Report of the Committee on Power Marketing Agencies

I. LITIGATION UPDATE

A. Allegheny Electric Cooperative, Inc. v. FERC[1]

Affirming a decision of the Federal Energy Regulatory Commission (FERC)[2], which had affirmed the Initial Decision of the Administrative Law Judge (ALJ)[3], the Second Circuit held that the numerous municipal distribution agencies (MDAs) in New York State and the Vermont Department of Public Service (VDPS) do not qualify as "public bodies" within the requirement of the preference provisions of the Niagara Redevelopment Act (NRA).[4] The preference clause in the NRA mandates that the Power Authority of the State of New York (PASNY) give preference in the sale of fifty percent of Niagara power to "public bodies" and nonprofit cooperatives within economic transmission distance. This is the third time the Second Circuit has addressed the preference provisions of the NRA.[5]

The ALJ had thoroughly examined the lease and operating agreements (LOAs) between the MDAs and VDPS on the one hand and the investor-owned utilities on the other,[6] as well as the operating characteristics of the MDAs and VDPS. The FERC followed the ALJ in establishing the criteria that in order to qualify as a "public body," the public entity must at least (1) provide "yardstick competition" for the private investor-owned utilities; (2) be directly responsible for meeting the requirements and responding to the concerns of the retail customers and have the ability to initiate corrective action; and (3) have "control" of the distribution system, which is the authority to "manage a system without restraint." A "yardstick competitor" must (1) create a threat of takeover or displacement of private investor-owned utilities, (2) substantially meet the energy needs of its customers, and (3) provide consumers and regulators with a basis for comparing the rates and quality of

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1. 922 F.2d 73 (2d Cir. 1970). (A petition for *rehearing en banc* has been filed by VDPS).

2. Opinion No. 329, Municipal Elec. Utils. Ass'n v. Power Auth., 48 F.E.R.C. ¶ 61,124 (1989) *clarified* 48 F.E.R.C. ¶ 61,211 (1989), *aff'd on rehearing* 49 F.E.R.C. ¶ 61,068 (1989). A petition to the D.C. Circuit for a stay of the FERC decision was denied. Appeals of the FERC decision were filed with both the D.C. Circuit and the Second Circuit. The responsibility for hearing the appeal was initially assigned to the D.C. Circuit. It subsequently transferred the case to the Second Circuit. The FERC decision was discussed in the 1989 report of this Committee. *See* 11 ENERGY L.J. 141 (1990).

3. Municipal Elec. Utils. Ass'n, 42 F.E.R.C. ¶ 63,018 (Feb. 16, 1988). The ALJ decision was discussed in the 1988 report of this Committee. *See* 10 ENERGY L.J. 417, 419 (1989).

4. 16 U.S.C. § 836 (1990).

5. See Metropolitan Transp. Auth. v. FERC, 796 F.2d 584 (2d Cir. 1986), *cert. denied sub nom.* Allegheny Elec. Coop. v. FERC, 479 U.S. 1085 (1987); Power Auth. of N.Y. v. FERC, 743 F.2d 93 (2d Cir. 1984).

6. Under the LOA between the New York City Public Utility Service (NYCPUS) and Consolidated Edison Co., a typical example, Consolidated Edison was vested with "exclusive control" over the distribution system, functioned as the operating agent for NYCPUS with responsibility for billing, metering and collection, reserved the right to suspend or terminate the LOA under various circumstances, and was required to deliver the preference power only to Consolidated Edison's own customers. *See* Allegheny Elec. Coop. v. FERC, Nos 90-369-376, slip opinion, at 26-27 (2d Cir. 1990).

service of publicly-owned and privately-owned utilities.[7]

The Second Circuit found these criteria "consistent with the purposes of the NRA and the reasoning of our prior decisions."[8] It agreed with the FERC that the degree of control required by the criteria "is essential to a finding of 'public body' status."[9] The court noted, inter alia, that while ownership of distribution facilities is not required, direct operational control is required.[10] The court also upheld the factual findings by the Commission that the agreements of both the MDAs and VDPS did not lack these criteria,[11] observing as to the MDAs that they "lacked the requisite degree of control over distribution,"[12] and as to VDPS that "the distribution costs of the lessee public entity and the lessor private utility will always be the same."[13]

