramming are what concern" the Water Districts); *see also* Int. Br. 2, 5, 7 (focusing on transmission constraints on the California-Oregon Intertie).

Yet as the Commission noted, "the issue of whether reprogramming to the remedial action scheme causes *pro rata* reductions in transmission capacity and

scheduling ability among the owners of the California-Oregon [] Project is a matter properly governed by the Operation Agreement." Rehearing Order P 33, PER 14. *But see* Complaint Order P 60 (noting that whether the Remedial Scheme would reduce transfer capacity on the California-Oregon Project was already addressed in *Transmission Agency*, 148 FERC ¶ 61,150, P 69, where the Commission found that ending the Remedial Scheme would not harm reliability), PER 39.

So the Commission had record support for its determination that the Water Districts had not adequately shown that capacity concerns on the California-Oregon Project "may result" in Adverse Impacts to the Water Districts' Systems. *See, e.g.*, *Fall River Rural Elec. Coop., Inc. v. FERC*, 543 F.3d 519, 527-28 (9th Cir. 2008) (finding substantial evidence for the agency's decision where there was "much more than a 'mere scintilla'"); *see also Bear Lake Watch, Inc. v. FERC*, 324 F.3d 1071, 1076 (9th Cir. 2003) (affirming FERC's factual findings and holding that, if the evidence is "susceptible of more than one interpretation," the Court must uphold FERC). The Commission reasonably found that the Water Districts could not satisfy the "may result" standard (or any standard) to carry the Water Districts' burden of proof. *See, e.g.*, Rehearing Order PP 24, 36, PER 12, 18; *see also MPS Merchant Servs.*, 836 F.3d at 1168 (when a "court reviews an agency action involving primarily issues of fact, and where analysis of the relevant documents requires a high level of technical expertise, we must defer to the

informed discretion of the responsible federal agencies") (citing *Snoqualmie Indian Tribe*, 545 F.3d at 1212).

CONCLUSION

For the foregoing reasons, the Court should deny the petition for review.

Respectfully submitted,

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December 22, 2017

STATEMENT OF RELATED CASES

Per Circuit Rule 28-2.6, counsel is not aware of any related case pending in this Court or any other court.

Respectfully submitted,

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December 22, 2017

CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(a)(7)(C)(i), I certify that the Brief for Respondent has been prepared in a proportionally spaced typeface (using Microsoft Word 2013, in 14-point Times New Roman) and contains 7,820 words, not including the cover page, the tables of contents and authorities, the glossary, the certificates of counsel, and the addendum.

/s/ Ross R. Fulton
Ross R. Fulton
Attorney

December 22, 2017

ADDENDUM
STATUTES

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Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, §1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(b).	June 11, 1946, ch. 324, §10(b), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94–574 provided that if no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer as defendant.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, §10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, §10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, §10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

ABBREVIATION OF RECORD

Pub. L. 85–791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: ''This Act [see Tables for classification] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title].''

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

Sec.

(C) any electric utility company, or holding company thereof, which is an associate company or affiliate of an exempt wholesale generator which sells electric energy to an electric utility company referred to in subparagraph (A),

wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric service.

(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

(4) Nothing in this section shall—

(A) preempt applicable State law concerning the provision of records and other information; or

(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

(5) As used in this subsection the terms ''affiliate'', ''associate company'', ''electric utility company'', ''holding company'', ''subsidiary company'', and ''exempt wholesale generator'' shall have the same meaning as when used in the Public Utility Holding Company Act of 2005 [42 U.S.C. 16451 et seq.].

(June 10, 1920, ch. 285, pt. II, § 201, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 847; amended Pub. L. 95–617, title II, § 204(b), Nov. 9, 1978, 92 Stat. 3140; Pub. L. 102–486, title VII, § 714, Oct. 24, 1992, 106 Stat. 2911; Pub. L. 109–58, title XII, §§ 1277(b)(1), 1291(c), 1295(a), Aug. 8, 2005, 119 Stat. 978, 985.)

