

16 USC Ch. 12G: PACIFIC NORTHWEST FEDERAL TRANSMISSION SYSTEM**From Title 16—CONSERVATION****CHAPTER 12G—PACIFIC NORTHWEST FEDERAL TRANSMISSION SYSTEM**

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§838. Congressional findings; authority and duties of Secretary of Energy relating to Federal Columbia River Power System unaffected

(a) Congress finds that in order to enable the Secretary of Energy to carry out the policies of Public Law 88–552 [16 U.S.C. 837 et seq.] relating to the marketing of electric power from hydroelectric projects in the Pacific Northwest, Public Laws 89–448 and 89–561 relating to use of revenues of the Federal Columbia River Power System to provide financial assistance to reclamation projects in the Pacific Northwest, the treaty between the United States and Canada relating to the cooperative development of the resources of the Columbia River Basin, and other applicable law, it is desirable and appropriate that the revenues of the Federal Columbia River Power System and the proceeds of revenue bonds be used to further the operation, maintenance, and further construction of the Federal transmission system in the Pacific Northwest.

(b) Other than as specifically provided herein, the present authority and duties of the Secretary of Energy relating to the Federal Columbia River Power System shall not be affected by this chapter. The authority and duties of the Administrator referred to herein are subject to the supervision and direction of the Secretary.

(Pub. L. 93–454, §2, Oct. 18, 1974, 88 Stat. 1376; Pub. L. 95–91, title III, §302(a)(1)(D), Aug. 4, 1977, 91 Stat. 578.)

EDITORIAL NOTES**REFERENCES IN TEXT**

Public Law 88–552, referred to in subsec. (a), is act Aug. 31, 1964, 78 Stat. 756, as amended, which is classified generally to chapter 12F (§837 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

Public Law 89–448, referred to in subsec. (a), is Pub. L. 89–448, §§1–3, June 14, 1966, 80 Stat. 200, as amended, which enacted sections 835j and 835k of this title and amended section 832h of this title.

Public Law 89–561, referred to in subsec. (a), is Pub. L. 89–561, §§1–6, Sept. 7, 1966, 80 Stat. 707, which enacted sections 835l and 835m of this title and section 1962d–6 of Title 42, The Public Health and Welfare, and amended sections 835j and 835k of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 93–454, §1, Oct. 18, 1974, 88 Stat. 1376, provided that: "This Act [enacting this chapter] may be cited as the 'Federal Columbia River Transmission System Act'."

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted in text for "Secretary of the Interior" pursuant to Pub. L. 95–91, §302(a)(1)(D), which is classified to section 7152(a)(1)(D) of Title 42, The Public Health and Welfare.

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

§838a. Definitions

As used in this chapter—

(a) The term "Administrator" means the Administrator, Bonneville Power Administration.

(b) The term "electric power" means electric peaking capacity or electric energy, or both.

(c) The term "major transmission facilities" means transmission facilities intended to be used to provide services not previously provided by the Bonneville Power Administration with its own facilities.

(Pub. L. 93–454, §3, Oct. 18, 1974, 88 Stat. 1376.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

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

§838b. Operation and maintenance of Federal transmission system; construction of improvements, betterments, additions and replacements; criteria

The Secretary of Energy, acting by and through the Administrator, shall operate and maintain the Federal transmission system within the Pacific Northwest and shall construct improvements, betterments, and additions to and replacements of such system within the Pacific Northwest as he determines are appropriate and required to:

(a) integrate and transmit the electric power from existing or additional Federal or non-Federal generating units;

(b) provide service to the Administrator's customers;

(c) provide interregional transmission facilities; or

(d) maintain the electrical stability and electrical reliability of the Federal system: *Provided, however,* That the Administrator shall not construct any transmission facilities outside the Pacific Northwest, excepting customer service facilities within any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a distribution cooperative which has (i) no generating facilities, and (ii) a distribution system from which it serves both within and without said region, nor shall he commence construction of any major transmission facility within the Pacific Northwest, unless the expenditure of the funds for the initiation of such construction is specifically approved by Act of Congress.

(Pub. L. 93–454, §4, Oct. 18, 1974, 88 Stat. 1376; Pub. L. 95–91, title III, §302(a)(1)(D), Aug. 4, 1977, 91 Stat. 578.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted in text for "Secretary of the Interior" pursuant to Pub. L. 95–91, §302(a)(1)(D), which is classified to section 7152(a)(1)(D) of Title 42, The Public Health and Welfare.

