

2000

# In the Matter of the Complaint of Westside Dixon Associates, LLC v. Utah Power and Light Company/Pacificorp and the Public Service Commission of Utah Respondents : Brief of Appellee

Utah Supreme Court

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Before the Supreme Court of the State of Utah

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Brief of Respondent Public Service Commission of Utah

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In the Matter of the Complaint of Westside	o	
Dixon Associates, LLC	0	Case No. 2000 731 SC
Complainant/Petitioner	0	
	0	Priority Number 14
vs.	0	
	0	
Utah Power and Light Company/Pacificorp	0	(Public Service Commission
and the Public Service Commission of Utah	0	Docket No. 00-035-01)
Respondents	o	

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Appeal of Orders of the Public Service Commission of Utah

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#### JURISDICTION OF THE COURT

This Court has jurisdiction over appeals from orders of the Public Service Commission pursuant to Utah Code Ann. §78-2-2(3)(e)(i).

#### ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW

1. Is the Broadway Lofts Building a “new building” subject to the PURPA prohibition of master metering?

This issue is governed by a correction of error standard, giving deference to the Public Service Commission’s role in applying utility laws in the state of Utah. *Drake v. Industrial Comm’n*, 939 P.2d 1177 (Utah 1997).

2. Did the Public Service Commission properly conclude that the record does not support an exemption from the master meter prohibition for the Broadway Lofts

Building?

This issue is governed by a reasonableness standard, recognizing the Public Service Commission's expertise in applying utility law to factual situations. *Morton Int'l, Inc. v. Auditing Division*, 814 P.2d 581 (Utah 1991) and *State v. Pena*, 869 P.2d 932 (Utah 1994).

#### STATUTES AND REGULATIONS APPLICABLE TO THIS CASE

The following statutes or rules are determinative with respect to a number of the issues raised on appeal: 16 U.S.C. §§2621, 2622, 2623 and 2625, and Utah Administrative Code R746-210. Because of the length of their provisions, they are not set out verbatim at this point of the brief, but are included in the addendum.

#### STATEMENT OF THE CASE

The proceedings before the Public Service Commission of Utah (PSC) originated from a formal complaint (Complaint) filed by Westside Dixon Associates, L.L.C. (Westside Dixon). Record, at 1. In its Complaint, Westside Dixon requested that the PSC prevent Pacificorp, d.b.a. Utah Power and Light (UP&L), from ending electric utility service to a building located at 159 West Broadway Street, Salt Lake City, Utah, known as the Broadway Lofts or the J.G. McDonald Chocolate Company Building (Broadway Lofts Building). *Id.* UP&L proposed to end electric utility service at the Broadway Lofts

Building because UP&L had concluded that the electric utility service was being taken contrary to the provisions of UP&L's PSC approved tariff Regulation No. 7 and the provisions of a Utah Administrative Code Rule, R746-210 (Rule 210). Record, at 3.

Chronologically, the dispute between Westside Dixon and UP&L arose as follows: the Broadway Lofts Building was to be renovated from a warehouse into a building containing commercial, retail space on the lower level and individual residential condominium space on the upper levels. On December 6, 1999, the construction company performing the construction work informed Westside Dixon that the construction company was nearing completion of the project and had informed UP&L that the temporary electric service, that the construction company had arranged with UP&L for the construction work, was to be ended and arrangements for permanent power for the Broadway Lofts Building needed to be obtained. Record, at 7 and 5 (UP&L Answer and Motion to Dismiss, at 3). Near that same time, counsel for UP&L informed counsel for Westside Dixon that UP&L was "ready, willing and able to provide service" upon installation of UP&L meters. Record, at 9. On December 21, 1999, UP&L sent a letter informing Westside Dixon that UP&L would no longer be able to provide continued electric utility service because the service would be in violation of UP&L tariffs and the PSC's Rule 210. The letter stated that electric service would be discontinued on January 3, 2000, and informed Westside Dixon of the general aspects of the PSC's complaint procedure if Westside Dixon disagreed with UP&L's proposed course of action. Record,

at 3. The Complaint was filed January 4, 2000.

The dispute, the issues raised in the underlying PSC proceedings and those on appeal are driven by the policies and provisions of the federal Public Utility Regulatory Policies Act (PURPA), which are currently codified at 16 U.S.C. §§2601-2645. PURPA originated in the late 1970's, after what some call the “energy crisis” of the mid-70s. Congress intended to foster a national policy and program of energy conservation to reduce energy consumption. *See, e.g.,* Jeffery Watkiss and Douglas Smith, *The Energy Policy Act of 1992*, 10 Yale Journal of Regulation 447, 453 (1993); Pamela J. Stephens, *Implementing Federal Energy Policy at the State & Local Levels: “Every Power Requisite,”* 10 Boston College Environmental Affairs Law Review 875, 878 (Summer 1982). As 16 U.S.C. §2601 phrases it: “a program providing for increased conservation of electric energy . . . [and] conservation of natural gas . . .” Each state was required to consider implementing, on a state basis, the policies and standards articulated in PURPA, *See*, 16 U.S.C. §§2621 and 2622. To fulfill some the purposes of PURPA, in giving individual consumers the proper price signals and information concerning their individual energy use, states were required to implement standards to prohibit or restrict master metering of utility service, 16 U.S.C. §2623(b)(1); individual or separate metering of energy use is the preferred national standard. 16 U.S.C. §2625(d). This state implementation of PURPA was the genesis for the PSC’s Rule 210. Master metering is a situation where the energy consumption for a building is done through one meter. The



entire energy demand, whether for electricity or natural gas, is aggregated, even though there are multiple tenants or individual units in the building. This is usually done because one appliance (furnace, boiler, air conditioner, etc.) services the needs of all tenants/units. Record, at 5 (UP&L Answer and Motion to Dismiss, at 3) and at 115 (April 20, 2000, Hearing Transcript, at 35 and 36). *See also*, Rule 210-2. Because the entire building's energy consumption is aggregated, master metering thwarts some of the purposes of PURPA. The conservation efforts of a tenant (controlling temperature, using more efficient home appliances, etc.) are not recognizable to the energy conserving individual, because his consumption is not identifiable to him. His consumption is combined with other tenants who may or may not share his energy conservation bend. Indeed, his efforts may be swamped by a high energy consuming tenant or tenants who take advantage of the fact that the prolific consumption is not identifiable through separate metering; the building's tenants' consumption is aggregated with no individual attribution or responsibility.