REFERENCES IN TEXT

The Rural Electrification Act of 1936, referred to in subsec. (f), is act May 20, 1936, ch. 432, 49 Stat. 1363, as amended, which is classified generally to chapter 31 (§ 901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

The Public Utility Holding Company Act of 2005, referred to in subsec. (g)(5), is subtitle F of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which is classified principally to part D (§ 16451 et seq.) of subchapter XII of chapter 149 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of Title 42 and Tables.

AMENDMENTS

2005—Subsec. (b)(2). Pub. L. 109–58, § 1295(a)(1), substituted ''Notwithstanding subsection (f) of this section, the provisions of sections 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824*o*, 824p, 824q, 824r, 824s, 824t, 824u, and 824v of this title'' for ''The provisions of sections 824i, 824j, and 824k of this title'' and ''Compliance with any order or rule of the Commission under the provisions of section 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824*o*, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title'' for ''Compliance with any order of the Commis-sion under the provisions of section 824i or 824j of this title''.

Subsec. (e). Pub. L. 109–58, § 1295(a)(2), substituted ''section 824e(e), 824e(f), 824i, 824j, 824j–1, 824k, 824*o*, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title'' for ''sec-tion 824i, 824j, or 824k of this title''.

Subsec. (f). Pub. L. 109–58, § 1291(c), which directed amendment of subsec. (f) by substituting ''political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year,'' for ''political subdivision of a state,'', was executed by making the substitution for ''political subdivision of a State,'' to reflect the probable intent of Congress.

Subsec. (g)(5). Pub. L. 109–58, § 1277(b)(1), substituted ''2005'' for ''1935''.

1992—Subsec. (g). Pub. L. 102–486 added subsec. (g).

1978—Subsec. (b). Pub. L. 95–617, § 204(b)(1), designated existing provisions as par. (1), inserted ''except as pro-vided in paragraph (2)'' after ''in interstate commerce, but'', and added par. (2).

Subsec. (e). Pub. L. 95–617, § 204(b)(2), inserted ''(other than facilities subject to such jurisdiction solely by reason of section 824i, 824j, or 824k of this title)'' after ''under this subchapter''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1277(b)(1) of Pub. L. 109–58 effective 6 months after Aug. 8, 2005, with provisions relating to effect of compliance with certain regulations approved and made effective prior to such date, see section 1274 of Pub. L. 109–58, set out as an Effective Date note under section 16451 of Title 42, The Public Health and Welfare.

STATE AUTHORITIES; CONSTRUCTION

Nothing in amendment by Pub. L. 102–486 to be construed as affecting or intending to affect, or in any way to interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see section 731 of Pub. L. 102–486, set out as a note under section 796 of this title.

PRIOR ACTIONS; EFFECT ON OTHER AUTHORITIES

Pub. L. 95–617, title II, § 214, Nov. 9, 1978, 92 Stat. 3149, provided that:

''(a) PRIOR ACTIONS.—No provision of this title [enacting sections 823a, 824i to 824k, 824a–1 to 824a–3 and 825q–1 of this title, amending sections 796, 824, 824a, 824d, and 825d of this title and enacting provisions set out as notes under sections 824a, 824d, and 825d of this title] or of any amendment made by this title shall apply to, or affect, any action taken by the Commis-sion [Federal Energy Regulatory Commission] before the date of the enactment of this Act [Nov. 9, 1978].

''(b) OTHER AUTHORITIES.—No provision of this title [enacting sections 823a, 824i to 824k, 824a–1 to 824a–3 and 825q–1 of this title, amending sections 796, 824, 824a, 824d, and 825d of this title and enacting provisions set out as notes under sections 824a, 824d, and 825d of this title] or of any amendment made by this title shall limit, impair or otherwise affect any authority of the Commission or any other agency or instrumentality of the United States under any other provision of law ex-cept as specifically provided in this title.''

