Public Law 99-495
99th Congress

An Act

To amend the Federal Power Act to provide for more protection to electric consumers.

Oct. 16, 1986
[S. 426]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Electric Consumers Protection Act of 1986.
16 USC 791a note.

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Electric Consumers Protection Act of 1986".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.
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SEC. 2. AMENDMENTS TO SECTION 7 OF FEDERAL POWER ACT.

Section 7(a) of the Federal Power Act (16 U.S.C. 791(a) et seq.) is amended as follows: 16 USC 800.

(1) Insert "original" after "hereunder or".

(2) Strike out "and in issuing licenses to new licensees under section 15 hereof" and substitute a comma.

SEC. 3. ENVIRONMENTAL CONSIDERATION IN LICENSING.

(a) PURPOSES OF LICENSE.—Section 4(e) of the Federal Power Act is amended by adding the following at the end thereof: "In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.". 16 USC 797.

(b) AMENDMENTS TO SECTION 10(a).—Section 10(a) of such Act is amended as follows: 16 USC 803.

(1) After "waterpower development," insert "for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat),".

(2) After "including", insert "irrigation, flood control, water supply, and".

(3) Strike "purposes; and" and insert after "recreational" the following: "and other purposes referred to in section 4(e)".

16 USC 797.

(4) insert "(1)" after "(a)" and insert the following new paragraphs at the end thereof:

"(2) In order to ensure that the project adopted will be best adapted to the comprehensive plan described in paragraph (1), the Commission shall consider each of the following:

Water.

"(A) The extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by—

"(i) an agency established pursuant to Federal law that has the authority to prepare such a plan; or

"(ii) the State in which the facility is or will be located.

State and local governments.

"(B) The recommendations of Federal and State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

"(C) In the case of a State or municipal applicant, or an applicant which is primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities), the electricity consumption efficiency improvement program of the applicant, including its plans, performance and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of relevant State regulatory authorities applicable to such applicant.

Indians.

"(3) Upon receipt of an application for a license, the Commission shall solicit recommendations from the agencies and Indian tribes identified in subparagraphs (A) and (B) of paragraph (2) for proposed terms and conditions for the Commission's consideration for inclusion in the license.".

16 USC 803.

(c) FISH AND WILDLIFE PROTECTION, MITIGATION, AND ENHANCEMENT.—Section 10 of the Federal Power Act is amended by adding the following at the end:

State and local governments.

"(j)(1) That in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license issued under this Part shall include conditions for such protection, mitigation, and enhancement. Subject to paragraph (2), such conditions shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

"(2) Whenever the Commission believes that any recommendation referred to in paragraph (1) may be inconsistent with the purposes and requirements of this Part or other applicable law, the Commission and the agencies referred to in paragraph (1) shall attempt to

resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

"(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Part or with other applicable provisions of law.

"(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1).

Subsection (i) shall not apply to the conditions required under this subsection.".

SEC. 4. RELICENSING PROCEDURES.

(a) RELICENSING PROCESS.—Section 15 of the Federal Power Act is amended by inserting "(1)" after "(a)", by redesignating subsection (b) as subsection (f), and by adding the following at the end of subsection (a): 16 USC 808.

"(2) Any new license issued under this section shall be issued to the applicant having the final proposal which the Commission determines is best adapted to serve the public interest, except that in making this determination the Commission shall ensure that insignificant differences with regard to subparagraphs (A) through (G) of this paragraph between competing applications are not determinative and shall not result in the transfer of a project. In making a determination under this section (whether or not more than one application is submitted for the project), the Commission shall, in addition to the requirements of section 10 of this Part, consider (and explain such consideration in writing) each of the following: *Ante*, pp. 1243, 1244.

"(A) The plans and abilities of the applicant to comply with (i) the articles, terms, and conditions of any license issued to it and (ii) other applicable provisions of this Part.

"(B) The plans of the applicant to manage, operate, and maintain the project safely.

"(C) The plans and abilities of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service.

"(D) The need of the applicant over the short and long term for the electricity generated by the project or projects to serve its customers, including, among other relevant considerations, the reasonable costs and reasonable availability of alternative sources of power, taking into consideration conservation and other relevant factors and taking into consideration the effect on the provider (including its customers) of the alternative source of power, the effect on the applicant's operating and load characteristics, the effect on communities served or to be served by the project, and in the case of an applicant using power for the applicant's own industrial facility and related operations, the effect on the operation and efficiency of such facility or related operations, its workers, and the related community. In the case of an applicant that is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such tribe for electricity generated by the project to foster the purposes of the reservation may be included. Indians.

"(E) The existing and planned transmission services of the applicant, taking into consideration system reliability, costs, and other applicable economic and technical factors.