During the renovation construction, the Broadway Lofts Building was changed from a warehouse to individual commercial and residential spaces, each unit having its own natural gas and electrical appliances for space heating, water heating, ventilation and air conditioning. Record, at 5 (UP&L Answer and Motion to Dismiss, at 2), at 66, and at 115 (April 20, 2000, Hearing Transcript, at 35 and 36). There are no central appliances for the Broadway Lofts Building for any of these functions. *Id.* The Broadway Lofts

Building was also renovated with facilities to measure each individual unit's energy use; facilities are installed to meter each unit's separate electric and natural gas service consumption. *Id.* Although each unit's consumption can be metered individually, Westside Dixon arranged to have the entire building's energy consumption aggregated through single, master meters. Having individual metering within a building, but taking utility service from the public utility through a master meter is known as submetering. *Id.* Rule 210 prohibits submetering unless an exemption is applicable. Rule 210-5. As noted by Rule 210-5, the effect of submetering allows the provision of utility service by an entity that is not subject to Utah laws governing utility operations in this state. Submetering also is in violation of PSC approved tariff provisions which prohibit the resale of electric power obtained from UP&L, unless the service schedule for the electrical service allows for such resale. UP&L Tariff, Regulation 4.3.

In the proceedings before the PSC, Westside Dixon argued that its utility service arrangement at the Broadway Lofts Building was not in violation of UP&L's tariffs or Rule 210. Alternatively, Westside Dixon argued that the arrangement qualified as an exemption under Rule 210. *E.g.*, Record at 31 (Westside Dixon Hearing Brief, at 2-4). The PSC adopted the Report and Order of the administrative law judge who conducted the hearing and found against Westside Dixon. Record, at 68. Upon request for review, the PSC concluded that Westside Dixon may have misapprehended the showing it needed to make to establish an exemption under Rule 210; it provided Westside Dixon a second

opportunity to establish a sufficient record to obtain an exemption. Record, at 79.

Westside Dixon failed to support its claim for an applicable exemption and the PSC dismissed the complaint. Record, at 116. This appeal followed.

## SUMMARY OF ARGUMENT

A building permit for the renovation of the Broadway Lofts Building was issued in 1998. Pursuant to the definition contained in Rule 210, the Broadway Lofts Building is a new building and master metering is prohibited by PURPA policies and standards. An exemption from the master metering prohibition may be obtained through supporting evidence which shows that the present value of reduced energy consumption, with master metering, exceeds the costs associated with separate metering. Westside Dixon failed to create a record upon which the PSC could grant an exemption from master metering. The factual record does not support a waiver claim and a waiver theory does not have application relative to charges for utility service.

## ARGUMENT

### **I. Failure to marshal evidence in support of the Order.**

Westside challenges the PSC's Orders without marshaling the record evidence supporting the Orders and showing that the record evidence does not support the findings and conclusions and ultimate ruling made in the Orders. Where an appellant fails to do

this, the Court “must assume that the evidence supported the [PSC’s] findings.” *Utah Medical Products v. Searcy*, 958 P.2d 228, 233 (Utah 1998). *See, also, West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah Ct. App. 1991) (Appellant must become the devil’s advocate and marshal every scrape of competent evidence in support and then point out the fatal flaw in the evidence.). Because of Westside Dixon’s failure to comply with this appellate requirement, its challenges to the PSC’s Orders fail because Westside Dixon’s arguments lack any factual underpinnings or the evidence is contrary to the necessary factual predicate.

## **II. The Broadway Lofts Building is a “new building.”**

There is no dispute that the Broadway Lofts Building is master metered. Westside Dixon argues that Rule 210's prohibition of master metering for new buildings is not applicable because the Broadway Lofts Building is not a “new building.” Westside Dixon’s position is in error by ignoring the plain definition of “new building” contained in Rule 210. Rule 210-3.A. states: “‘New buildings’ shall be defined as those structures or mobile home parks for which a building permit is obtained on or after August 1, 1984, or, if no permit is required, for which construction is commenced on or after August 1, 1984. Construction is defined to begin when footings are poured.” Rule 210 provides for two situations or cases. The first, if a building permit (without qualification of the reason for the permit) for the structure is obtained after August 1, 1984, the structure is a “new building.” The second case, applicable only if no building permit is obtained or needed,

deems any building whose construction is commenced after August 1, 1984, as a “new building.” Construction is defined to commence for a structure for which no building permit is required when the structure’s footings are poured.

Westside Dixon obstinately ignores the clear and plain wording of the rule. A building permit for the Broadway Lofts Building was obtained. It was obtained after August 1, 1984. The first case situation for a “new building” applies precisely. The second case situation of Rule 210 is not applicable, because the alteration of the Broadway Lofts Building is not a situation where no building permit was required. Rule 210's reference to a building permit makes no qualification based on the reason for the issuance of the building permit; it states only “for which a building permit is obtained.” While Westside Dixon’s Brief, at 7 and 8, introduces new material on appeal that was not introduced below (reference to the 1997 Uniform Building Code), the new material shows that it was necessary for a building permit to be issued for the Broadway Lofts Building. Westside Dixon’s red herring, in using the language of erection or construction of the building, ignores the included circumstances requiring a permit where a building is altered, improved or converted.

Westside Dixon’s effort to portray Rule 210's unqualified building permit trigger as absurd is not persuasive. (Procedurally, Westside Dixon never assailed the rule itself; only the application of the rule.) A building permit may be needed to “put a new water heater in your home, or finished (sic) the basement, add a patio cover, or any type of

minor alteration.” Westside Dixon Brief, at 8. While these situations could be viewed as a “new building” under Rule 210, Rule 210 would not be implicated because these situations do not involve master metering of energy consumption. An individual’s home is not master metered. Application of an unqualified building permit trigger to multitenant structures is consistent with PURPA’s public policy of fostering energy conservation, making each individual tenant responsible for the energy consumption influenced or controllable by that individual. Where a structure like the Broadway Lofts Building is renovated from a single owner, single use warehouse into multitenant, multiunit residential and commercial space uses (whether “enlarged, altered, repaired, moved, improved, converted” under the Uniform Building Code language), the federal and state policies of energy conservation, encouraged through individual energy consumption responsibility, has application. Improvements to structures are to comply with the public policies encouraging energy conservation.

Some may not appreciate the policies or the broad reach of these policies and their implementation. But that opposition was to be raised in the legislative processes through which PURPA or Rule 210 were promulgated and enacted. If Westside Dixon opposes these policies and the means to achieve them, it should do so through efforts to repeal or modify them; not collaterally attack them as it does in this appeal. Until repealed or modified, the pursuit of the public policies is dictated by the existing statutes and regulations. Even then, qualified exemptions are made available where a blind application

of the prohibition of master metering/separate individual metering requirement would not necessarily further the public policies.

### **III. The Broadway Lofts Building does not qualify for an exemption.**

In implementing the standards entailed with the energy conservation public policies, the PSC included provisions in Rule 210 for automatic exemptions and a case specific determination process to permit master metering in situations where the goals of PURPA would not be furthered. Rule 210-2 and 210-3. There is no argument that any of the automatic exemptions of Rule 210-2 are applicable in this case. Westside Dixon argued before the PSC, and now argues on appeal, that the Broadway Lofts Building qualifies for an exemption under Rule 210-3's case specific benefit-to-cost exemption. Westside Dixon failed, however, to establish a sufficient evidentiary basis upon which an exemption could be granted.