§ 824a. Interconnection and coordination of facilities; emergencies; transmission to foreign countries

(a) Regional districts; establishment; notice to State commissions

For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon

its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnection and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

(b) Sale or exchange of energy; establishing physical connections

Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

(c) Temporary connection and exchange of facilities during emergency

During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

(d) Temporary connection during emergency by persons without jurisdiction of Commission

During the continuance of any emergency requiring immediate action, any person engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the Commission may make such temporary connections with any public utility subject to the jurisdiction of the Commission or may construct such temporary facilities for the transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the Commission by reason of such temporary connection or temporary construction: *Provided*, That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further*, That upon approval of the Commission permanent connections for emergency use only may be made hereunder.

(e) Transmission of electric energy to foreign country

After six months from August 26, 1935, no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.

(f) Transmission or sale at wholesale of electric energy; regulation

The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from the State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this subchapter. The State within which any such facilities are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection (e) of this section.

(g) Continuance of service

In order to insure continuity of service to customers of public utilities, the Commission shall require, by rule, each public utility to—

TRANSFER OF FUNCTIONS

Executive and administrative functions of Securities and Exchange Commission, with certain exceptions, transferred to Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 824d. Rates and charges; schedules; suspension of new rates; automatic adjustment clauses

(a) Just and reasonable rates

All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) Preference or advantage unlawful

No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Schedules

Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Notice required for rate changes

Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Suspension of new rates; hearings; five-month period

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of such five months, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period, but in case of a proposed increased rate or charge, the Commission may by order require the interested public utility or public utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(f) Review of automatic adjustment clauses and public utility practices; action by Commission; "automatic adjustment clause" defined

(1) Not later than 2 years after November 9, 1978, and not less often than every 4 years thereafter, the Commission shall make a thorough review of automatic adjustment clauses in public utility rate schedules to examine—

(A) whether or not each such clause effectively provides incentives for efficient use of resources (including economical purchase and use of fuel and electric energy), and

(B) whether any such clause reflects any costs other than costs which are—

(i) subject to periodic fluctuations and

(ii) not susceptible to precise determinations in rate cases prior to the time such costs are incurred.

Such review may take place in individual rate proceedings or in generic or other separate proceedings applicable to one or more utilities.

(2) Not less frequently than every 2 years, in rate proceedings or in generic or other separate proceedings, the Commission shall review, with respect to each public utility, practices under

any automatic adjustment clauses of such utility to insure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses.

(3) The Commission may, on its own motion or upon complaint, after an opportunity for an evidentiary hearing, order a public utility to—

(A) modify the terms and provisions of any automatic adjustment clause, or

(B) cease any practice in connection with the clause,

if such clause or practice does not result in the economical purchase and use of fuel, electric energy, or other items, the cost of which is included in any rate schedule under an automatic adjustment clause.

(4) As used in this subsection, the term ''automatic adjustment clause'' means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate.

(June 10, 1920, ch. 285, pt. II, § 205, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 851; amended Pub. L. 95–617, title II, §§ 207(a), 208, Nov. 9, 1978, 92 Stat. 3142.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95–617, § 207(a), substituted ''sixty'' for ''thirty'' in two places.

Subsec. (f). Pub. L. 95–617, § 208, added subsec. (f).

STUDY OF ELECTRIC RATE INCREASES UNDER FEDERAL POWER ACT

Section 207(b) of Pub. L. 95–617 directed chairman of Federal Energy Regulatory Commission, in consultation with Secretary, to conduct a study of legal requirements and administrative procedures involved in consideration and resolution of proposed wholesale electric rate increases under Federal Power Act, section 791a et seq. of this title, for purposes of providing for expeditious handling of hearings consistent with due process, preventing imposition of successive rate increases before they have been determined by Commission to be just and reasonable and otherwise lawful, and improving procedures designed to prohibit anticompetitive or unreasonable differences in wholesale and retail rates, or both, and that chairman report to Congress within nine months from Nov. 9, 1978, on results of study, on administrative actions taken as a result of this study, and on any recommendations for changes in existing law that will aid purposes of this section.