§838c. Acquisition by condemnation of transmission facilities

(a) Approval by Congress; exceptions

Unless specifically authorized by Act of Congress, the Administrator shall not expend funds made available under this chapter, other than funds specifically appropriated by the Congress for such purpose, to acquire any operating transmission facility by condemnation: *Provided*, That this provision shall not restrict the acquisition of the right to cross such a facility by condemnation.

(b) Notice of request for approval for construction or condemnation to contracting or interconnected entities in Pacific Northwest

At least sixty days prior to the time a request for approval or authority under this section or section 838b of this title is sent to Congress, the Administrator shall give notice of such request to entities in the Pacific Northwest with which the Administrator has power sales or exchange contracts or transmission contracts or which have a transmission interconnection with the Federal transmission system.

(Pub. L. 93-454, §5, Oct. 18, 1974, 88 Stat. 1377.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

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

§838d. Transmission of non-Federal power

The Administrator shall make available to all utilities on a fair and nondiscriminatory basis, any capacity in the Federal transmission system which he determines to be in excess of the capacity required to transmit electric power generated or acquired by the United States.

(Pub. L. 93-454, §6, Oct. 18, 1974, 88 Stat. 1377.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

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

§838e. Acquisition of property

Subject to the provisions of section 838c of this title the Administrator may purchase or lease or otherwise acquire and hold such real and personal property in the name of the United States as he deems necessary or appropriate to carry out his duties pursuant to law.

(Pub. L. 93-454, §7, Oct. 18, 1974, 88 Stat. 1377.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

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

§838f. Marketing of Federal power; sales agent

The Administrator is hereby designated as the marketing agent for all electric power generated by Federal generating plants in the Pacific Northwest, constructed by, under construction by, or presently authorized for construction by the Bureau of Reclamation or the United States Corps of Engineers except electric power required for

the operation of each Federal project and except electric power from the Green Springs project of the Bureau of Reclamation.

(Pub. L. 93–454, §8, Oct. 18, 1974, 88 Stat. 1377.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

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

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

§838g. Schedules of rates and charges for sale of Federal power and transmission of non-Federal power; confirmation and approval; criteria for modification and establishment

Schedules of rates and charges for the sale, including dispositions to Federal agencies, of all electric power made available to the Administrator pursuant to section 838f of this title or otherwise acquired, and for the transmission of non-Federal electric power over the Federal transmission system, shall become effective upon confirmation and approval thereof by the Secretary of Energy. Such rate schedules may be modified from time to time by the Secretary of Energy, acting by and through the Administrator, subject to confirmation and approval by the Secretary of Energy, and shall be fixed and established (1) with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles, (2) having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric power, including the amortization of the capital investment allocated to power over a reasonable period of years and payments provided for in section 838i(b)(9) of this title, and (3) at levels to produce such additional revenues as may be required, in the aggregate with all other revenues of the Administrator, to pay when due the principal of, premiums, discounts, and expenses in connection with the issuance of and interest on all bonds issued and outstanding pursuant to this chapter, and amounts required to establish and maintain reserve and other funds and accounts established in connection therewith.

(Pub. L. 93–454, §9, Oct. 18, 1974, 88 Stat. 1377; Pub. L. 95–91, title III, §§301(b), 302(a)(1)(D), Aug. 4, 1977, 91 Stat. 578.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted in text for "Secretary of the Interior" and "Federal Power Commission" pursuant to Pub. L. 95–91, §§301(b), 302(a)(1)(D), which are classified to sections 7151(b) and 7152(a)(1)(D) of Title 42, The Public Health and Welfare.

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

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

§838h. Uniform schedules of rates and charges for sale of Federal power and transmission of non-Federal power; allocation of cost recovery

The said schedules of rates and charges for transmission, the said schedules of rates and charges for the sale of electric power, or both such schedules, may provide, among other things, for uniform rates or rates uniform throughout prescribed transmission areas. The recovery of the cost of the Federal transmission system shall be equitably allocated between Federal and non-Federal power utilizing such system.

