

(a) of this section or a utility geothermal small power production facility shall not be considered to be an "electric utility company" as defined in section 2(a)(3) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(3).

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

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

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

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

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

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

[45 FR 12237, Feb. 25, 1980, as amended by Order 135, 46 FR 19232, Mar. 30, 1981]

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

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

§ 294.101 Shortages of electric energy and capacity.

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

(1) Any situation anticipated to occur in which the generating and bulk

purchased power capability of a public utility will not be sufficient to meet its anticipated demand plus appropriate reserve margins and this shortage would affect the utility's capability adequately to supply electric services to its firm power wholesale customers; or

(2) Any situation anticipated to occur in which the energy supply capability of a public utility is not sufficient to meet its customers' energy requirements and this shortage would affect the utility's capability adequately to supply electric services to its firm power wholesale customers.

(b) *Accommodation of shortages.* (1) Each public utility now serving firm power wholesale customers, shall submit a brief statement indicating how it would accommodate any shortages of electric energy or capacity affecting its firm power wholesale customers.

(2) This statement shall:

(i) Describe how the utility would assure that direct and indirect customers are treated without undue prejudice or disadvantage; and

(ii) It shall also identify any agreement, law, or regulation which might impair the utility's ability to accommodate such a shortage.

(3) Each utility shall file a copy of its statement with any appropriate State regulatory agency and all firm power wholesale customers.

(4) If a plan for accommodating any shortages of electric energy or capacity affecting its firm power wholesale customers as described in the brief statement submitted pursuant to paragraph (b)(1) of this section is modified, the utility must submit to the Commission and the persons described in paragraph (b)(3) of this section within 15 days of any such modification, a supplemental statement informing the Commission of those modifications.

(5) Notwithstanding any other provision of this section, a public utility need not file the statement with the Commission if the public utility provides in its rate schedules to firm power wholesale customers that:

(i) During electric energy and capacity shortages it will treat without undue discrimination or preference, prejudice, or disadvantage firm power wholesale customers; and

§ 294.101

18 CFR Ch. I (4-1-04 Edition)

(ii) It will report any modifications to its contingency plans for accommodating shortages within 15 days to:

(A) The appropriate State regulatory agency and

(B) To the affected wholesale customers.

(c) *Reporting requirements.* Each public utility shall immediately report to the Commission, to any State regulatory authority and to firm power wholesale customers, any anticipated shortage of electric energy or capacity. The report shall include the following information:

(1) The nature and projected duration of the anticipated capacity or energy supply shortage;

(2) A list showing all firm power wholesale customers affected or likely to be affected by the anticipated shortage;

(3) Procedures for accommodating the shortage, if different from those described in paragraph (b) of this section;

(4) An estimate of the effects (reduced power and energy usage) of use of these procedures upon the utility's wholesale and retail customers; and

(5) The name, title, address and telephone number of an officer or employee of the utility who may be contacted for further information regarding the shortage and planned actions of the utility.

(d) *Reports to other government entities.* Any report filed with another governmental entity that contains the information that must be reported under this part may be filed to comply with this part.

(e) *Number of copies.* Any public utility that files under this part must provide an original of any filing and at least two exact copies to this Commission and one copy to any state regulatory authority and firm power wholesale customers, unless otherwise required by the Commission.

(f) *Report of anticipated shortage.* Notwithstanding any other provision of this part, if a public utility provides in its rate schedule that it will make such reports to the appropriate state regulatory agency and to its firm power wholesale requirements customers, then it need only report to the Commission the nature and projected duration of the anticipated capacity or energy supply shortage and supply a list of the firm power wholesale customers affected or likely to be affected by the shortage. Upon receiving the public utility's report of anticipated shortage of electric energy or capacity, the Commission will decide what further reports, if any, to require.

[44 FR 37502, June 27, 1979, as amended at 47 FR 20297, May 12, 1982; Order 401, 49 FR 39538, Oct. 9, 1984; Order 401-A, 54 FR 41087, Oct. 5, 1989; Order 575, 60 FR 4859, Jan. 25, 1995]