§ 824e. Power of Commission to fix rates and charges; determination of cost of production or transmission

(a) Unjust or preferential rates, etc.; statement of reasons for changes; hearing; specification of issues

Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. Any complaint or motion of the Commission to initiate a proceeding under this section shall state the change or changes to be made in the rate, charge, classification, rule, regulation, practice, or contract then in force, and the reasons for any proposed change or changes therein. If, after review of any motion or complaint and answer, the Commission shall decide to hold a hearing, it shall fix by order the time and place of such hearing and shall specify the issues to be adjudicated.

(b) Refund effective date; preferential proceedings; statement of reasons for delay; burden of proof; scope of refund order; refund orders in cases of dilatory behavior; interest

Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the publication date. Upon institution of a proceeding under this section, the Commission shall give to the decision of such proceeding the same preference as provided under section 824d of this title and otherwise act as speedily as possible. If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant. At the conclusion of any proceeding under this section, the Commission may order refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force: *Provided*, That if the proceeding is not concluded within fifteen months after the refund effective date and if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission may order refunds of any or all amounts paid for the period subsequent to the refund effective date and prior to the conclusion of the proceeding. The refunds

underwriting of, or participate in the marketing of, securities of the public utility of which the person holds the position of officer or director;

(iii) the public utility for which the person serves or proposes to serve as an officer or director selects underwriters by competitive procedures; or

(iv) the issuance of securities of the public utility for which the person serves or proposes to serve as an officer or director has been approved by all Federal and State regulatory agencies having jurisdiction over the issuance.

(c) Statement of prior positions; definitions

(1) On or before April 30 of each year, any person, who, during the calendar year preceding the filing date under this subsection, was an officer or director of a public utility and who held, during such calendar year, the position of officer, director, partner, appointee, or representative of any other entity listed in paragraph (2) shall file with the Commission, in such form and manner as the Commission shall by rule prescribe, a written statement concerning such positions held by such person. Such statement shall be available to the public.

(2) The entities listed for purposes of paragraph (1) are as follows—

(A) any investment bank, bank holding company, foreign bank or subsidiary thereof doing business in the United States, insurance company, or any other organization primarily engaged in the business of providing financial services or credit, a mutual savings bank, or a savings and loan association;

(B) any company, firm, or organization which is authorized by law to underwrite or participate in the marketing of securities of a public utility;

(C) any company, firm, or organization which produces or supplies electrical equipment or coal, natural gas, oil, nuclear fuel, or other fuel, for the use of any public utility;

(D) any company, firm, or organization which during any one of the 3 calendar years immediately preceding the filing date was one of the 20 purchasers of electric energy which purchased (for purposes other than for resale) one of the 20 largest annual amounts of electric energy sold by such public utility (or by any public utility which is part of the same holding company system) during any one of such three calendar years;

(E) any entity referred to in subsection (b) of this section; and

(F) any company, firm, or organization which is controlled by any company, firm, or organization referred to in this paragraph.

On or before January 31 of each calendar year, each public utility shall publish a list, pursuant to rules prescribed by the Commission, of the purchasers to which subparagraph (D) applies, for purposes of any filing under paragraph (1) of such calendar year.

(3) For purposes of this subsection—

(A) The term ''public utility'' includes any company which is a part of a holding company system which includes a registered holding company, unless no company in such system is an electric utility.

(B) The terms ''holding company'', ''registered holding company'', and ''holding company system'' have the same meaning as when used in the Public Utility Holding Company Act of 1935.[1]

(June 10, 1920, ch. 285, pt. III, § 305, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 856; amended Pub. L. 95–617, title II, § 211(a), Nov. 9, 1978, 92 Stat. 3147; Pub. L. 106–102, title VII, § 737, Nov. 12, 1999, 113 Stat. 1479.)

REFERENCES IN TEXT

The Public Utility Holding Company Act of 1935, referred to in subsec. (c)(3)(B), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, as amended, which was classi-fied generally to chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–102 inserted subsec. heading, designated existing provisions as par. (1), inserted heading, and substituted ''After 6'' for ''After six'', and added par. (2).