§838i. Bonneville Power Administration fund

(a) Establishment; composition; availability of transferred funds for expenditures

There is hereby established in the Treasury of the United States a Bonneville Power Administration fund (hereinafter referred to as the "fund"). The fund shall consist of (1) all receipts, collections, and recoveries of the Administrator in cash from all sources, including trust funds, (2) all proceeds derived from the sale of bonds by the Administrator, (3) any appropriations made by the Congress for the fund, and (4) the following funds which are hereby transferred to the Administrator: (i) all moneys in the special account in the Treasury established pursuant to Executive Order Numbered 8526 dated August 26, 1940, (ii) the unexpended balances in the continuing fund established by the provisions of section 832j of this title, and (iii) the unexpended balances of funds appropriated or otherwise made available for the Bonneville Power Administration. All funds transferred hereunder shall be available for expenditure by the Secretary of Energy, acting by and through the Administrator, as authorized in this chapter and any other Act relating to the Federal Columbia River transmission system, subject to such limitations as may be prescribed by any applicable appropriation act effective during such period as may elapse between their transfer and the approval by the Congress of the first subsequent annual budget program of the Administrator.

(b) Authorized purposes of expenditures

The Administrator may make expenditures from the fund, which shall have been included in his annual budget submitted to Congress, without further appropriation and without fiscal year limitation, but within such specific directives or limitations as may be included in appropriation acts, for any purpose necessary or appropriate to carry out the duties imposed upon the Administrator pursuant to law, including but not limited to—

(1) construction, acquisition, and replacement of (i) the transmission system, including facilities and structures appurtenant thereto, and (ii) additions, improvements, and betterments thereto (hereinafter in this chapter referred to as "transmission system");

(2) operation, maintenance, repair, and relocation, to the extent such relocation is not provided for under subsection (1) above, of the transmission system;

(3) electrical research, development, experimentation, test, and investigation related to construction, operation, and maintenance of transmission systems and facilities;

(4) marketing of electric power;

(5) transmission over facilities of others and rental, lease, or lease-purchase of facilities;

(6) purchase of electric power (including the entitlement of electric plant capability) (i) on a short-term basis to meet temporary deficiencies in electric power which the Administrator is obligated by contract to supply, or ¹(ii) if such purchase has been heretofore authorized or is made with funds expressly appropriated for such purchase by the Congress, (iii) if to be paid for with funds provided by other entities for such purpose under a trust or agency arrangement, or (iv) on a short term basis to meet the Administrator's obligations under section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act [16 U.S.C. 839b(h)];

(7) defraying emergency expenses or insuring continuous operation;

(8) paying the interest on, premiums, discounts, and expenses, if any, in connection with the issuance of, and principal of all bonds issued under section 838k(a) of this title, including provision for and maintenance of reserve and other funds established in connection therewith;

(9) making such payments to the credit of the reclamation fund or other funds as are required by or pursuant to law to be made into such funds in connection with reclamation projects in the Pacific Northwest: *Provided*, That this clause shall not be construed as permitting the use of revenues for repayment of costs allocated to irrigation at any project except as otherwise expressly authorized by law;

(10) making payments to the credit of miscellaneous receipts of the Treasury for all unpaid costs required by or pursuant to law to be charged to and returned to the general fund of the Treasury for the repayment of the Federal investment in the Federal Columbia River Power System from electric power marketed by the Administrator;

(11) acquiring such goods and services, and paying dues and membership fees in such professional, utility, industry, and other societies, associations, and institutes, together with expenses related to such memberships, including but not limited to the acquisitions and payments set forth in the general provisions of the annual appropriations Act for the Department of Energy, as the Administrator determines to be necessary or appropriate in carrying out the purposes of this chapter; and

(12) making such payments, as shall be required to carry out the purposes and provisions of the Pacific Northwest Electric Power Planning and Conservation Act [16 U.S.C. 839 et seq.].

(c) Restriction on use of expenditures to authorized purposes; expenditures of moneys received in trust; applicability of provisions relating to control of Government corporations

Moneys heretofore or hereafter appropriated shall be used only for the purposes for which appropriated, and moneys received by the Administrator in trust shall be used only for carrying out such trust. The provisions of chapter 91 of title 31 shall be applicable to the Administrator in the same manner as they are applied to the wholly owned Government corporations named in section 9101 of title 31, but nothing in section 9105(d) ² of title 31 shall be

construed as affecting the powers granted in subsection (b)(11) of this section and in sections 832a(f), 832i(b), and 832k(a) of this title.