Rule 210-3 provides that master metering may be permitted where the applicant makes a written request for an exemption from the master metering prohibition, supported by a benefit-to-cost ratio analysis showing that costs from master metering are less than costs from separate metering. Rule 210-3. The Rule also specifies the methodology to determine the costs versus benefits effectiveness in this benefit-to-cost analysis. "The benefits shall be quantified in dollars of savings and shall reflect the difference in electricity use which results when separate metering is utilized rather than master-

metering.” Rule 210.3.B (emphasis added). Westside Dixon introduced no evidence whatsoever relating to the different electric energy consumption levels between the two specified situations. Westside Dixon solely approached its evidentiary burden with material that, arguably, may have had relevance to determining the cost portion of the analysis required by Rule 210-3.D. Rule 210 clearly states that an exemption could be granted where the ratio or resulting fraction, expressed with a numerator of the dollar value of the reduced energy consumption benefits divided by a denominator of the dollar value of the difference in meter installation costs, is less than one (1). Rule 210. While Westside Dixon introduced evidence that may have been usable to determine the value for the denominator<sup>1</sup>, there was no evidence to establish the value of the numerator: the difference in energy consumption value. The PSC gave Westside Dixon two opportunities to present this analysis; even specifically directing Westside Dixon to the appropriate electric service schedule to use when making the calculation to value the difference in the energy consumption. Record, at 79.

Westside Dixon may argue that it presented evidence that could be used to

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<sup>1</sup> Westside Dixon even failed to comply with the Rule’s formulation for this calculation. The Rule requires that this cost analysis be based on the utility’s cost difference between master metering and separate metering. Westside Dixon presented evidence purporting to show the difference between the utility’s costs of separate metering and a third party’s alleged costs of master metering. The utility is to prepare the material for the difference in purchase and installation costs for master metering versus separate metering. Specific Westside Dixon (or third party) costs information would only be relevant where it dealt with costs associated with meter bases and building wiring installed by Westside Dixon for the utility’s meters. *See*, Rule 210-3.D.



establish a value for the numerator. But Westside Dixon's evidence was confined to comparing a price/cost difference based on the difference between two different rate schedules, not the difference in customer energy use or consumption as required by Rule 210. Record, at 95. One necessarily expects that using two different rate schedules, for the costs associated with the same quantity or amount of electricity use or consumption, will show a difference. Different rate schedules necessarily reflect different rate design considerations. The PSC makes its rate design decisions in the context of a utility's general rate case proceedings; in which the PSC must make a myriad of decisions and balancing considerations associated with creating an overall design of rates based upon statutory directives in setting the rates that recover a utility's revenue requirement.

Having failed to present the requisite evidence establishing: that there would be a difference in energy use or consumption at the Broadway Lofts Building if the units were master metered rather than separately metered; what those different consumption levels would be; and what the present value of the long term reduced energy consumption would be, Westside Dixon could not be given a case specific exemption for the Broadway Lofts Building on the record developed below.<sup>2</sup> *Cf., Greenwood Professional Park v. Public*

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<sup>2</sup>Because the Broadway Lofts Building's individual units are constructed with individual space conditioning appliances and wired to permit metering of individual consumption, implicit in the evidence presented is that energy consumption would not be further reduced if master metering were permitted. The policies or purposes of the PURPA regime would not be furthered. Unless master metering can be shown to reduce the Broadway Lofts Building's tenants' energy consumption any further, the only difference is obtained by applying one UP&L rate schedule rather than some other UP&L rate schedule to price the electric energy consumed at the Broadway Lofts Building.

*Service Comm'n of Indiana*, 487 N.E.2d 472 (Indiana 1986).

**IV. Westside Dixon's procedural errors preclude consideration of issues raised on appeal as a matter of law.**

Westside Dixon attempts to raise issues on appeal which are precluded by Utah statutory provisions. Westside Dixon proffers a discrimination/denial of equal protection argument that was not presented below. Westside Dixon Brief, at 12 and 13. Westside Dixon did not raise this type of claim in seeking PSC review of the original order. Record, at 76 (Petition for Review, at 1-6). Utah Code §54-7-15 precludes this argument before this Court. "No applicant may urge or rely on any ground not set forth in the application in an appeal to any court." Utah Code §54-7-15(2)(b).

Westside Dixon also mounts an attack concerning the reasonableness of the rates or pricing of electric service between UP&L Rate Schedule 1 and Rate Schedule 6. Westside Dixon Brief, at 12. Again, this argument was not included in the Petition for Review. Additionally, those rate schedules were not set by the PSC in the proceedings below. UP&L's different rates, and the reasons for the differences between the various rate schedules and the customers who may take service under the different schedules, were set in general rate proceedings; separate and apart from the case on appeal.<sup>3</sup> These

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<sup>3</sup> The general rate proceedings by which rates were set that have application to the electric service consumption at the Broadway Lofts Building were PSC Docket No. 97-035-01, Final Order issued December 13, 1999, and PSC Docket No. 99-035-10, Final Order issued October 6, 2000.

general rate proceedings, and the rate decisions made therein, were completed and the PSC's rate making orders became final outside of this case. Westside Dixon is precluded, in this appeal, from collaterally attacking the rate design/rate making decisions, made in other proceedings, for these two UP&L rate schedules. Utah Code §54-7-14. The proper method to challenge existing rate design decisions, made in previous, final orders of the PSC, is pursuant to Utah Code §54-7-11. Westside Dixon did not do this below and may not challenge the reasonableness of the two UP&L rate schedule in this appeal.

#### **V. Waiver has no application in this case.**

Because of its failure to marshal the evidence on appeal, Westside Dixon makes an argument that UP&L waived objection to master metering that is without a factual basis. Westside Dixon asserts that UP&L accepted master metering for the Broadway Lofts Building, Westside Dixon Brief, at 10 and 11. Yet Westside Dixon's witness before the PSC testified that he had not submitted any request to UP&L for master metering of the building, he had not submitted any cost benefit analysis in support of master metering, he had not submitted any plans to UP&L, nor did he know who had submitted any request, analysis or plans to UP&L. Record, at 115 (April 20, 2000, Transcript, at 29 - 31). This testimony is contrasted with UP&L's witness who testified that he had not received nor did a review of the company's records show that any request or supporting analysis for master metering were received by UP&L. He further testified that the two requests UP&L

did receive for electric service for the Broadway Lofts Building did not show that the building would be master metered, but that the individual units would be separately metered. UP&L became aware of the master metering only after a Salt Lake City building inspector, after inspecting the building, informed UP&L of the situation. *Id.* (April 20, 2000, Transcript, at 36 - 40).