"(F) Whether the plans of the applicant will be achieved, to the greatest extent possible, in a cost effective manner.

"(G) Such other factors as the Commission may deem relevant, except that the terms and conditions in the license for the protection, mitigation, or enhancement of fish and wildlife resources affected by the development, operation, and management of the project shall be determined in accordance with section 10, and the plans of an applicant concerning fish and wildlife shall not be subject to a comparative evaluation under this subsection.

Ante, p. 1244.

"(3) In the case of an application by the existing licensee, the Commission shall also take into consideration each of the following:

"(A) The existing licensee's record of compliance with the terms and conditions of the existing license.

"(B) The actions taken by the existing licensee related to the project which affect the public.

"(b)(1) Each existing licensee shall notify the Commission whether the licensee intends to file an application for a new license or not. Such notice shall be submitted at least 5 years before the expiration of the existing license.

Public information. Regulations.

"(2) At the time notice is provided under paragraph (1), the existing licensee shall make each of the following reasonably available to the public for inspection at the offices of such licensee: current maps, drawings, data, and such other information as the Commission shall, by rule, require regarding the construction and operation of the licensed project. Such information shall include, to the greatest extent practicable pertinent energy conservation, recreation, fish and wildlife, and other environmental information. Copies of the information shall be made available at reasonable costs of reproduction. Within 180 days after the enactment of the Electric Consumers Protection Act of 1986, the Commission shall promulgate regulations regarding the information to be provided under this paragraph.

"(3) Promptly following receipt of notice under paragraph (1), the Commission shall provide public notice of whether an existing licensee intends to file or not to file an application for a new license. The Commission shall also promptly notify the National Marine Fisheries Service and the United States Fish and Wildlife Service, and the appropriate State fish and wildlife agencies.

Indians.

"(4) The Commission shall require the applicant to identify any Federal or Indian lands included in the project boundary, together with a statement of the annual fees paid as required by this Part for such lands, and to provide such additional information as the Commission deems appropriate to carry out the Commission's responsibilities under this section.

"(c)(1) Each application for a new license pursuant to this section shall be filed with the Commission at least 24 months before the expiration of the term of the existing license. Each applicant shall consult with the fish and wildlife agencies referred to in subsection (b) and, as appropriate, conduct studies with such agencies. Within 60 days after the statutory deadline for the submission of applications, the Commission shall issue a notice establishing expeditious procedures for relicensing and a deadline for submission of final amendments, if any, to the application.

"(2) The time periods specified in this subsection and in subsection (b) shall be adjusted, in a manner that achieves the objectives of this section, by the Commission by rule or order with respect to existing licensees who, by reason of the expiration dates of their licenses, are unable to comply with a specified time period.

"(d)(1) In evaluating applications for new licenses pursuant to this section, the Commission shall not consider whether an applicant has adequate transmission facilities with regard to the project.

"(2) When the Commission issues a new license (pursuant to this section) to an applicant which is not the existing licensee of the project and finds that it is not feasible for the new licensee to utilize the energy from such project without provision by the existing licensee of reasonable services, including transmission services, the Commission shall give notice to the existing licensee and the new licensee to immediately enter into negotiations for such services and the costs demonstrated by the existing licensee as being related to the provision of such services. It is the intent of the Congress that such negotiations be carried out in good faith and that a timely agreement be reached between the parties in order to facilitate the transfer of the license by the date established when the Commission issued the new license. If such parties do not notify the Commission that within the time established by the Commission in such notice (and if appropriate, in the judgment of the Commission, one 45-day extension thereof), a mutually satisfactory arrangement for such services that is consistent with the provisions of this Act has been executed, the Commission shall order the existing licensee to file (pursuant to section 205 of this Act) with the Commission a tariff, subject to refund, ensuring such services beginning on the date of transfer of the project and including just and reasonable rates and reasonable terms and conditions. After notice and opportunity for a hearing, the Commission shall issue a final order adopting or modifying such tariff for such services at just and reasonable rates in accordance with section 205 of this Act and in accordance with reasonable terms and conditions. The Commission, in issuing such order, shall ensure the services necessary for the full and efficient utilization and benefits for the license term of the electric energy from the project by the new licensee in accordance with the license and this Part, except that in issuing such order the Commission— 16 USC 824d.

"(A) shall not compel the existing licensee to enlarge generating facilities, transmit electric energy other than to the distribution system (providing service to customers) of the new licensee identified as of the date one day preceding the date of license award, or require the acquisition of new facilities, including the upgrading of existing facilities other than any reasonable enhancement or improvement of existing facilities controlled by the existing licensee (including any acquisition related to such enhancement or improvement) necessary to carry out the purposes of this paragraph;

"(B) shall not adversely affect the continuity and reliability of service to the customers of the existing licensee;

"(C) shall not adversely affect the operational integrity of the transmission and electric systems of the existing licensee;

"(D) shall not cause any reasonably quantifiable increase in the jurisdictional rates of the existing licensee; and

"(E) shall not order any entity other than the existing licensee to provide transmission or other services.