The court rejected the argument of Rhode Island that states are statutorily entitled to an allocation of preference power even if they do not directly sell power to consumers at retail,[14] explaining that "an allocation of preference power to a state to distribute the energy as it sees fit does not advance the statute's purpose."[15]

The court upheld the relief ordered by the Commission that in all future allocations to preference customers, PASNY should make an informal filing with the Commission ninety days before the allocation is to take effect explaining how the customer meets the criteria as a public body. The court rejected the argument of certain public agency petitioners that the Commission should have gone further to require Commission approval of all future preference allocations to entities other than traditional municipal electric systems and rural electric cooperatives before they could take effect.[16]

B. Salt Lake City v. Western Area Power Administration[17]

Utah Power & Light (UP&L), together with municipalities in the states of Utah and Wyoming, have challenged the Western Area Power Administration's (WAPA) allocation of preference power, claiming entitlement to preference power. Plaintiffs' key arguments are that preference laws are unconstitutional under the equal protection clause, and that municipalities lacking electric distribution systems and utility responsibility are nevertheless legitimate preference customers. In addition, plaintiffs challenged WAPA's administrative decision denying these municipalities preference power.

In April, 1988, Judge Greene granted summary judgment for WAPA on the key preference issues. Judge Greene upheld WAPA's decision not to sell power to UP&L's cities and found that WAPA's activities did not violate the

7. *Id.* at 11-14.
8. *Id.* at 23.
9. *Id.* at 27.
10. *Id.* at 22.
11. *Id.* at 23-29.
12. *Id.* at 27.
13. *Id.* at 29.
14. *Id.* at 29-31.
15. *Id.* at 31.
16. *Id.* at 31-32.
17. No. C86-1000G, (D. Utah, Apr. 14, 1988) (LEXIS, Genfed Library, Courts file).

Constitution. Two minor issues, WAPA's participation in the Rocky Mountain Generation Cooperative and UP&L's environmental claims, were severed for trial.

UP&L appealed the preference and constitutional issues and oral argument was held March 6, 1990, before the Tenth Circuit. No decision has yet been issued.

C. *United States v. Pacific Gas and Electric Co.*[18]

The WAPA initiated a proceeding in 1988 to resolve, inter alia, the question of its right to purchase power from another power marketing agency (in this case, the Bonneville Power Administration (BPA)) and resell it to preference customers using Pacific Gas and Electric Company (PG&E) transmission. The customers involved, six city members of the Northern California Power Agency, claimed a right to transmission service from PG&E under the investor-owned utility's Nuclear Regulatory Commission antitrust license conditions. PG&E was unwilling to agree to provide the transmission service. In a June, 1989 decision, the Honorable William Schwarzer held substantially in favor of WAPA and its customers, finding that WAPA could resell the power involved and that PG&E was obligated to provide the necessary transmission. The judge directed the parties to submit an appropriate form of judgment.

The parties were unable to agree on a form of judgment. In March 1990, WAPA filed motions to amend its complaint against PG&E by adding an additional contract claim in the amount of approximately $16 million, and to dismiss various PG&E counterclaims against WAPA which had been adjudicated in Judge Schwarzer's decision. In its motion to dismiss, WAPA alleged that the PG&E claims exceeded $10,000 in amount. Therefore, the claims, under the Tucker Act,[19] were beyond the subject matter jurisdiction of the district court and could only be adjudicated in the U.S. Claims Court. PG&E opposed WAPA's motions and requested limited reconsideration on the transmission-related issues of the June, 1989 decision.

At a hearing in June, 1990, the Honorable Vaughn Walker (now presiding in place of Judge Schwarzer) denied WAPA's motion to amend and PG&E's request for limited reconsideration. However WAPA's motion to dismiss was granted thereby remitting PG&E to the Claims Court for its claims against WAPA in excess of $10,000.

In October, 1990, after further briefing of various issues, Judge Walker issued a proposed form of judgment. The parties have commented on the proposed order, but Judge Walker has not yet entered the judgment. PG&E has indicated that it intends to appeal.