(d) Audit of financial transactions by Comptroller General; report to Congress

Notwithstanding the provisions of sections 9105 and 9106 of title 31, the financial transactions of the Administrator shall be audited by the Comptroller General at such times and to such extent as the Comptroller General deems necessary, and reports of the results of each such audit shall be made to the Congress within 6½ months following the end of the fiscal year covered by the audit.

(Pub. L. 93–454, §11, Oct. 18, 1974, 88 Stat. 1378; Pub. L. 95–91, title III, §302(a)(1)(D), Aug. 4, 1977, 91 Stat. 578; Pub. L. 96–501, §8(a), (b), Dec. 5, 1980, 94 Stat. 2728.)

EDITORIAL NOTES

REFERENCES IN TEXT

Executive Order Numbered 8526 dated August 26, 1940, referred to in subsec. (a), is not classified to the Code.

The Pacific Northwest Electric Power Planning and Conservation Act, referred to in subsec. (b)(12), is Pub. L. 96–501, Dec. 5, 1980, 94 Stat. 2697, which is classified principally to chapter 12H (§839 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 839 of this title and Tables.

Section 9105 of title 31, referred to in subsec. (c), was amended generally by Pub. L. 101–576, title III, §305, Nov. 15, 1990, 104 Stat. 2853, and, as so amended, does not contain a subsec. (d).

CODIFICATION

In subsec. (c), "chapter 91 of title 31", "section 9101 of title 31", and "section 9105(d) of title 31" substituted for "the Government Corporation Control Act (31 U.S.C. 841 et seq.)", "section 101 of such Act (31 U.S.C. 846)", and "the proviso in section 850 of title 31, United States Code," respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

In subsec. (d), "sections 9105 and 9106 of title 31" substituted for "sections 105 and 106 of the Government Corporation Control Act [31 U.S.C. 850, 851]" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31.

AMENDMENTS

1980—Subsec. (b)(6)(iv). Pub. L. 96–501, §8(a), added cl. (iv).
Subsec. (b)(12). Pub. L. 96–501, §8(b), added par. (12).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

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

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted for "Secretary of the Interior" in subsec. (a) and "Department of Energy" substituted for "Department of Interior" in subsec. (b)(11) pursuant to Pub. L. 95–91, §302(a)(1)(D), which is classified to section 7152(a)(1)(D) of Title 42, The Public Health and Welfare.

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

BONNEVILLE POWER ADMINISTRATION FUND: STATE CLEAN ENERGY PROGRAMS

Pub. L. 116–94, div. C, title III, Dec. 20, 2019, 133 Stat. 2675, provided in part that: "Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93–454 are authorized and approved, without fiscal year limitation, for the cost of current and future year purchases or payments of emissions expenses associated with Bonneville Power Administration power and transmission operations in states with clean energy programs: *Provided further*, This expenditure authorization is limited solely to Bonneville Power Administration's voluntary purchase or payments made in conjunction with state clean energy programs and is not a broader waiver of Bonneville Power Administration's sovereign immunity."

AUTHORITY TO INCUR OBLIGATIONS IN EXCESS OF BORROWING AUTHORITY AND CASH IN FUND

Pub. L. 100–371, title III, July 19, 1988, 102 Stat. 869, provided that: "Without fiscal year limitation, the Bonneville Power Administration continues to be authorized to incur obligations for authorized purposes and may do so in excess of borrowing authority and cash in the Bonneville Power Administration Fund."

¹ *So in original. The word "or" probably should not appear.*

² *See References in Text note below.*

§838j. Investment of excess moneys; deposit of moneys

(a) If the Administrator determines that moneys in the fund are in excess of current needs he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in direct, general obligations of, or obligations guaranteed as to both principal and interest by, the United States of America.

(b) With the approval of the Secretary of the Treasury, the Administrator may deposit moneys of the fund in any Federal Reserve bank or other depository for funds of the United States of America, or in such other banks and financial institutions and under such terms and conditions as the Administrator and the Secretary of the Treasury may mutually agree.

(Pub. L. 93–454, §12, Oct. 18, 1974, 88 Stat. 1380.)