Such order shall be for such period as the Commission deems appropriate, not to exceed the term of the license. At any time, the Commission, upon its own motion or upon a petition by the existing or new licensee and after notice and opportunity for a hearing, may modify, extend, or terminate such order.".

16 USC 808.

(b) CONFORMING AMENDMENTS.—(1) Section 15(a) of the Federal Power Act is amended by striking out "original" each place it appears and substituting "existing".

16 USC 807.

(2) Section 14(b) of such Act is amended by striking out the first sentence.

16 USC 825h note.

(c) COMMISSION REVIEW.—In order to ensure that the provisions of Part I of the Federal Power Act, 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, review all provisions of that Act 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.

16 USC 825h.

SEC. 5. LICENSE TERM ON RELICENSING.

Section 15 of the Federal Power Act is amended by adding the following after subsection (d) (as added by section 4 of this Act):

"(e) Except for an annual license, any license issued by the Commission under this section shall be for a term which the Commission determines to be in the public interest but not less than 30 years, nor more than 50 years, from the date on which the license is issued.".

SEC. 6. UNAUTHORIZED ACTIVITIES.

16 USC 817.

Section 23(b) of the Federal Power Act is amended by inserting "(1)" after "(b)" and by adding the following at the end thereof:

"(2) No person may commence any significant modification of any project licensed under, or exempted from, this Act unless such modification is authorized in accordance with terms and conditions of such license or exemption and the applicable requirements of this Part. As used in this paragraph, the term 'commence' refers to the beginning of physical on-site activity other than surveys or testing.".

SEC. 7. AMENDMENTS TO SECTION 30 OF FEDERAL POWER ACT.

Water.
16 USC 823a.

(a) STATE OR LOCAL CONDUITS.—Section 30(b) of the Federal Power Act is amended by inserting after "15 megawatts" the following: "(40 megawatts in the case of a facility constructed, operated, and maintained by an agency or instrumentality of a State or local government solely for water supply for municipal purposes)".

(b) NMFS.—Section 30(c) of the Federal Power Act is amended by inserting "National Marine Fisheries Service" after "the Fish and Wildlife Service" in both places such term appears.

(c) FEES FOR STUDIES.—Section 30 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

"(e) The Commission, in addition to the requirements of section 10(e), shall establish fees which shall be paid by an applicant for a license or exemption for a project that is required to meet terms and conditions set by fish and wildlife agencies under subsection (c).

Ante, pp. 1243, 1244.

Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in subsection (c) for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations Acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended.".

SEC. 8. AMENDMENTS CONCERNING CERTAIN SMALL POWER PRODUCTION FACILITIES SUBJECT TO PURPA BENEFITS.

(a) NEW DAMS AND DIVERSIONS SEEKING PURPA BENEFITS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 is amended by inserting the following new subsections after subsection (i) and by redesignating subsection (j) as subsection (l): 16 USC 824a-3.

"(j) NEW DAMS AND DIVERSIONS.—Except for a hydroelectric project located at a Government dam (as defined in section 3(10) of the Federal Power Act) at which non-Federal hydroelectric development is permissible, this section shall not apply to any hydroelectric project which impounds or diverts the water of a natural watercourse by means of a new dam or diversion unless the project meets each of the following requirements: 16 USC 796.

"(1) NO SUBSTANTIAL ADVERSE EFFECTS.—At the time of issuance of the license or exemption for the project, the Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality. Such finding shall be made by the Commission after taking into consideration terms and conditions imposed under either paragraph (3) of this subsection or section 10 of the Federal Power Act (whichever is appropriate as required by that Act or the Electric Consumers Protection Act of 1986) and compliance with other environmental requirements applicable to the project. *Ante*, pp. 1243, 1244.

"(2) PROTECTED RIVERS.—At the time the application for a license or exemption for the project is accepted by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to environmental consultation), such project is not located on either of the following:

"(A) Any segment of a natural watercourse which is included in (or designated for potential inclusion in) a State or national wild and scenic river system.

"(B) Any segment of a natural watercourse which the State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development.

"(3) FISH AND WILDLIFE TERMS AND CONDITIONS.—The project meets the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act. *Ante*, p. 1248.

"(k) DEFINITION OF NEW DAM OR DIVERSION.—For purposes of this section, the term 'new dam or diversion' means a dam or diversion which requires, for purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices)".