D. *Aluminum Co. of America v. Bonneville Power Administration*[20]

In 1989, the U.S. Court of Appeals for the Ninth Circuit affirmed BPA's

18. 714 F. Supp. 1039 (N.D. Cal. 1989).
19. Tucker Act 28 U.S.C. § 1346(a)(2) (1988).
20. 891 F.2d 748 (9th Cir. 1989), *amended*, 903 F.2d 586 (9th Cir. 1990).

1981 nonfirm energy rates established under the Pacific Northwest Electric Power Planning and Conservation Act. In 1990, the court issued an amended opinion correcting technical errors, such as the description of the distinction between firm and nonfirm power. Among other things, the court held that BPA can include its full capacity and energy costs in the NF-1 and NF-2 rates on an unweighted proportional basis.

On June 21, 1990, the court issued an order denying petitions for rehearing. A petition for a writ of certiorari is pending before the U.S. Supreme Court.

E. Southern California Edison Co. v. Jura[21]

On July 13, 1990, the U.S. Court of Appeals for the Ninth Circuit issued an opinion affirming BPA's 1983 nonfirm energy rates, NF-83. The case held: (1) nonfirm rates need not be designed so that below-cost sales are offset by above-cost sales; (2) BPA may include a portion of the costs of credits for interruption rights in its sales to industrial customers in BPA's nonfirm energy rates; and (3) there is no statutory prohibition against "undue discrimination" in BPA's nonfirm power rates and the court refused to infer one.

F. Alabama v. United States Army Corps of Engineers[22]

On June 28, 1990, Alabama filed suit against the U.S. Army Corps of Engineers in the U.S. District Court for the Northern District of Alabama, requesting that the court enjoin the Corps proposed interim reallocations of Lakes Lanier, Carters, and Allatoona for municipal and industrial water supply.[23] The Corps proposed to meet growing M&I water needs in Georgia by reallocating water storage of these projects from authorized project purposes (navigation and power generation) under the Water Supply Act of 1958.

Alabama alleged violations of the National Environmental Policy Act, and a breach of the Corps duty to manage water resources projects so as to assure a fair distribution of benefits among the states in the southeastern region. A number of parties intervened in the suit, both on the side of Alabama (the state of Florida, several Alabama municipal water boards, and the Alabama Wildlife Federation) and on the side of the Corps (the state of Georgia, the city of Atlanta, and several Georgia municipal water boards).

In exchange for an agreement delaying implementation of the interim reallocations, Alabama has agreed to a stay of the lawsuit while negotiations are underway. The Corps is currently developing a memorandum of understanding to resolve the issues raised in the lawsuit. The memorandum will probably address both short-term (interim) and long-term issues related to the use, protection, and management of the Appalachicola-Chattahoochee-Flint and Coosa-Alabama basins.

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21. 909 F.2d 339 (9th Cir. 1990).

22. No. CV90-H-1331-E., *filed*, (N.D. Ala. June 28, 1990).

23. The interim contracts, pursuant to the Water Supply Act of 1958, 43 U.S.C. § 390 b (1988), are a partial step in a major and permanent reallocation of Lake Lanier, which must be legislatively authorized. See *infra* section II.B.2.b for a description of the status of the permanent reallocation.

G. *California Energy Commission v. Bonneville Power Administration*[24]

On July 26, 1990, the U.S. Court of Appeals for the Ninth Circuit issued an opinion upholding BPA's Long Term Intertie Access Policy (LTIAP). The LTIAP was developed to regulate access to transmission interties connecting the Pacific Northwest and California.