§838k. Bonneville Power Administration bonds

(a) Issuance and sale; terms and conditions; interest rate; limitation on aggregate principal amount outstanding

The Administrator is authorized to issue and sell to the Secretary of the Treasury from time to time in the name and for and on behalf of the Bonneville Power Administration bonds, notes, and other evidences of indebtedness (in this chapter collectively referred to as "bonds") to assist in financing the construction, acquisition, and replacement of the transmission system, to implement the Administrator's authority pursuant to the Pacific Northwest Electric Power Planning and Conservation Act [16 U.S.C. 839 et seq.] (including his authority to provide financial assistance for conservation measures, renewable resources, and fish and wildlife, but not including the authority to acquire under section 6 of that Act [16 U.S.C. 839d] electric power from a generating facility having a planned capability greater than 50 average megawatts), and to issue and sell bonds to refund such bonds. Such bonds shall be in such forms and denominations, bear such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary of the Treasury taking into account terms and conditions prevailing in the market for similar bonds, the useful life of the facilities for which the bonds are issued, and financing practices of the utility industry. Refunding provisions may be prescribed by the Administrator. Such bonds shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, plus an amount in the judgment of the Secretary of the Treasury to provide for a rate comparable to the rates prevailing in the market for similar bonds issued by Government corporations. Beginning in fiscal year 1982, if the Administrator fails to repay by the end of any fiscal year all of the amounts projected immediately prior to such year to be repaid to the Treasury by the end of such year under the repayment criteria of the Secretary of Energy and if such failure is due to reasons other than (A) a decrease in power sale revenues due to fluctuating streamflows or (B) other reasons beyond the control of the Administrator, the Secretary of the Treasury may increase the interest rate applicable to the outstanding bonds issued by the Administrator during such fiscal year. Such increase shall be effective commencing with the fiscal year immediately following the fiscal year during which such failure occurred and shall not exceed 1 per centum for each such fiscal year during which such repayments are not in accord with such criteria. The Secretary of the Treasury shall take into account amounts that the Administrator has repaid in advance of any repayment criteria in determining whether to increase such rate. Before such rate is increased, the Secretary of the Treasury, in consultation with the Administrator and the Federal Energy Regulatory Commission, must be satisfied that the Administrator will have the ability to pay such increased rate, taking into account the Administrator's obligations. Such increase shall terminate with the fiscal year in which repayments (including repayments of the increased rate) are in accordance with the repayment criteria of the Secretary of Energy. The aggregate principal amount of any such bonds outstanding at any one time shall not exceed \$1,250,000,000 prior to October 1, 1981. Such aggregate principal limitation shall be increased by an additional \$1,250,000,000 after October 1, 1981, as provided in advance in annual appropriation Acts, and such increased amount shall be reserved for the purpose of providing funds for conservation and renewable resource loans and grants in a special revolving account created therefor in the Fund. The funds from such revolving account shall not be deemed State or local funds.

(b) Payment of principal, premiums, and interest from net proceeds; "net proceeds" defined

The principal of, premiums, if any, and interest on such bonds shall be payable solely from the Administrator's net proceeds as hereinafter defined. "Net proceeds" shall mean for the purposes of this section the remainder of the Administrator's gross receipts from all sources after first deducting trust funds and the costs listed in section 838i(b)(2) through (b)(7), (b)(11), and (b)(12) of this title, and shall include reserve or other funds created from such receipts.

(c) Purchase and sale by Secretary of the Treasury; public debt transactions

The Secretary of the Treasury shall purchase forthwith any bonds issued by the Administrator under this chapter and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, as now or hereafter in force, and the purposes for which securities may be issued under chapter 31 of title 31, as now or hereafter in force, are extended to include any purchases of the bonds issued by the Administrator under this chapter. The Secretary of the Treasury may, at any time, sell any of the bonds acquired by him under this chapter. All redemptions, purchases, and sales by the Secretary of the Treasury of such bonds shall be treated as public debt transactions of the United States.

(Pub. L. 93-454, §13, Oct. 18, 1974, 88 Stat. 1380; Pub. L. 96-501, §8(c), (d), Dec. 5, 1980, 94 Stat. 2728, 2729.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Pacific Northwest Electric Power Planning and Conservation Act, referred to in subsec. (a), is Pub. L. 96-501, Dec. 5, 1980, 94 Stat. 2697, which is classified principally to chapter 12H (§839 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 839 of this title and Tables.