16 USC 824a-3 note.

(b) EFFECTIVE DATE.—(1) Subsection (j) of section 210 of the Public Utility Regulatory Policies Act of 1978 (as amended by subsection (a) of this section) shall apply to any project for which benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 are sought and for which a license or exemption is issued by the Federal Energy Regulatory Commission after the enactment of this Act, except as otherwise provided in paragraph (2), (3) or (4) of this subsection.

(2) Subsection (j) shall not apply to the project if the application for license or exemption for the project was filed, and accepted for filing by the Commission, before the enactment of this Act.

(3) Paragraphs (1) and (3) of such subsection (j) shall not apply if the application for the license or exemption for the project was filed before the enactment of this Act and accepted for filing by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to the requirement for environmental consultation) within 3 years after such enactment.

(4)(A) Paragraph (3) of subsection (j) shall not apply for projects where the license or exemption application was filed after enactment of this Act if, based on a petition filed by the applicant for such project within 18 months after such enactment, the Commission determines (after public notice and opportunity for public comment of at least 45 days) that the applicant has demonstrated that he had committed (prior to the enactment of this Act) substantial monetary resources directly related to the development of the project and to the diligent and timely completion of all requirements of the Commission for filing an acceptable application for license or exemption. Such petition shall be publicly available and shall be filed in such form as the Commission shall require by rule issued within 120 days after the enactment of this Act. The public notice required under this subparagraph shall include written notice by the petitioner to affected Federal and State agencies.

(B) In the case of any petition referred to in subparagraph (A), if the applicant had a preliminary permit and had completed environmental consultations (required by Commission regulations and procedures in effect on January 1, 1986) prior to enactment, there shall be a rebuttable presumption that such applicant had committed substantial monetary resources prior to enactment.

(C) The applicant for a license or exemption for a project described in subparagraph (A) may petition the Commission for an initial determination under paragraph (1) of section 210(j) of the Public Utility Regulatory Policies Act of 1978 prior to the time the license or exemption is issued. If the Commission initially finds that the project will have substantial adverse effects on the environment within the meaning of such paragraph (1), prior to making a final finding under that paragraph the Commission shall afford the applicant a reasonable opportunity to provide for mitigation of such adverse effects. The Commission shall make a final finding under such paragraph (1) at the time the license or exemption is issued. If the Federal Energy Regulatory Commission has notified the State of its initial finding and the State has not taken any action described in paragraph (2) of section 210(j) before such final finding, the failure to take such action shall be the basis for a rebuttable presumption that there is not a substantial adverse effect on the environment related to natural, recreational, cultural, or scenic attributes for purposes of such finding.

State and local governments.

(D) If a petition under subparagraph (A) is denied, all provisions of section 210(j) of the Public Utility Regulatory Policies Act of 1978 shall apply to the project regardless of when the license or exemption is issued. *Ante*, p. 1249.

(c) APPLICATION OF SECTION 30(c).—Nothing in this Act shall affect the application of section 30(c) of the Federal Power Act to any exemption issued after the enactment of this Act. 16 USC 823a note. *Ante*, p. 1248.

(d) STUDY.—(1) The Commission shall conduct a study (in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969) of whether the benefits of section 210 of the Public Utility Regulatory Policies Act of 1978 and section 210 of the Federal Power Act should be applied to hydroelectric power facilities utilizing new dams or diversions (within the meaning of section 210(k) of the Public Utility Regulatory Policies Act of 1978). 16 USC 824a-3 note. 42 USC 4332. *Ante*, p. 1249. 16 USC 824i. *Ante*, p. 1249.

(2) The study under this subsection shall take into consideration the need for such new dams or diversions for power purposes, the environmental impacts of such new dams and diversions (both with and without the application of the amendments made by this Act to sections 4, 10, and 30 of the Federal Power Act and section 210 of the Public Utility Regulatory Policies Act of 1978), the environmental effects of such facilities alone and in combination with other existing or proposed dams or diversions on the same waterway, the intent of Congress to encourage and give priority to the application of section 210 of Public Utility Regulatory Policies Act of 1978 to existing dams and diversions rather than such new dams or diversions, and the impact of such section 210 on the rates paid by electric power consumers. *Ante*, pp. 1243, 1244; *post*, pp. 1252, 1257; *ante*, p. 1248. *Ante*, p. 1249.

(3) The study under this subsection shall be initiated within 3 months after enactment of this Act and completed as promptly as practicable.

(4) A report containing the results of the study conducted under this subsection shall be submitted to the Committee on Energy and Commerce of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate while both Houses are in session. Reports.

(5) The report submitted under paragraph (4) shall include a determination (and the basis thereof) by the Commission, based on the study and a public hearing and subject to review under section 313(b) of the Federal Power Act, whether any of the benefits referred to in paragraph (1) should be available for such facilities and whether applications for preliminary permits (or licenses where no preliminary permit has been issued) for such small power production facilities utilizing new dams or diversions should be accepted by the Commission after the moratorium period specified in subsection (e). The report shall include such other administrative and legislative recommendations as the Commission deems appropriate. 16 USC 825*l*.