In its opinion, the court rejected contentions that the LTIAP constitutes ratemaking. The court held as follows:

1. Noting that the LTIAP may have some ultimate effect on rates, the court nevertheless found even if agency action has an indirect effect on revenues, that action does not necessarily constitute ratemaking.
2. BPA can make the federal intertie available to non-federal utilities if, among other things, the non-federal transmission does not conflict with BPA's statutory marketing obligations, including the statutory ratemaking standards. In such cases, the non-federal utility needs to compensate BPA only for the expense of the actual transmission, not for revenues BPA forgoes by not using the capacity itself. With respect to "the lowest possible rates to consumers consistent with sound business principles" standard, the court found that BPA need not always charge the lowest possible rates. The concept of lowest possible rate is balanced against sound business principles.
3. The court rejected the California petitioners' challenge to BPA's authority to allocate intertie shares rather than allow for free market competition among non-federal utilities. The court held that "formula allocation," which allows non-federal utilities to make short-term spot sales of surplus power, was reasonable and not arbitrary or capricious. As long as BPA is fair and nondiscriminatory, it has the discretion to allocate excess transmission capacity as it sees fit.

II. ADMINISTRATIVE AND LEGISLATIVE DEVELOPMENTS

A. *Relevant FERC Decisions*

1. Pacific Gas and Electric Co.[25]

In August, 1990, PG&E filed its new interconnection agreement with Sacramento Municipal Utility District (SMUD). WAPA—which is interconnected with both PG&E and SMUD—intervened and argued that the FERC should reject the agreement or, at least, hold a hearing to consider WAPA's claim that SMUD or PG&E should be required to pay for "uncompensated power flows" on the WAPA transmission system. In an October 31, 1990 order, the FERC rejected WAPA's position, stating that "power flows are an unavoidable consequence of interconnected utility operations and that it is up to the interconnected parties, in the first instance, to establish mutually acceptable operating practices." WAPA did not seek rehearing of FERC's order.

2. U.S. Department of Energy—Bonneville Power Administration[26]

On November 14, 1990, the FERC issued an order holding that prefer-

24. 909 F.2d 1298 (9th Cir. 1990).

25. 53 F.E.R.C. ¶ 61,145, (1990).

26. 53 F.E.R.C. ¶ 61,193 (1990), *reversing in part*, 43 F.E.R.C. ¶ 61,032 (1988).

ence and recall provisions applicable to BPA's extra-regional sales did not render the sales nonfirm. Following the guidance provided by the Ninth Circuit's *ALCOA* division,[27] the FERC determined that nonfirm energy is energy that is available to Bonneville as the result of its having water available for power generation in excess of its historic lowest level used to establish its firm power capability.

On December 5, 1990, the FERC issued a final order approving BPA's 1985 surplus firm power and nonfirm energy rate schedules.[28] The FERC determined that BPA may include upward flexibility in its nonfirm rate design, but it is not statutorily required to design its rates to completely offset all of its below-cost sales.

B. Competing Uses of Water at Federal Water Projects

1. Columbia River Basin System Operating Review

As in many other regions of the country, the demands of all users of the rivers in the Pacific Northwest have increased dramatically, creating conflicts among users. The BPA, the Corps of Engineers (Corps), and the Bureau of Reclamation (Bureau) have acknowledged the need to develop methods to address the changing expectations and demands of the rivers' users, and are in the process of developing appropriate procedures and practices.

In the Pacific Northwest, the Corps and the Bureau own numerous federal dams. BPA markets the electricity produced at these dams. Pursuant to federal legislation, the Northwest Power Planning Council adopts a plan for future resource acquisition and fish and wildlife protection and mitigation. The Council's plan includes elements such as an allocation of water to be spilled rather than passed through the project turbines in order to assist migrating fish. The Council's plan must be considered by all federal agencies, but it is not binding. Its implementation may be limited by existing project authority. Despite this planning process, it has become clear that existing legislation and contractual agreements do not cover all of the situations concerning management of rivers in the Pacific Northwest, where responsibility and authority either overlap or result in gaps.

To deal with these uncertainties, the BPA, the Corps, and the Bureau have developed a formal, but not legislatively mandated, administrative proceeding which they have called the "System Operation Review." The end product is supposed to be an agency decision and is supported by legal, scientific, economic, and environmental studies. The public has an opportunity to participate. It is expected that other federal and state agencies and public and private interests will be involved in the process as well. The issues to be addressed include recreation, commercial fishing, navigation, irrigation, and power production. The entire process is expected to take approximately three years.

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27. See *infra* section I.D. for a status report on this case.