Even if factually supported, Westside Dixon's application of waiver in this case is not consistent with public policy. The federal and state energy conservation policies would be supplanted by the fortuity of a customer slipping in some reference to a UP&L construction worker at the site (who may well assume that the customer has submitted an application and supporting evidence to utility management, which was approved by the utility, if his job responsibilities even require that he has any knowledge of the process to obtain master metering approval) and getting temporary power during the construction of the building.<sup>4</sup> Then, when permanent power for the actual units in the building is to be initiated, the customer comes forward with a claim that somebody in the utility was informed, waiver has occurred and the building must now be master metered. Even though there will be no reduction in individual energy consumption, no benefit of conservation of electricity or natural gas, master metering is to occur contrary to statutory and regulatory provisions.

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<sup>4</sup>In this case, UP&L connected temporary construction power, for the construction company, to accommodate commencement of construction; not that it accepted future master metering for the building. It specifically objected to any master metering of the building before any electrical power was provided. Record, at 115 (April 20, 2000, Transcript, at 40).

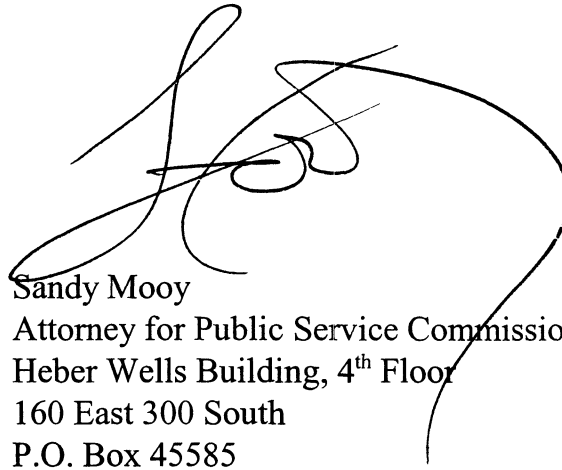
This would also create a clear conflict with Utah law which prohibits a utility from charging at variance from the applicable rate schedule or discriminating between customers, Utah Code §§54-3-7 and 54-3-8. The electric energy usage had at the Broadway Lofts Building would be charged under a non-applicable schedule and customers would be treated differently. Westside Dixon is asking for utility service under a rate schedule for which the electric service does not qualify. In the context of utility services and the appropriate rates that are to be charged for utility service to customers in the State of Utah, a utility cannot “waive” the statutory requirement that the customer be properly billed for utility service pursuant to the price, terms and conditions of the applicable PSC approved rate. *See, American Salt Co. v. W.S. Hatch Co.*, 748 P.2d 1060, 1064 (Utah 1987).

## CONCLUSION

Westside Dixon has failed to show that the PSC’s Orders are factually in error. The PSC correctly concluded that the Broadway Lofts Building is subject to the master meter prohibition. The PSC correctly determined that Westside Dixon failed to establish that any exemption from the master meter prohibition could be granted for the Broadway Lofts Building. Without a PURPA master meter exemption, the electric service for the individual residential units at the Broadway Lofts Building is properly served under UP&L Rate Schedule 1 through separate, UP&L meters for each individual unit. The

PSC's Orders should be affirmed.

Submitted this 11<sup>th</sup> day of April, 2001.

A large, stylized handwritten signature in black ink, appearing to read 'Sandy Mooy', is written over the printed name and address.

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UNITED STATES CODE SERVICE

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\*\*\* CURRENT THROUGH 106TH CONGRESS, 2ND SESSION \*\*\*

TITLE 16. CONSERVATION  
CHAPTER 46. PUBLIC UTILITY REGULATORY POLICIES  
STANDARDS FOR ELECTRIC UTILITIES

16 USCS § 2621 (2001)

§ 2621. Consideration and determination respecting certain ratemaking standards

(a) Consideration and determination. Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title. For purposes of such consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of such consideration and determination in any court in accordance with section 123 [16 USCS § 2633], the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) Procedural requirements for consideration and determination.

(1) The consideration referred to in subsection (a) shall be made after public notice and hearing. The determination referred to in subsection (a) shall be--

- (A) in writing,
- (B) based upon findings included in such determination and upon the evidence presented at the hearing, and
- (C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 112(a) [16 USCS § 2622(a)], and in sections 121 and 122 [16 USCS §§ 2631, 2632], the procedures for the consideration and determination referred to in subsection (a) shall be those established by the State regulatory authority or the nonregulated electric utility.

(c) Implementation.

(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law--

(A) implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this title, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) which is determined under subsection (a) to be appropriate to carry out the purposes of this title, such authority or nonregulated electric utility shall state in writing the reasons therefor. Such statement of reasons shall be available to the public.

(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8), such authority shall--

(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures, and

(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

(d) Establishment. The following Federal standards are hereby established:

(1) Cost of service. Rates charged by any electric utility for providing electric service to each class of electric consumers shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such class, as determined under section 115(a) [16 USCS § 2625(a)].



(2) Declining block rates The energy component of a rate, or the amount attributable to the energy component in a rate, charged by any electric utility for providing electric service during any period to any class of electric consumers may not decrease as kilowatt-hour consumption by such class increases during such period except to the extent that such utility demonstrates that the costs to such utility of providing electric service to such class, which costs are attributable to such energy component, decrease as such consumption increases during such period

(3) Time-of-day rates The rates charged by any electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class, as determined under section 115(b) [16 USCS § 2625(b)]

(4) Seasonal rates The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflects the costs of providing service to such class of consumers at different seasons of the year to the extent that such costs vary seasonally for such utility

(5) Interruptible rates Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which such consumer is a member

(6) Load management techniques Each electric utility shall offer to its electric consumers such load management techniques as the State regulatory authority (or the nonregulated electric utility) has determined will--

(A) be practicable and cost-effective, as determined under section 115(c) [16 USCS § 2625(c)],

(B) be reliable, and

(C) provide useful energy or capacity management advantages to the electric utility

(7) Integrated resource planning Each electric utility shall employ integrated resource planning All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented

(8) Investments in conservation and demand management The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated

(9) Energy efficiency investments in power generation and supply The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment

(10) Consideration of the effects of wholesale power purchases on utility cost of capital, effects of leveraged capital structures on the reliability of wholesale power sellers, and assurance of adequate fuel supplies

(A) To the extent that a State regulatory authority requires or allows electric utilities for which it has ratemaking authority to consider the purchase of long-term wholesale power supplies as a means of meeting electric demand, such authority shall perform a general evaluation of

(i) the potential for increases or decreases in the costs of capital for such utilities, and any resulting increases or decreases in the retail rates paid by electric consumers, that may result from purchases of long-term wholesale power supplies in lieu of the construction of new generation facilities by such utilities,

(ii) whether the use by exempt wholesale generators (as defined in section 32 of the Public Utility Holding Company Act of 1935 [15 USCS § 79z-6]) of capital structures which employ proportionally greater amounts of debt than the capital structures of such utilities threatens reliability or provides an unfair advantage for exempt wholesale generators over such utilities,

(iii) whether to implement procedures for the advance approval or disapproval of the purchase of a particular long-term wholesale power supply, and

(iv) whether to require as a condition for the approval of the purchase of power that there be reasonable assurances of fuel supply adequacy