(6) If the study under this subsection has not been completed within 18 months after its initiation, the Commission shall notify the Committees referred to in paragraph (4) of the reasons for the delay and specify a date when it will be completed and a report submitted.

(e) MORATORIUM ON APPLICATION OF PURPA TO NEW DAMS.—Notwithstanding the amendments made by subsection (a) of this section, in the case of a project for which a license or exemption is issued after the enactment of this Act, section 210 of the Public Utility Regulatory Policies Act of 1978 shall not apply during the 16 USC 824a-3 note. *Ante*, p. 1249.

moratorium period if the project utilizes a new dam or diversion (as defined in section 210(k) of such Act) unless the project is either—

Ante, p. 1249.

(1) a project located at a Government dam (as defined in section 3(10) of the Federal Power Act) at which non-Federal hydroelectric development is permissible, or

16 USC 796.

(2) a project described in paragraphs (2), (3), or (4) of subsection (b).

For purposes of this subsection, the term "moratorium period" means the period beginning on the date of the enactment of this Act and ending at the expiration of the first full session of Congress after the session during which the report under subsection (d) has been submitted to the Congress.

SEC. 9. FEES AND CHARGES FOR USE OF DAMS AND STRUCTURES.

16 USC 803.

(a) FEES AND CHARGES.—Section 10(e) of the Federal Power Act is amended as follows:

(1) Insert "(1)" after "(e)".

(2) Add the following at the end thereof:

"(2) In the case of licenses involving the use of Government dams or other structures owned by the United States, the charges fixed (or readjusted) by the Commission under paragraph (1) for the use of such dams or structures shall not exceed 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces in any year, 1½ mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours in any year, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours in any year. Except as provided in subsection (f), such charge shall be the only charge assessed by any agency of the United States for the use of such dams or structures.

"(3) The provisions of paragraph (2) shall apply with respect to—

"(A) all licenses issued after the date of the enactment of this paragraph; and

"(B) all licenses issued before such date which—

"(i) did not fix a specific charge for the use of the Government dam or structure involved; and

"(ii) did not specify that no charge would be fixed for the use of such dam or structure.

"(4) Every 5 years, the Commission shall review the appropriateness of the annual charge limitations provided for in this subsection and report to Congress concerning its recommendations thereon.".

Indians.
16 USC 803 note.

(b) SAVINGS PROVISIONS.—Nothing in this Act shall affect any annual charge to be paid pursuant to section 10(e) of the Federal Power Act to Indian tribes for the use of their lands within Indian reservations.

SEC. 10. ELECTION AND NEGOTIATIONS CONCERNING CONTESTED PROJECTS SUBJECT TO LITIGATION.

(a) APPLICATION OF SECTION.—This section applies to any relicensing proceeding initiated prior to October 1983 at the Federal Energy Regulatory Commission involving the following projects: Mokelumne (No. 137), California; Phoenix (No. 1061), California; Rock Creek/Cresta (No. 1962), California; Haas-King (No. 1988), California; Poole (No. 1388), California; Olmsted (No. 596), Utah; Weber (No. 1744), Utah; Rush Creek (No. 1389), California; and Shawano (No. 710), Wisconsin. The numbers in this subsection refer to Federal Energy Regulatory Commission project identification numbers for the existing licensee. This subsection shall also apply to

any subsequent relicensing proceeding for any such project involving the same parties which results from the rejection, without prejudice, of an application in any of the proceedings specified in this subsection.

(b) PROVISIONS NOT APPLICABLE IF ELECTION MADE.—In the case of each project named in subsection (a), if the existing licensee fails to make an election under subsection (c) within 90 days after the enactment of this Act for negotiations under subsection (e)—

(1) the provisions of the Federal Power Act in effect one day prior to enactment of this Act; and 16 USC 791a.

(2) the amendments made by sections 3, 6, and 12 of this Act to the Federal Power Act;

shall apply to the relicensing proceeding referred to in subsection (a).

(c) ELECTION PROCEDURES.—An existing licensee for any project named in subsection (a) may file an election with the Commission under this subsection. The election shall be filed in the manner required by the Commission. The election, subject to subsection (d), shall consist of an agreement that, in the case of the project concerned, the licensee will—

(1) enter into good faith negotiations under subsection (e) with each person (or group of persons) who filed a competing application for a new license for the project before October 7, 1983; and

(2) be subject to the provisions of this section.

Notice of the election to negotiate or the refusal thereof shall be filed with the Commission within the 90-day period.