28. Order No. 358, *Opinion and Order on Rates and Vacating Initial Decisions*, 53 F.E.R.C. ¶ 61,323 (1990).

2. Corps of Engineers Projects

a. GAO Study of the Corps of Engineers Drought Management

In August, 1990, the Chief Counsel of the Corps and the Missouri River Division Office of Counsel prepared several legal opinions on the question of the U.S. Army Corps of Engineers' discretionary authority with respect to the operation of federal multipurpose dams in the Missouri River Basin. These opinions discuss the Corps' authority to consider recreation under federal statutes relating generally to the civil works program, and under the specific congressional authorization of the Missouri River main stem projects.

These opinions conclude that the Corps has the authority, under statutes of general applicability, to consider recreation in project operations, and to exercise its discretion to accommodate recreational interests to a reasonable degree. However, the memoranda note that certain project uses provided the economic justification for the projects; have been allocated project costs; and are repaying federal investment. Therefore, these uses are considered primary purposes. They include flood control, navigation, hydropower generation, and irrigation. The role of these primary purposes, in economic justification of the projects and repayment, gives rise to compelling legal and equitable arguments for the Corps to continue operating the projects to attain such purposes, with recreation receiving only incidental benefits. To the extent that recreation measures would seriously interfere with the primary project purposes, prior congressional authorization is necessary.

b. Lake Lanier Project Uses Reassignment

For many years the Atlanta Regional Commission (ARC), the agency charged with procuring municipal and industrial water for the Atlanta metropolitan area, had planned to meet a portion of Atlanta's growing water needs by construction of a reregulation dam downstream of Buford Dam at Lake Lanier. In July, 1988, a Corps study concluded that a reallocation of Lake Lanier would yield greater national economic benefits than construction of the reregulation dam. In light of this finding, Sen. Sam Nunn (D-GA) instructed the Governor of Georgia to conduct negotiations among interested parties to effect the reallocation.

At the Governor's request, the Georgia Department of Natural Resources (DNR) called the ARC and power customers to the bargaining table. The reallocation agreement which was negotiated, provides that municipal and industrial water users will pay power customers a lump sum representing the present value of replacement power necessary due to the reallocation.

Downstream interests in Alabama and Florida have raised questions

about the effect the reallocation will have in these states.[29] At this point, the reallocation is stalled, pending completion of a comprehensive study of its effect on the region. This study was ordered in the energy and water development appropriations bill enacted in 1990.[30]

c. Corps Procedural Legislation

Over the past several years, the Corps of Engineers' management of federal multipurpose projects has become increasingly controversial. Disputes over the appropriate uses and priorities with respect to project operation have arisen in a number of areas of the country. In 1989, a coalition of preference customers and others supported a legislative solution to this issue.

The initiative was in response to low water conditions and pressures from competing users of impounded water resources in certain areas of the country. The Corps has since changed project operations, altering the basic economic justification Congress relied upon in authorizing these projects. In many cases, the Corps has not sought congressional approval of these changes. Rather, district engineers have asserted discretion to reallocate water resource benefits administratively to respond to new public demand.

In 1990, a national coalition of hydropower customers, navigation interests, and others was formed to address the questions of (1) the Corps' decision making process with respect to changes in project operation and (2) congressional limitations on Corps management discretion. The coalition, which included representatives of all of the regional associations of preference customers, as well as the National Rural Electric Cooperative Association and the American Public Power Association, proposed legislation to require the Corps to follow an open and principled decision making process when making changes in project operations. This legislation would have:

(1) Required the Corps to follow an open, regularized process in which all affected parties could participate, before proposing changes to management plans which would alter the use of impounded water;
(2) Provided that the Corps would consider specifically whether a proposed change was consistent with the economic basis on which the project was authorized; and
(3) Required the Corps to seek congressional approval of any change which altered the economics or authorized uses of the projects.

The Senate included provision which addressed these issues in its Water Resources Development bill.[31] The bill sets forth a decisionmaking structure which the Corps would be required to follow prior to making fundamental operational changes, to assure that such changes do not violate the laws which authorized construction.

29. *See infra* section I.F. discussing Alabama's challenge to Corps' interim allocation proposals for Lakes Lanier, Carter, and Allatoona.