(B) For purposes of implementing the provisions of this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 [enacted Nov 9, 1978] shall be deemed to be a reference to the date of enactment of this paragraph [enacted Oct 24, 1992]

(C) Notwithstanding any other provision of Federal law, nothing in this paragraph shall prevent a State regulatory authority from taking such action, including action with respect to the allowable capital structure of exempt wholesale generators, as such State regulatory authority may determine to be in the public interest as a result of performing evaluations under the standards of subparagraph (A)

(D) Notwithstanding section 124 [*16 USCS § 2634*] and paragraphs (1) and (2) of section 112(a) [*16 USCS § 2622(a)(1) and (2)*], each State regulatory authority shall consider and make a determination concerning the standards of subparagraph (A) in accordance with the requirements of subsections (a) and (b) of this section, without regard to any proceedings commenced prior to the enactment of this paragraph [enacted Oct 24, 1992]

(E) Notwithstanding subsections (b) and (c) of section 112 [*16 USCS § 2622(b) and (c)*], each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards set out in subparagraph (A) not later than one year after the date of enactment of this paragraph [enacted Oct 24, 1992].

HISTORY· (Nov 9, 1978, P.L. 95-617, Title I, Subtitle B, § 111, 92 Stat. 3121, Oct 24, 1992, P.L. 102-486, Title I, Subtitle B, § 111(a), (b), Title VII, Subtitle A, § 712, 106 Stat. 2795, 2910.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### References in text.

"This title", referred to in this section, is Title I of Act Nov 9, 1978, P.L. 95-617, 92 Stat. 3117, which appears generally as *16 USCS §§ 2611 et seq*. For full classification of this Title, consult USCS Tables volumes.

##### Amendments·

1992. Act Oct. 24, 1992, in subsec. (c), added para (3), and in subsec. (d), added paras. (7)-(10).

##### Other provisions

Study concerning electric rates of State utility agencies Act Nov. 9, 1978, P.L. 95-617, Title VI, § 601, 92 Stat. 3164, provided·

"(a) Study and report. The Secretary, in consultation with the Commission and appropriate State regulatory authorities and other persons, shall conduct a study concerning the effects of provisions of Federal law on rate [rates] established by State utility agencies. The Secretary shall submit a report to Congress containing the results of such study not later than 1 year after the date of the enactment of this Act [enacted Nov. 9, 1978].

"(b) Definition. The term 'State utility agency' means an agency of a State (not including any political subdivision or agency thereof or any public power district) which is an electric utility."

Report to the President and Congress on resource plans by electric cooperatives. Oct. 24, 1992, P.L. 102-486, Title I, Subtitle B, § 111(e), 106 Stat. 2796, provides

"(e) Report Not later than 2 years after the date of the enactment of this Act [enacted Oct. 24, 1992], the Secretary shall transmit a report to the President and to the Congress containing--

"(1) a survey of all State laws, regulations, practices, and policies under which State regulatory authorities implement the provisions of paragraphs (7), (8), and (9) of section 111(d) of the Public Utility Regulatory Policies Act of 1978 [*16 USCS § 2621(d)(7), (8), and (9)*],

"(2) an evaluation by the Secretary of whether and to what extent, integrated resource planning is likely to result in--

"(A) higher or lower electricity costs to an electric utility's ultimate consumers or to classes or groups of such consumers;

"(B) enhanced or reduced reliability of electric service; and

"(C) increased or decreased dependence on particular energy resources; and

"(3) a survey of practices and policies under which electric cooperatives prepare integrated resource plans, submit such plans to the Rural Electrification Administration and the extent to which such integrated resource planning is reflected in rates charged to customers.

"The report shall include an analysis prepared in conjunction with the Federal Trade Commission, of the competitive impact of implementation of energy conservation, energy efficiency, and other demand side management programs by utilities on small businesses engaged in the design, sale, supply, installation, or servicing of similar energy conservation, energy efficiency, or other demand side management measures and whether any unfair, deceptive, or predatory acts exist, or are likely to exist, from implementation of such programs."

State authorities; construction. Nothing in amendment by Act Oct. 24, 1992, P.L. 102-486, to be construed as affecting or intending to affect, or in any way interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see § 731 of such Act, which appears as *15 USCS § 79* note.

## NOTES:

### CROSS REFERENCES

This section is referred to in *16 USCS §§ 831m-1, 2622, 2624--2627, 2641, 2643; 42 USCS §§ 6349, 6807a, 7276b.*

### INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Fixed-rate contracts
3. Seasonal rates
4. Federal court jurisdiction

#### 1. Generally

Nothing in Public Utility Regulatory Policies Act (*16 USCS §§ 2601 et seq.*) requires FERC to adopt views of state rate setting commissions when Commission evaluates reasonableness of rates that utility may charge to wholesale customers. *Bethany, Bushnell, etc. v Federal Energy Regulatory Com.* (1984, App DC) 234 US App DC 32, 727 F2d 1131, cert den (1984) 469 US 917, 83 L Ed 2d 229, 105 S Ct 293.

State law permitting special rates for utility is not in conflict with Public Utilities Regulatory Policy Act (*16 USCS §§ 2601 et seq.*) since *16 USCS § 2621(a)* and (c) permit applicable state law to take precedence over standards set out in *16 USCS § 2621(d)* requiring rates charged by electric utility to reflect cost of providing electric services. *Board of Public Utilities v Kansas City* (1980, DC Kan) 496 F Supp 389.

Public Utility Regulatory Policies Act (*16 USCS §§ 2611 et seq.*) requires each state regulatory authority to consider implementing several specified rate-making standards if it finds that standards would conserve electricity, maximize efficiency in facility and resource use by electric utilities, and assure of equitable rates to consumers, without undermining other goals; Act requires that rates charged by any electric utility to each class of consumers reflect possible cost of providing service to that class and time-of-day rates should be used unless shown to be cost-ineffective for class under consideration. *Metropolitan Washington Bd. of Trade v Public Service Com.* (1981, Dist Col App) 432 A2d 343.

#### 2. Fixed-rate contracts

With respect to question whether under § 206 of Federal Power Act (*16 USCS § 824e*) electric utility was entitled to increase rates for service under 2 fixed-rate firm wheeling contracts, Federal Energy Regulatory Commission would not be acting contrary to § 111(d)(1) of Public Utility Regulatory Policies Act (PURPA) (*16 USCS § 2621(d)(1)*) by requiring utility to continue to adhere to fixed-rate contracts, since in enacting PURPA Congress did not intend to overturn Mobile-Sierra doctrine under which rates are set in first instance by contract, and since fixed-rate contract may be set aside under § 206 of Federal Power Act (*16 USCS § 824e*) only if contrary to public interest. *Utah Power & Light Co.* (1987) FERC Op No. 293, 41 CCH FERC P 61308.