(d) ACCEPTANCE OR REFUSAL TO ACCEPT ELECTION.—Within 45 days after receiving notice from the Commission of an election to negotiate made by the existing licensee under subsection (c) for an applicable project, each competing license applicant (or group of applicants) referred to in subsection (a) may—

(1) accept the election, withdraw the competing application, enter into good faith negotiations in accordance with this section, and agree to be subject to the provisions of this section; or

(2) refuse to accept such election.

If the election to negotiate is not accepted by the competing applicant (or group) within the 45-day period, the relicensing proceeding for such project shall be continued and a new license issued solely in accordance with the Federal Power Act, as amended by this Act (including the amendments made by this Act to section 7 of the Federal Power Act). Notice of an election to negotiate or refusal must be filed with the Commission within the 45-day period. *Ante*, p. 1243.

(e) NEGOTIATIONS.—If an election to negotiate is made pursuant to subsections (c) and (d) for any project, the existing licensee and the competing applicant shall commence negotiations for each of the following:

(1) Compensation to be provided by the existing licensee for the reasonable costs incurred by the competing applicant which are related to pursuing—

(A) the application in the applicable relicensing proceeding, including the costs of preparing, filing, and maintaining such application for the period ending December 31, 1985; and

(B) the litigation in the courts involving the application of section 7 of the Federal Power Act to the applicable relicensing proceeding.

(2) Compensation in an additional sum (which may be in money or electric power or both) representing a reasonable percentage (but not to exceed 100 percent) of the net investment of the existing licensee in the project, as of October 22, 1985 (as determined by the Commission, prior to the initiation of such negotiations, in accordance with section 14(a) of the Federal Power Act). In making the determination of net investment, the Commission shall utilize all relevant records and data (which the existing licensee shall provide to the Commission) applicable to the project for the term of the existing license through October 22, 1985.

16 USC 807.

The parties to the negotiations shall establish the method, period, and manner of providing all such compensation.

(f) COMMISSION ORDER.—If an election is made and accepted but negotiations under subsection (e) are not commenced by the parties within the time established by the Commission (or, if appropriate, in the judgment of the Commission, one 45-day extension thereof) or if a mutually satisfactory compensation arrangement that is consistent with the provisions of the Federal Power Act has not been executed within such time, the Commission, after notice and opportunity for a hearing, shall issue an order establishing compensation in accordance with paragraphs (1) and (2) of subsection (e). In determining the amount of compensation, the Commission may accept any stipulations agreed to by the parties as a result of the negotiations. The Commission shall also take into consideration all of the following:

16 USC 791a.

(1) The quality of the relicensing proposals of the existing licensee and the competing applicant.

(2) The net benefits to both parties and their customers of obtaining the new license.

(3) The extent to which the applications filed by both parties were actively pursued (subject to the effect thereon of any action by the Commission or the applicable litigation) and filed with the Commission in good faith.

(4) The extent of reliance by the competing applicant on the provisions of the Federal Power Act in effect prior to enactment of this Act and the detrimental impact of such reliance on the operations and on the service area of the applicant.

(g) COMPENSATION.—The order of the Commission under this section shall establish the method, period, and manner of providing compensation under subsection (f), and such other reasonable terms and conditions concerning such compensation, consistent with the Federal Power Act, as the Commission deems appropriate. Any payment over a period of time shall include interest compounded at a rate based upon outstanding obligations of the United States of comparable maturity. The payment period shall not exceed one-third of the new license term for the project. The order shall state the basis for the Commission's determination. The provisions of section 313 of the Federal Power Act shall apply to such order and determinations. The order (or any agreement reached by the parties by negotiation) shall be a condition of any annual license or new license (depending when the order is issued or agreement reached) issued to the existing licensee for this project. Nothing in this section shall be construed to affect the treatment, by a State regulatory authority for ratemaking purposes, of any compensation paid under this section.

16 USC 825l.

State and local governments.

(h) COMMISSION PROCEEDINGS.—Upon mutual request of the parties to any negotiation under this section, the Commission may defer any determination of net investment for the applicable project until whenever it is required to issue an order under this section for such project. No new license shall be issued under the Federal Power Act for the projects referenced in this section until there is full compliance, to the extent applicable, with this section. The Commission shall ensure that negotiations and any determinations and orders required by this section shall be conducted, made, and issued expeditiously and shall ensure that the parties do not delay.

16 USC 791a.

SEC. 11. MERWIN DAM PROJECT.

The amendments made by this Act, except for the amendments made by sections 6 and 12 shall not apply to the Federal Energy Regulatory Commission proceeding involving FERC Project Number 935 (FERC Project Number 2791), relating to the Merwin Dam in Washington State.

Washington.

SEC. 12. ADDITIONAL COMMISSION ENFORCEMENT AUTHORITY.