1978—Subsec. (c). Pub. L. 95–617 added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–617, title II, § 211(b), Nov. 9, 1978, 92 Stat. 3147, provided that: ''No person shall be required to file a statement under section 305(c)(1) of the Federal Power Act [subsec. (c)(1) of this section] before April 30 of the second calendar year which begins after the date of the enactment of this Act [Nov. 9, 1978] and no public utility shall be required to publish a list under section 305(c)(2) of such Act [subsec. (c)(2) of this section] before January 31 of such second calendar year.''

§ 825e. Complaints

Any person, electric utility, State, municipality, or State commission complaining of anything done or omitted to be done by any licensee, transmitting utility, or public utility in contravention of the provisions of this chapter may apply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such licensee, transmitting utility, or public utility, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such licensee, transmitting utility, or public utility shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating such complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall find proper.

(June 10, 1920, ch. 285, pt. III, § 306, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 856; amended Pub. L. 109–58, title XII, § 1284(a), Aug. 8, 2005, 119 Stat. 980.)

AMENDMENTS

2005—Pub. L. 109–58 inserted ''electric utility,'' after ''Any person,'' and '', transmitting utility,'' after ''licensee'' wherever appearing.

[1] See References in Text note below.

individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on 60th day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before 60th day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

§ 825g. Hearings; rules of procedure

(a) Hearings under this chapter may be held before the Commission, any member or members thereof or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

(b) All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this chapter.

(June 10, 1920, ch. 285, pt. III, § 308, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 858.)

§ 825h. Administrative powers of Commission; rules, regulations, and orders

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

(June 10, 1920, ch. 285, pt. III, § 309, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 858.)

COMMISSION REVIEW

Pub. L. 99–495, § 4(c), Oct. 16, 1986, 100 Stat. 1248, provided that: ''In order to ensure that the provisions of Part I of the Federal Power Act [16 U.S.C. 791a et seq.], as amended by this Act, are fully, fairly, and efficiently implemented, that other governmental agencies identified in such Part I are able to carry out their responsibilities, and that the increased workload of the Federal Energy Regulatory Commission and other agencies is facilitated, the Commission shall, consistent with the provisions of section 309 of the Federal Power Act [16 U.S.C. 825h], review all provisions of that Act [16 U.S.C. 791a et seq.] requiring an action within a 30-day period and, as the Commission deems appropriate, amend its regulations to interpret such period as meaning 'working days', rather than 'calendar days' unless calendar days is specified in such Act for such action.''

§ 825i. Appointment of officers and employees; compensation

The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(June 10, 1920, ch. 285, pt. III, § 310, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 859; amended Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

CODIFICATION

Provisions that authorized the Commission to appoint and fix the compensation of such officers, attor-neys, examiners, and experts as may be necessary for carrying out its functions under this chapter ''without regard to the provisions of other laws applicable to the employment and compensation of officers and employ-ees of the United States'' have been omitted as obsolete and superseded.

Such appointments are subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order No. 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

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

[illegible] chapter 51 and subchapter III of chapter 53 of title 5'' substituted in text for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

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

REPEALS

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

§ 825j. Investigations relating to electric energy; reports to Congress

In order to secure information necessary or appropriate as a basis for recommending legislation, the Commission is authorized and directed to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, whether or not otherwise subject to the jurisdiction of the Commission, including the generation, transmission, distribution, and sale of electric energy by any agency, authority, or instrumentality of the United States, or of any State or municipality or other political subdivision of a State. It shall, so far as practicable, secure and keep current information regarding the ownership, operation, management, and control of all facilities for such generation, transmission, distribution, and sale; the capacity and output thereof and the relationship between the two; the cost of generation, transmission, and distribution; the rates, charges, and contracts in respect of the sale of electric energy and its service to residential, rural, commercial, and industrial consumers and other purchasers by private and public agencies; and the relation of any or all such facts to the development of navigation, industry, commerce, and the national defense. The Commission shall report to Congress the results of investigations made under authority of this section.

(June 10, 1920, ch. 285, pt. III, § 311, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 859.)