#### 3. Seasonal rates

Public utilities commission's refusal to mandate seasonal rates was not abuse of discretion where only one witness advocated such seasonal rates and there was lacking sufficient information to establish seasonally differentiated rates which would be equitable in individual cases. *Central Maine Power Co. v Public Utilities Com.* (1979, Me) 405 A2d 153, cert den (1980) 447 US 911, 64 L Ed 2d 862, 100 S Ct 2999 and (superseded by statute on other grounds as stated in *Central Maine Power Co. v Public Utilities Com.* (1981, Me) 433 A2d 331).

#### 4. Federal court jurisdiction

*16 USCS § 824a-3* does not divest federal court of jurisdiction in case where state public utilities commission's data requests were pursuant to both state law and § 2621, not under rules cited in § 824a-3. *Bristol Energy Corp. v New Hampshire PUC* (1994, CA1 NH) 13 F3d 471.

Action by wood-fired electricity generators was properly dismissed for lack of subject-matter jurisdiction pursuant to *16 USCS § 2633(a)*, which precludes court's jurisdiction over actions brought under § 2621(d)(10), despite attempt to assert action was brought under *16 USCS § 824a-3* and regulations promulgated thereunder, because § 2621(d)(10) "preempts" any exemptions from federal law authorized under § 824a-3(e)(1) since opening clause provides "notwithstanding any other provision of federal law." *Bristol Energy Corp. v New Hampshire, Pub. Utils. Comm'n* (1993, DC NH) 827 F Supp 81.

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\*\*\* CURRENT THROUGH 106TH CONGRESS, 2ND SESSION \*\*\*

TITLE 16. CONSERVATION  
CHAPTER 46. PUBLIC UTILITY REGULATORY POLICIES  
STANDARDS FOR ELECTRIC UTILITIES

16 USCS § 2622 (2001)

§ 2622. Obligations to consider and determine

(a) Request for consideration and determination. Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility may undertake the consideration and make the determination referred to in section 111 [16 USCS § 2621] with respect to any standard established by section 111(d) [16 USCS § 2621(d)] in any proceeding respecting the rates of the electric utility. Any participant or intervenor (including an intervenor referred to in section 121 [16 USCS § 2631]) in such a proceeding may request, and shall obtain, such consideration and determination in such proceeding. In undertaking such consideration and making such determination in any such proceeding with respect to the application to any electric utility of any standard established by section 111(d) [16 USCS § 2621(d)], a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or nonregulated electric utility may take into account in such proceeding--

(1) any appropriate prior determination with respect to such standard--

(A) which is made in a proceeding which takes place after the date of the enactment of this Act [enacted Nov. 9, 1978], or

(B) which was made before such date (or is made in a proceeding pending on such date) and complies, as provided in section 124 [16 USCS § 2634], with the requirements of this title; and

(2) the evidence upon which such prior determination was based (if such evidence is referenced in such proceeding).

(b) Time limitations.

(1) Not later than 2 years after the date of the enactment of this Act [enacted Nov. 9, 1978] (or after the enactment of the Comprehensive National Energy Policy Act [enacted October 24, 1992] in the case of standards under paragraphs (7), (8), and (9) of section 111(d)), each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111 [16 USCS § 2621], or set a hearing date for such consideration, with respect to each standard established by section 111(d) [16 USCS § 2621(d)].

(2) Not later than three years after the date of the enactment of this Act [enacted Nov. 9, 1978] (or after the enactment of the Comprehensive National Energy Policy Act [enacted October 24, 1992] in the case of standards under paragraphs (7), (8), and (9) of section 111(d)), each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 [16 USCS § 2621] with respect to each standard established by section 111(d) [16 USCS § 2621(d)].

(c) Failure to comply. Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall undertake the consideration, and make the determination, referred to in section 111 [16 USCS § 2621] with respect to each standard established by section 111(d) [16 USCS § 2621(d)] in the first rate proceeding commenced after the date three years after the date of enactment of this Act [enacted Nov. 9, 1978] respecting the rates of such utility if such State regulatory authority or nonregulated electric utility has not, before such date, complied with subsection (b)(2) with respect to such standard.

HISTORY: (Nov. 9, 1978, P.L. 95-617, Title I, Subtitle B, § 112, 92 Stat. 3122; Oct. 24, 1992, P.L. 102-486, Title I, Subtitle B, § 111(c), 106 Stat. 2795.)

## HISTORY; ANCILLARY LAWS AND DIRECTIVES

### References in text:

"This title", referred to in this section, is Title I of Act Nov. 9, 1978, P.L. 95-617, 92 Stat. 3117, which appears generally as *16 USCS §§ 2611 et seq.* For full classification of this Title, consult USCS Tables volumes.

### Amendments:

1992. Act Oct. 24, 1992, in subsec. (b), in paras. (1) and (2), inserted "(or after the enactment of the Comprehensive National Energy Policy Act in the case of standards under paragraphs (7), (8), and (9) of section 111(d))".

### NOTES:

#### CROSS REFERENCES

This section is referred to in *16 USCS § 2621*.

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\*\*\* CURRENT THROUGH 106TH CONGRESS, 2ND SESSION \*\*\*

TITLE 16 CONSERVATION  
CHAPTER 46 PUBLIC UTILITY REGULATORY POLICIES  
STANDARDS FOR ELECTRIC UTILITIES

16 USCS § 2623 (2001)

§ 2623. Adoption of certain standards

(a) Adoption of standards Not later than two years after the date of the enactment of this Act [enacted Nov 9, 1978], each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall provide public notice and conduct a hearing respecting the standards established by subsection (b) and, on the basis of such hearing, shall--

(1) adopt the standards established by subsection (b) (other than paragraph (4) thereof) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate to carry out the purposes of this title, is otherwise appropriate, and is consistent with otherwise applicable State law, and

(2) adopt the standard established by subsection (b)(4) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate and consistent with otherwise applicable State law

For purposes of any determination under paragraphs (1) or (2) and any review of such determination in any court in accordance with section 123 [16 USCS § 2633], the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to adopt any such standard, pursuant to its authority under otherwise applicable State law

(b) Establishment. The following Federal standards are hereby established:

(1) Master metering. To the extent determined appropriate under section 115(d) [16 USCS § 2625(d)], master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purposes of this title

(2) Automatic adjustment clauses. No electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements of section 115(e) [16 USCS § 2625(e)].

(3) Information to consumers Each electric utility shall transmit to each of its electric consumers information regarding rate schedules in accordance with the requirements of section 115(f) [16 USCS § 2625(f)].

(4) Procedures for termination of electric service. No electric utility may terminate electric service to any electric consumer except pursuant to procedures described in section 115(g) [16 USCS § 2625(g)]

(5) Advertising. No electric utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 115(h) [16 USCS § 2625(h)].

(c) Procedural requirements. Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility, within the two-year period specified in subsection (a), shall (1) adopt, pursuant to subsection (a), each of the standards established by subsection (b) or, (2) with respect to any such standard which is not adopted, such authority or nonregulated electric utility shall state in writing that it has determined not to adopt such standard, together with the reasons for such determination. Such statement of reasons shall be available to the public.