CODIFICATION

In subsec. (c), "chapter 31 of title 31" substituted for "the Second Liberty Bond Act" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-501, §8(d), inserted provision relating to the implementation of the Administrator's authority pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, inserted "issued by Government corporations" after "rates prevailing in the market for similar bonds", increased the existing \$1,250,000,000 aggregate principal limitation by an additional \$1,250,000,000 after Oct. 1, 1981, to be used to provide funds for conservation and renewable resource loans and grants in a special revolving account created for that purpose, and inserted provision that, beginning in fiscal year 1982, if the Administrator fails to repay by the end of any fiscal year all of the amounts projected immediately prior to that year to be repaid to the Treasury by the end of that year under the repayment criteria of the Secretary of Energy and if that failure is due to reasons other than a decrease in power sale revenues due to fluctuating streamflows or other reasons beyond the control of the Administrator, the Secretary of the Treasury may increase the interest rate applicable to the outstanding bonds issued by the Administrator during that fiscal year.

Subsec. (b). Pub. L. 96-501, §8(c), substituted ", (b)(11), and (b)(12) of this title," for "and (b)(11) of this title,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

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

TRANSFER OF FUNCTIONS

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

§838i. Bonneville Power Administration refinancing

(a) Definitions

For the purposes of this section—

- (1) "Administrator" means the Administrator of the Bonneville Power Administration;
- (2) "capital investment" means a capitalized cost funded by Federal appropriations that—
 - (A) is for a project, facility, or separable unit or feature of a project or facility;
 - (B) is a cost for which the Administrator is required by law to establish rates to repay to the United States Treasury through the sale of electric power, transmission, or other services;
 - (C) excludes a Federal irrigation investment; and
 - (D) excludes an investment financed by the current revenues of the Administrator or by bonds issued and sold, or authorized to be issued and sold, by the Administrator under section 838k of this title;
- (3) "new capital investment" means a capital investment for a project, facility, or separable unit or feature of a project or facility, placed in service after September 30, 1996;
- (4) "old capital investment" means a capital investment the capitalized cost of which—
 - (A) was incurred, but not repaid, before October 1, 1996, and
 - (B) was for a project, facility, or separable unit or feature of a project or facility, placed in service before October 1, 1996;
- (5) "repayment date" means the end of the period within which the Administrator's rates are to assure the repayment of the principal amount of a capital investment; and
- (6) "Treasury rate" means—
 - (A) for an old capital investment, a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding October 1, 1996, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between October 1, 1996, and the repayment date for the old capital investment; and
 - (B) for a new capital investment, a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year in which the related project, facility, or separable unit or feature is placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year and the repayment date for the new capital investment.

(b) New principal amounts

(1) Principal amount

Effective October 1, 1996, an old capital investment has a new principal amount that is the sum of—

- (A) the present value of the old payment amounts for the old capital investment, calculated using a discount rate equal to the Treasury rate for the old capital investment; and
- (B) an amount equal to \$100,000,000 multiplied by a fraction whose numerator is the principal amount of the old payment amounts for the old capital investment and whose denominator is the sum of the principal amounts of the old payment amounts for all old capital investments.

(2) Determination

With the approval of the Secretary of the Treasury based solely on consistency with this section, the Administrator shall determine the new principal amounts under subsection (b) and the assignment of interest rates to the new principal amounts under subsection (c).

(3) Old payment amounts

For the purposes of this subsection, "old payment amounts" means, for an old capital investment, the annual interest and principal that the Administrator would have paid to the United States Treasury from October 1, 1996, if this section had not been enacted, assuming that—

- (A) the principal were repaid—
 - (i) on the repayment date the Administrator assigned before October 1, 1994, to the old capital investment, or
 - (ii) with respect to an old capital investment for which the Administrator has not assigned a repayment date before October 1, 1994, on a repayment date the Administrator shall assign to the old capital investment in accordance with paragraph 10(d)(1) of the version of Department of Energy Order RA 6120.2 in effect on October 1, 1994; and
- (B) interest were paid—
 - (i) at the interest rate the Administrator assigned before October 1, 1994, to the old capital investment, or
 - (ii) with respect to an old capital investment for which the Administrator has not assigned an interest rate before October 1, 1994, at a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year in which the related project, facility, or separable unit or feature is placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year and the repayment date for the old capital investment.

(c) Interest rate for new principal amounts

As of October 1, 1996, the unpaid balance on the new principal amount established for an old capital investment under subsection (b) bears interest annually at the Treasury rate for the old capital investment until the earlier of the date that the new principal amount is repaid or the repayment date for the new principal amount.