Part I of the Federal Power Act is amended by adding the following new section at the end thereof:

"SEC. 31. ENFORCEMENT.

16 USC 823b.

"(a) MONITORING AND INVESTIGATION.—The Commission shall monitor and investigate compliance with each license and permit issued under this Part and with each exemption granted from any requirement of this Part. The Commission shall conduct such investigations as may be necessary and proper in accordance with this Act. After notice and opportunity for public hearing, the Commission may issue such orders as necessary to require compliance with the terms and conditions of licenses and permits issued under this Part and with the terms and conditions of exemptions granted from any requirement of this Part.

"(b) REVOCATION ORDERS.—After notice and opportunity for an evidentiary hearing, the Commission may also issue an order revoking any license issued under this Part or any exemption granted from any requirement of this Part where any licensee or exemptee is found by the Commission:

"(1) to have knowingly violated a final order issued under subsection (a) after completion of judicial review (or the opportunity for judicial review); and

"(2) to have been given reasonable time to comply fully with such order prior to commencing any revocation proceeding.

In any such proceeding, the order issued under subsection (a) shall be subject to de novo review by the Commission. No order shall be issued under this subsection until after the Commission has taken into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation.

"(c) CIVIL PENALTY.—Any licensee, permittee, or exemptee who violates or fails or refuses to comply with any rule or regulation under this Part, any term, or condition of a license, permit, or exemption under this Part, or any order issued under subsection (a) shall be subject to a civil penalty in an amount not to exceed $10,000 for each day that such violation or failure or refusal continues. Such penalty shall be assessed by the Commission after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the nature

and seriousness of the violation, failure, or refusal and the efforts of the licensee to remedy the violation, failure, or refusal in a timely manner. No civil penalty shall be assessed where revocation is ordered.

"(d) ASSESSMENT.—(1) Before issuing an order assessing a civil penalty against any person under this section, the Commission shall provide to such person notice of the proposed penalty. Such notice shall, except in the case of a violation of a final order issued under subsection (a), inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

"(2)(A) In the case of the violation of a final order issued under subsection (a), or unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Commission shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

Courts, U.S.

"(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Commission assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in Part, the order of the Commission, or the court may remand the proceeding to the Commission for such further action as the court may direct.

5 USC 701 *et seq.*

"(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Commission shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

"(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in Part, such assessment.

"(C) Any election to have this paragraph apply may not be revoked except with the consent of the Commission.

"(4) The Commission may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection, taking into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation in a timely manner at any time prior to a final decision by the court of appeals under paragraph (2) or by the district court under paragraph (3).

"(5) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Commission under paragraph (3), the Commission shall

institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

"(6)(A) Notwithstanding the provisions of title 28, United States Code, or of this Act, the Commission may be represented by the general counsel of the Commission (or any attorney or attorneys within the Commission designated by the Chairman) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (5)) in a court of the United States or in any other court, except the Supreme Court. However, the Commission or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

"(B) The Commission shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.".

SEC. 13. ANTITRUST LAWS.

Section 10(h) of the Federal Power Act is amended by inserting "(1)" after "(h)" and by adding the following new paragraph at the end thereof: 16 USC 803.

"(2) That conduct under the license that: (A) results in the contravention of the policies expressed in the antitrust laws; and (B) is not otherwise justified by the public interest considering regulatory policies expressed in other applicable law (including but not limited to those contained in Part II of this Act) shall be prevented or adequately minimized by means of conditions included in the license prior to its issuance. In the event it is impossible to prevent or adequately minimize the contravention, the Commission shall refuse to issue any license to the applicant for the project and, in the case of an existing project, shall take appropriate action to provide thereafter for the operation and maintenance of the affected project and for the issuing of a new license in accordance with section 15 of this Part.".

SEC. 14. LANDOWNER NOTIFICATION.

Section 9 of the Federal Power Act is amended by inserting "(a)" after "9", by redesignating existing subsections (a) and (b) as paragraphs (1) and (2), and by adding the following at the end thereof: 16 USC 802.

"(b) Upon the filing of any application for a license (other than a license under section 15) the applicant shall make a good faith effort to notify each of the following by certified mail: 16 USC 808.

"(1) Any person who is an owner of record of any interest in the property within the bounds of the project.

"(2) Any Federal, State, municipal or other local governmental agency likely to be interested in or affected by such application.". State and local governments.

SEC. 15. APPLICATIONS FOR CERTAIN ORDERS UNDER FEDERAL POWER ACT.

Section 211(c)(2)(B) of the Federal Power Act is amended by adding the following before the period: ": *Provided*, That nothing in this subparagraph shall prevent an application for an order hereunder 16 USC 824j.

to be filed prior to termination of modification of an existing rate schedule: *Provided*, That such order shall not become effective until termination of such rate schedule or the modification becomes effective".