§ 825k. Publication and sale of reports

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and is authorized to sell at reasonable prices copies of all maps, atlases, and reports as it may from time to time publish. Such reasonable prices may include the cost of compilation, composition, and reproduction. The Commission is also authorized to make such charges as it deems reasonable for special statistical services and other special or periodic services. The amounts collected under this section shall be deposited in the Treasury to the credit of miscellaneous receipts. All printing for the Federal Power Commission making use of engraving, lithography, and photolithography, together with the plates for the same, shall be contracted for and performed under the direction of the Commission, under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe, and all other printing for the Commission shall be done by the Director of the Government Publishing Office under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe. The entire work may be done at, or ordered through, the Government Publishing Office whenever, in the judgment of the Joint Committee on Printing, the same would be to the interest of the Government: *Provided*, That when the exigencies of the public service so require, the Joint Committee on Printing may authorize the Commission to make immediate contracts for engraving, lithographing, and photolithographing, without advertisement for proposals: *Provided further*, That nothing contained in this chapter or any other Act shall prevent the Federal Power Commission from placing orders with other departments or establishments for engraving, lithographing, and photolithographing, in accordance with the provisions of sections 1535 and 1536 of title 31, providing for interdepartmental work.

(June 10, 1920, ch. 285, pt. III, § 312, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 859; amended Pub. L. 113–235, div. H, title I, § 1301(b), (d), Dec. 16, 2014, 128 Stat. 2537.)

CODIFICATION

''Sections 1535 and 1536 of title 31'' substituted in text for ''sections 601 and 602 of the Act of June 30, 1932 (47 Stat. 417 [31 U.S.C. 686, 686b])'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first sec-tion of which enacted Title 31, Money and Finance.

CHANGE OF NAME

''Director of the Government Publishing Office'' substituted for ''Public Printer'' in text on authority of section 1301(d) of Pub. L. 113–235, set out as a note under section 301 of Title 44, Public Printing and Docu-ments.

''Government Publishing Office'' substituted for ''Government Printing Office'' in text on authority of section 1301(b) of Pub. L. 113–235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

§ 825*l*. Review of orders

(a) Application for rehearing; time periods; modification of order

Any person, electric utility, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, electric utility, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any entity unless such entity shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Judicial review

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the United States court of appeals for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United

States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission's order

The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(June 10, 1920, ch. 285, pt. III, § 313, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 860; amended June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85–791, § 16, Aug. 28, 1958, 72 Stat. 947; Pub. L. 109–58, title XII, § 1284(c), Aug. 8, 2005, 119 Stat. 980.)

CODIFICATION

In subsec. (b), ''section 1254 of title 28'' substituted for ''sections 239 and 240 of the Judicial Code, as amend-ed (U.S.C., title 28, secs. 346 and 347)'' on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Proce-dure.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58 inserted ''electric utility,'' after ''Any person,'' and ''to which such person,'' and substituted ''brought by any entity unless such entity'' for ''brought by any person unless such person''.

1958—Subsec. (a). Pub. L. 85–791, § 16(a), inserted sentence to provide that Commission may modify or set aside findings or orders until record has been filed in court of appeals.

Subsec. (b). Pub. L. 85–791, § 16(b), in second sentence, substituted ''transmitted by the clerk of the court to'' for ''served upon'', substituted ''file with the court'' for ''certify and file with the court a transcript of'', and inserted ''as provided in section 2112 of title 28'', and in third sentence, substituted ''jurisdiction, which upon the filing of the record with it shall be exclusive'' for ''exclusive jurisdiction''.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted ''court of appeals'' for ''circuit court of appeals''.

§ 825m. Enforcement provisions

(a) Enjoining and restraining violations

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper District Court of the United States or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings under this chapter.

(b) Writs of mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder.

(c) Employment of attorneys

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

(d) Prohibitions on violators

In any proceedings under subsection (a) of this section, the court may prohibit, conditionally or

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CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 22nd day of December 2017, served the foregoing upon the counsel listed in the Service Preference Report via the Court's CM/ECF system as indicated below:

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