(d) Repayment dates

As of October 1, 1996, the repayment date for the new principal amount established for an old capital investment under subsection (b) is no earlier than the repayment date for the old capital investment assumed in subsection (b)(3)(A).

(e) Prepayment limitations

During the period October 1, 1996, through September 30, 2001, the total new principal amounts of old capital investments, as established under subsection (b), that the Administrator may pay before their respective repayment dates shall not exceed \$100,000,000.

(f) Interest rates for new capital investments during construction

(1) New capital investment

The principal amount of a new capital investment includes interest in each fiscal year of construction of the related project, facility, or separable unit or feature at a rate equal to the one-year rate for the fiscal year on the sum of—

- (A) construction expenditures that were made from the date construction commenced through the end of the fiscal year, and
- (B) accrued interest during construction.

(2) Payment

The Administrator is not required to pay, during construction of the project, facility, or separable unit or feature, the interest calculated, accrued, and capitalized under subsection (f)(1).

(3) One-year rate

For the purposes of this section, "one-year rate" for a fiscal year means a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year, on outstanding interest-bearing obligations of the United States with periods to maturity of approximately one year.

(g) Interest rates for new capital investments

The unpaid balance on the principal amount of a new capital investment bears interest at the Treasury rate for the new capital investment from the date the related project, facility, or separable unit or feature is placed in service until the earlier of the date the new capital investment is repaid or the repayment date for the new capital investment.

(h) Omitted

(i) Contract provisions

In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1996, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1996—

- (1) the Administrator shall establish rates and charges on the basis that—
 - (A) the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b);
 - (B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under subsection (c);
 - (C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and
 - (D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

(2) apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b) and to pay the interest on the principal amount under subsection (c), no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

(3) amounts provided under section 1304 of title 31 shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United States on a claim for a breach of the contract provisions required by this Part; ¹ and

- (4) the contract provisions specified in this Part ¹ do not—
 - (A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or
 - (B) affect the Administrator's authority under applicable law, including section 839e(g) of this title, to—
 - (i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

(ii) design rates.

(j) Savings provisions

(1) Repayment

This section does not affect the obligation of the Administrator to repay the principal associated with each capital investment, and to pay interest on the principal, only from the "Administrator's net proceeds," as defined in section 838k(b) of this title.

(2) Payment of capital investment

Except as provided in subsection (e), this section does not affect the authority of the Administrator to pay all or a portion of the principal amount associated with a capital investment before the repayment date for the principal amount.

(Pub. L. 104–134, title III, §3201, Apr. 26, 1996, 110 Stat. 1321–350.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and not as part of the Federal Columbia River Transmission System Act which comprises this chapter.

Section is comprised of section 3201 of Pub. L. 104–134. Subsec. (h) of section 3201 of Pub. L. 104–134 amended section 6 of Pub. L. 103–436, which is not classified to the Code.

¹ So in original. Probably should be "section;" or "section".

§838m. Power marketing administration transmission borrowing authority

(a) Borrowing authority

(1) In general

Subject to paragraph (2), for the purposes of providing funds to assist in the financing of the construction, acquisition, and replacement of the Federal Columbia River Power System and to implement the authority of the Administrator of the Bonneville Power Administration (referred to in this section as the "Administrator") under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.), an additional \$10,000,000,000 in borrowing authority is made available under the Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.), to remain outstanding at any 1 time.

(2) Limitation

The obligation of additional borrowing authority under paragraph (1) shall not exceed \$6,000,000,000 by fiscal year 2028.

(b) Financial plan

(1) In general

The Administrator shall issue an updated financial plan by the end of fiscal year 2022.

(2) Requirement

As part of the process of issuing an updated financial plan under paragraph (1), the Administrator shall—

(A) consistent with asset management planning and sound business principles, consider projected and planned use and allocation of the borrowing authority of the Administrator across the mission responsibilities of the Bonneville Power Administration; and

(B) before issuing the final updated financial plan—

(i) engage, in a manner determined by the Administrator, with customers with respect to a draft of the updated plan; and

(ii) consider as a relevant factor any recommendations from customers regarding prioritization of asset investments.

(c) Stakeholder engagement

The Administrator shall—

(1) engage, in a manner determined by the Administrator, with customers and stakeholders with respect to the financial and cost management efforts of the Administrator through periodic program reviews; and

(2) to the maximum extent practicable, implement those policies that would be expected to be consistent with the lowest possible power and transmission rates consistent with sound business principles.