SEC. 15A. MISCELLANEOUS PROVISIONS.

Alabama.

(a) LAKE TUSCALOOSA.—In the case of any hydroelectric power project located or proposed to be located at Lake Tuscaloosa, in Tuscaloosa County, Alabama, the provisions of the Federal Power Act shall continue to apply, except that the Federal Energy Regulatory Commission shall not issue any permit, license, or exemption under that Act or under any other provision of law administered by the Commission to any person or public or private entity for such project or for any transmission or other facilities used in connection with, or appurtenant to, such project unless authorized by law enacted after the enactment of this Act.

16 USC 791a.

(b) TIME LIMITATIONS FOR CERTAIN PROJECTS.—Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission upon the request of the licensee for FERC Projects Nos. 3033, 3034, and 3044 (and after reasonable notice) is authorized, in accordance with the good faith, due diligence, and public interest requirements of such section 13 and the Commission's procedures under such section, to extend:

16 USC 806.

(1) the time required for commencement of construction of Projects Nos. 3033, 3034, and 3044 for up to a maximum of 3 consecutive 2-year periods for each such project,

(2) the time required for completion of construction of such projects for a reasonable period not to exceed 5 years after commencement of construction of each project, and

(3) the time required for the licensee to acquire the real property required for such projects for a period of up to 5 years from the date of enactment of the Act.

The authorization for issuing extensions under paragraphs (2) and (3) of this subsection shall terminate 3 years after enactment of this Act. The Commission to facilitate requests under this subsection may consolidate such requests.

Idaho.

(c) HENRY'S FORK.—(1) In the case of any project proposed to be sited on, or adjacent to, that portion of Henry's Fork of the Snake River, Idaho (including that segment originating at Big Springs), or its tributaries within one-half mile of their confluence with Henry's Fork of the Snake River, from its point of origin at Henry's Lake, Idaho to the point of its confluence with the backwaters of Ashton Reservoir, Idaho, the provisions of the Federal Power Act shall continue to apply, except that the Federal Energy Regulatory Commission shall not issue any permit, license, or exemption under that Act or under any other provision of law administered by the Commission to any person or public or private entity for such project or for any transmission or other facilities used in connection with, or appurtenant to, such project unless authorized by law enacted after the enactment of this Act. The prohibition in the preceding sentence shall not apply to the application for a license under Part I of the Federal Power Act, as amended by this Act, to the Island Park Dam Hydropower Project (FERC Project No. 2973), except that in addition to the requirements of that Act, the Commission may issue such license only if the Commission determines that significant and permanent alternation of streamflow, habitat, water temperature, and quality will not occur as a result of the project.

16 USC 791a.

Ante, p. 1255.

Nothing in this subsection shall be construed to affect the authority of this Commission to relicense, in accordance with the provisions of the Federal Power Act, as amended by this Act, the Ponds Lodge Hydropower Project (FERC Project No. 1413). 16 USC 791a.

(2) Except as expressly provided in paragraph (1), nothing in this subsection shall affect the validity of any existing license, permit, or certificate issued by any Federal agency pursuant to any other Federal law.

(3) The provisions of this subsection shall supersede the provisions of title VII (relating to the Henry's Fork of the Snake River, Idaho) of the Act entitled "An Act to amend the Wild and Scenic Rivers Act, and for other purposes" enacted during the 99th Congress, second session.

SEC. 16. PROVISION OF INFORMATION TO CONGRESS. 16 USC 797b.

The Federal Energy Regulatory Commission shall keep the Committee on Energy and Commerce of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate fully and currently informed regarding actions of the Commission with respect to the provisions of Part I of the Federal Power Act.

SEC. 17. SAVINGS PROVISIONS. State and local governments. Indians. 16 USC 797 note.

(a) IN GENERAL.—Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act—

(1) affect the rights or jurisdiction of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource;

(2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;

(3) alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right;

(4) affect, expand, or create rights to use transmission facilities owned by the Federal Government;

(5) alter, amend, repeal, interpret, modify, or be in conflict with, the Treaty rights or other rights of any Indian tribe;

(6) permit the filing of any competing application in any relicensing proceeding where the time for filing a competing application expired before the enactment of this Act; or

(7) modify, supersede, or affect the Pacific Northwest Electric Power Planning and Conservation Act. 16 USC 839 note.

SEC. 18. EFFECTIVE DATE. 16 USC 797 note.

Except as otherwise provided in this Act, the amendments made by this Act shall take effect with respect to each license, permit, or exemption issued under the Federal Power Act after the enactment of this Act. The amendments made by sections 6 and 12 of this Act 16 USC 791a.

shall apply to licenses, permits, and exemptions without regard to when issued.

Approved October 16, 1986.