HISTORY: (Nov. 9, 1978, P.L. 95-617, Title I, Subtitle B, § 113, 92 Stat. 3123.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

#### References in text

"This title", referred to in this section, is Title I of Act Nov 9, 1978, P L 95-617, 92 Stat 3117, which appears generally as *16 USCS §§ 2611 et seq* For full classification of this Title, consult USCS Tables volumes

#### NOTES

##### CROSS REFERENCES

This section is referred to in *16 USCS §§ 2625-2627, 2641*

##### INTERPRETIVE NOTES AND DECISIONS

Showing that master metering is equal to or better than individual metering is insufficient to invoke master metering exception to state administrative regulations adopted under Public Utility Regulatory Policies Act (PURPA) (*16 USCS §§ 2601 et seq*), where it was not shown that individual metering would meet none of PURPA's objectives, as delineated in *16 USCS § 2611*, and that costs of individual metering exceeded its benefits *Greenwood Professional Park v Public Service Com* (1986, Ind App) 487 NE2d 472

Rules precluding electric and gas utilities from including cost of certain political, promotional, and institutional advertising and activities in operating expenses upholds policies of Public Utilities Regulatory Policies Act (*16 USCS §§ 2601 et seq*) since less advertising leads to conservation of gas and lower costs to consumers *Appeal of Concord Natural Gas Corp* (1981) 121 NH 685, 433 A2d 1291

Claim by construction contractor against United States for breach of contract in failing to pay for individual electrical metering in apartment units as specified in contract and by state law raises sufficient factual questions, regarding impact of waiver of individual metering requirement obtained by defendant, to preclude summary judgment *North Star Alaska Hous Corp v United States* (1993) 30 Fed Cl 259, 39 CCF P 76607

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\*\*\* CURRENT THROUGH 106TH CONGRESS, 2ND SESSION \*\*\*

TITLE 16 CONSERVATION  
CHAPTER 46 PUBLIC UTILITY REGULATORY POLICIES  
STANDARDS FOR ELECTRIC UTILITIES

16 USCS § 2625 (2001)

§ 2625 Special rules for standards

(a) **Cost of service** In undertaking the consideration and making the determination under section 111 [16 USCS § 2621] with respect to the standard concerning cost of service established by section 111(d)(1) [16 USCS § 2621(d)(1)], the costs of providing electric service to each class of electric consumers shall, to the maximum extent practicable, be determined on the basis of methods prescribed by the State regulatory authority (in the case of a State regulated electric utility) or by the electric utility (in the case of a nonregulated electric utility) Such methods shall to the maximum extent practicable--

(1) permit identification of differences in cost-incurrence, for each such class of electric consumers, attributable to daily and seasonal time of use of service and

(2) permit identification of differences in cost-incurrence attributable to differences in customer demand, and energy components of cost In prescribing such methods, such State regulatory authority or nonregulated electric utility shall take into account the extent to which total costs to an electric utility are likely to change if--

(A) additional capacity is added to meet peak demand relative to base demand, and

(B) additional kilowatt-hours of electric energy are delivered to electric consumers

(b) **Time-of-day rates** In undertaking the consideration and making the determination required under section 111 [16 USCS § 2621] with respect to the standard for time-of-day rates established by section 111(d)(3) [16 USCS § 2621(d)(3)], a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering costs and other costs associated with the use of such rates

(c) **Load management techniques** In undertaking the consideration and making the determination required under section 111 [16 USCS § 2621] with respect to the standard for load management techniques established by section 111(d)(6) [16 USCS § 2621(d)(6)], a load management technique shall be determined, by the State regulatory authority or nonregulated electric utility, to be cost-effective if--

(1) such technique is likely to reduce maximum kilowatt demand on the electric utility, and

(2) the long-run cost-savings to the utility of such reduction are likely to exceed the long-run costs to the utility associated with implementation of such technique

(d) **Master metering** Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(1) [16 USCS § 2623(b)(1)] if--

(1) there is more than one unit in such building,

(2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and

(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building

(e) **Automatic adjustment clauses**

(1) An automatic adjustment clause of an electric utility meets the requirements of this subsection if--

(A) such clause is determined, not less often than every four years, by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by the electric utility (in the case of a nonregulated electric



utility), after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and

(B) such clause is reviewed not less often than every two years, in the manner described in paragraph (2), by the State regulatory authority having ratemaking authority with respect to such utility (or by the electric utility in the case of a nonregulated electric utility), to insure the maximum economies in those operations and purchases which affect the rates to which such clause applies

(2) In making a review under subparagraph (B) of paragraph (1) with respect to an electric utility, the reviewing authority shall examine and, if appropriate, cause to be audited the practices of such electric utility relating to costs subject to an automatic adjustment clause, and shall require such reports as may be necessary to carry out such review (including a disclosure of any ownership or corporate relationship between such electric utility and the seller to such utility of fuel, electric energy, or other items)

(3) As used in this subsection and section 113(b) [16 USCS § 2623(b)], 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 an interim rate which takes effect subject to a later determination of the appropriate amount of the rate

(f) Information to consumers

(1) For purposes of the standard for information to consumers established by section 113(b)(3) [16 USCS § 2623(b)(3)], each electric utility shall transmit to each of its electric consumers a clear and concise explanation of the existing rate schedule and any rate schedule applied for (or proposed by a nonregulated electric utility) applicable to such consumer. Such statement shall be transmitted to each such consumer--

(A) not later than sixty days after the date of commencement of service to such consumer or ninety days after the standard established by section 113(b)(3) [16 USCS § 2623(b)(3)] is adopted with respect to such electric utility, whichever last occurs, and

(B) not later than thirty days (sixty days in the case of an electric utility which uses a bimonthly billing system) after such utility's application for any change in a rate schedule applicable to such consumer (or proposal of such a change in the case of a nonregulated utility)

(2) For purposes of the standard for information to consumers established by section 113(b)(3) [16 USCS § 2623(b)(3)], each electric utility shall transmit to each of its electric consumers not less frequently than once each year--

(A) a clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate, and

(B) an identification of any classes whose rates are not summarized

Such summary may be transmitted together with such consumer's billing or in such other manner as the State regulatory authority or nonregulated electric utility deems appropriate

(3) For purposes of the standard for information to consumers established by section 113(b)(3) [16 USCS § 2623(b)(3)], each electric utility, on request of an electric consumer of such utility, shall transmit to such consumer a clear and concise statement of the actual consumption (or degree-day adjusted consumption) of electric energy by such consumer for each billing period during the prior year (unless such consumption data is not reasonably ascertainable by the utility)

(g) Procedures for termination of electric service. The procedures for termination of service referred to in section 113(b)(4) [16 USCS § 2623(b)(4)] are procedures prescribed by the State regulatory authority (with respect to electric utilities for which it has ratemaking authority) or by the nonregulated electric utility which provide that--

(1) no electric service to an electric consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to an electric consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or nonregulated electric utility, and such consumer establishes that--

(A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) he is able to pay for such service but only in installments,

such service may not be terminated

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers

(h) Advertising

(1) For purposes of this section and section 113(b)(5) [16 USCS § 2623(b)(5)]--

(A) The term "advertising" means the commercial use, by an electric utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's electric consumers

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance

(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation of any appliance or equipment designed to use such utility's service

(2) For purposes of this subsection and section 113(b)(5) [16 USCS § 2623(b)(5)], the terms "political advertising" and "promotional advertising" do not include--

(A) advertising which informs electric consumers how they can conserve energy or can reduce peak demand for electric energy,

(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act [42 USCS §§ 8211 et seq ],

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon

HISTORY. (Nov. 9, 1978, P L. 95-617, Title I, Subtitle B, § 115, 92 Stat 3125.)