(d) Repayment

Any additional Treasury borrowing authority received under this section shall be fully repaid to the Treasury in a manner consistent with the applicable self-financed Federal budget accounts.

(Pub. L. 117–58, div. D, title I, §40110, Nov. 15, 2021, 135 Stat. 945.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Pacific Northwest Electric Power Planning and Conservation Act, referred to in subsec. (a)(1), is Pub. L. 96–501, Dec. 5, 1980, 94 Stat. 2697, which is classified principally to chapter 12H (§839 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 839 of this title and Tables.

The Federal Columbia River Transmission System Act, referred to in subsec. (a)(1), is Pub. L. 93–454, Oct. 18, 1974, 88 Stat. 1376, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 838 of this title and Tables.

CODIFICATION

Section was enacted as part of the Infrastructure Investment and Jobs Act, and not as part of the Federal Columbia River Transmission System Act which comprises this chapter.

§838n. Columbia Basin power management

(a) Definitions

In this section:

(1) Account

The term "Account" means the account established by subsection (b)(1).

(2) Administrator

The term "Administrator" means the Administrator of the Bonneville Power Administration.

(3) Canadian Entitlement

The term "Canadian Entitlement" means the downstream power benefits that Canada is entitled to under Article V of the Treaty Relating to Cooperative Development of the Water Resources of the Columbia River Basin, signed at Washington January 17, 1961 (15 UST 1555; TIAS 5638).

(b) Transmission coordination and expansion

(1) Establishment

There is established in the Treasury an account for the purposes of making expenditures to increase bilateral transfers of renewable electric generation between the western United States and Canada.

(2) Criteria

(A) In general

The Administrator may make expenditures from the Account for activities to improve electric power system coordination by constructing electric power transmission facilities within the western United States that directly or indirectly facilitate non-carbon emitting electric power transactions between the western United States and Canada.

(B) Application

Subparagraph (A) shall be effective after the later of—

(i) September 16, 2024; and

(ii) the date on which the Canadian entitlement value calculation is terminated or reduced to the actual electric power value to the United States, as determined by the Administrator.

(3) Consultation

The Administrator shall consult with relevant electric utilities in Canada and appropriate regional transmission planning organizations in considering the construction of transmission activities under this subsection.

(4) Authorization

There is authorized to be appropriated to the Account a nonreimburseable amount equal to the aggregated amount of the Canadian Entitlement during the 5-year period preceding November 15, 2021.

(c) Increased hydroelectric capacity

(1) In general

The Commissioner of Reclamation shall rehabilitate and enhance the John W. Keys III Pump Generating Plant—

- (A) to replace obsolete equipment;
- (B) to maintain reliability and improve efficiency in system performance and operation;
- (C) to create more hydroelectric power capacity in the Pacific Northwest; and
- (D) to ensure the availability of water for irrigation in the event that Columbia River water flows from British Columbia into the United States are insufficient after September 16, 2024.

(2) Authorization of appropriations

There is authorized to be appropriated \$100,000,000, which shall be nonreimbursable, to carry out this subsection.

(d) Power coordination study

(1) In general

The Administrator shall conduct a study considering the potential hydroelectric power value to the Pacific Northwest of increasing the coordination of the operation of hydroelectric and water storage facilities on rivers located in the United States and Canada.

(2) Criteria

The study conducted under paragraph (1) shall analyze—

- (A) projected changes to the Pacific Northwest electricity supply;
- (B) potential reductions in greenhouse gas emissions;
- (C) any potential need to increase transmission capacity; and
- (D) any other factor the Administrator considers to be relevant for increasing bilateral coordination.

(3) Coordination

In conducting the study under paragraph (1), the Administrator shall coordinate, to the extent practicable, with—

- (A) the British Columbia or a crown corporation owned by British Columbia;
- (B) the Assistant Secretary;
- (C) the Commissioner of Reclamation; and
- (D) any public utility districts that operate hydroelectric projects on the mainstem of the Columbia River.

(4) Authorization of appropriations

There is authorized to be appropriated \$10,000,000, which shall be nonreimbursable, to carry out this subsection.

(Pub. L. 117–58, div. D, title I, §40113, Nov. 15, 2021, 135 Stat. 947.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Infrastructure Investment and Jobs Act, and not as part of the Federal Columbia River Transmission System Act which comprises this chapter.