NOTES:

CROSS REFERENCES

This section is referred to in 16 USCS §§ 2621, 2623.

INTERPRETIVE NOTES AND DECISIONS

Showing that master metering is equal to or better than individual metering is insufficient to invoke master metering exception to state administrative regulations adopted under Public Utility Regulatory Policies Act (PURPA) (16 USCS §§ 2601 et seq ), where it was not shown that individual metering would meet none of PURPA's objectives, as delineated in 16 USCS § 2611, and that costs of individual metering exceeded its benefits. *Greenwood Professional Park v Public Service Com* (1986, Ind App) 487 NE2d 472

**R746. Public Service Commission, Administration.**

**R746-210. Utility Service Rules Applicable Only to Electric Utilities.**

**R746-210-1. Public Utility Regulatory Policy Act (PURPA) Standards for Master-Metered Multiple Tenancy Dwellings.**

A. The Public Utility Regulatory Policy Act (PURPA) standards for Master Metered Multiple Tenancy Dwellings as set forth below are hereby adopted by the Commission.

1. Section 113 of PURPA 16 USCA states:

"To the extent determined appropriate under Section 115(d), master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purpose of this Title.

Section 115(d) states:

"Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(1) if --

(1) there is more than one unit in such building,

(2) the occupant of each such unit has electric energy used in such unit, and

(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

**R746-210-2. Exemptions.**

A. Automatic Exemptions -- Separate individual metering is not required for:

1. Those portions of transient multiple occupancy buildings and transient mobile home parks normally used as temporary domiciles in such buildings as hotels, motels, dormitories, rooming houses, hospitals, nursing homes and those mobile home park sections designated for travel trailers;

2. Residential unit space in multiple occupancy buildings where all space heating, water heating, ventilation and cooling are provided through central systems and where the electric load within each unit that is controlled by the tenant is projected to be near minimum bill requirements of the tariff;

3. Common building areas such as hallways, elevators, reception and/or washroom, security lighting areas.

4. Commercial unit space which is:

a. Subject to alternation with change in tenants as evidenced by temporary as distinguished from permanent type of load bearing wall and floor construction separating the commercial unit spaces, and

b. Non-energy intensive as evidenced by connected loads other than space heating, water heating, and air-conditioning of five watts or less per square foot of occupied space.

**R746-210-3. Exemptions Requiring a Cost-Effectiveness Test.**

Cases not covered under "automatic exemptions" will be granted an exemption if the benefit-to-cost ratio is less than one (1) with respect to separate metering using the cost effectiveness test guidelines described below. The burden of proof rests with the person requesting exemption and the evidence required to sustain

that burden must demonstrate that the long-run benefits of individual metering to the electric consumer are less than the costs of purchasing and installing separate meters. Written requests to the utility for an exemption will be given consideration based upon the following criteria and conditions:

A. "New buildings" shall be defined as those structures or mobile home parks for which a building permit is obtained on or after August 1, 1984, or, if no permit is required, for which construction is commenced on or after August 1, 1984. Construction is defined to begin when footings are poured.

B. The benefits shall be quantified in dollars of savings and shall reflect the difference in electricity use which results when separate metering is utilized rather than master-metering. The lump sum savings shall reflect a present worth analysis using as a discount rate the percentage interest rate of long-term debt such as the utility's latest long-term bond issue, or a mortgage rate, and a period equal to the estimated life of the building. Such analysis, including its preparation and expense, shall be the sole responsibility of the customer.

C. The customer's determination of benefit shall be based on electric service supplied by the utility at electric service rates and regulations approved by the Commission, including but not limited to, regulations that prohibit resale of electric service to any other person or entity unless taking service under rate schedules that specifically provide for reselling.

D. The cost shall be quantified in dollars and shall reflect the current difference in installed cost between master and individual metering. The lump sum differential cost reflecting the purchase and installation of separate meters versus a single meter shall be prepared by the utility. The preparation of the differential costs of meter bases and building wiring shall be the sole responsibility of the customer; and

E. The benefit-to-cost ratio shall equal the present worth of benefits described in paragraph (b) divided by the current (present worth) costs described in paragraph (d).

#### **R746-210-4. Exemption by Appeal.**

In the event the customer disagrees with the utility's determination of the exemption, such dispute shall be resolved by the Commission. The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon any matter arising out of an informal complaint. Further, a formal investigation requires not only the benefit-to-cost determination, but also a showing by the customer that a granted exemption status will be consistent with the stated purposes of Title I of PURPA; i.e., conservation, efficiency, and equity. It is appropriate that equity, conservation and efficiency not be negatively impacted as required under the promulgated PURPA regulations.

#### **R746-210-5. Submetering as an Alternative to Individual Metering.**

There are no circumstances, other than exemptions, where submetering is an acceptable alternative to individual metering under the constraints of PURPA. Submetering, while giving

consumers control over their energy consumption, still retains a primary objection to master metering; namely, that since customers of a master metered utility customer are not customers of a regulated public utility, the Commission is without authority to provide redress where appropriate, such as in cases of service or billing problems.

**KEY: electric utility industries, rules, procedure  
1988**

**54-4-1**

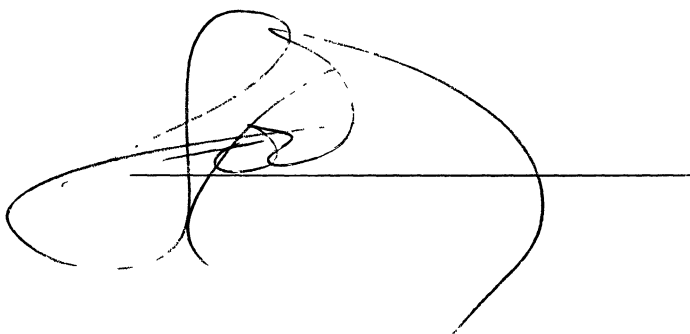
**Notice of Continuation June 26, 1998**

# CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of April, 2001, I served true and correct copies of the foregoing Brief of Respondent Public Service Commission by mailing two copies thereof, properly addressed with postage prepaid to:

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A handwritten signature in black ink, appearing to be "J. Kent Holland", is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.