30. H.R. 5019, 101st Cong. 2d Sess. (1990).

31. S. 2740, 101st Cong., 2d Sess. § 308 (1990).

The House counterpart[32] contained a provision which would have required the Corps to develop an operational plan for each reservoir; provide notice and opportunity for comment before changing the management plan; and submit proposed management plans to Congress ninety days before implementation.

In conference, the House and Senate negotiators agreed to delete both provisions and to revisit this topic in 1991. The conferees agreed to require the Corps to perform a study of existing operations and congressional authorizations in order to provide a basis for future legislation.

3. Reclamation Projects

a. Lake Andes-Wagner/Marty II

An effort to establish and fund a five-year irrigation drainage demonstration project, and to authorize the Lake Andes-Wagner and Marty II units, which would be units of the South Dakota Pumping Division, Pick-Sloan Missouri Basin Program, failed along with other provisions of an omnibus reclamation "authorization and adjustment" bill.[33] Had it been enacted, the Lake Ades-Wagner/Marty II proposal also would have provided funds for a South Dakota Biological Diversity Trust to protect and restore South Dakota's plant and animal environment.

b. Shasta Dam

Several legislative efforts to protect and restore fish and wildlife populations and associated habitat in California's Central Valley were left unfinished when the 101st Congress adjourned. Similar legislation is expected to be introduced early in the new Congress and, again, power customers are expected to be assigned a sizeable portion of the cost of any fish and wildlife project.

In the meantime, cold water releases at Shasta Dam were continued in 1990 as a means of improving salmon spawning in the Sacramento River below the dam. These releases—a decision of the Bureau of Reclamation, the Fish and Wildlife Service, and analogous California state agencies—reduce the amount of power generated at Shasta because the turbines are bypassed. Consequently, replacement power must be purchased to satisfy WAPA's contracts with federal power customers.

Power customers have been paying the full cost of the replacement power despite their protests. A provision was included in the fiscal year 1991 energy and water development appropriations bill,[34] making the cost of replacement power resulting from these cold water releases after January 1, 1986, a nonreimbursable federal expense.

32. H.R. 5314, 101st Cong., 2d Sess. § 16 (1990).
33. H.R. 2567, 101st Cong., 2d Sess. (1990).
34. H.R. 5019, 101st Cong., 2d Sess. (1990).

C. *The Central Utah Project Authorization Ceiling*

Legislation authorizing completion of the Central Utah Project (CUP) stalled in the final days of the session as Congress failed to enact an omnibus reclamation bill which contained the CUP provisions. When finished, CUP—part of the Colorado River Storage Project (CRSP)—will provide municipal, industrial, and irrigation water to residents of Utah.

Completion of construction of the CUP irrigation and drainage features is contingent upon the CRSP authorization ceiling being raised by Congress. For the past three years such efforts have resulted in an intense debate about the future of the project, the appropriateness of constructing irrigation projects, the need and repayment responsibility for environmental mitigation and enhancement, and the role of federal power customers in these issues.

In its final form, the CUP bill authorized completion of the irrigation and drainage facilities and funded a lengthy list of environmental mitigation and enhancement measures, and created a Utah state commission to oversee project mitigation efforts. An amendment offered by Rep. Gerald Solomon (R-NY) that would have required CRSP power customers to pay a three million dollar per year surcharge for mitigation of fish and wildlife impacts of CUP was defeated. CUP is an irrigation project with no power generation.

D. *Glen Canyon*

In July, 1989, the Department of Interior initiated an environmental review under the National Environmental Policy Act (NEPA) of the impact of the current operations of Glen Canyon Dam on the Grand Canyon. Because of concerns that current operations, if allowed to continue while an environmental impact statement (EIS) was conducted, would irreparably harm the Grand Canyon, legislation was introduced this Congress to establish, among other things, interim operating criteria. Glen Canyon is one of four CRSP storage units.

The legislation imposing operating parameters for Glen Canyon died in the final days of the 101st Congress. Provisions of the bill: (1) required interim operating criteria prior to completion of the pending Glen Canyon EIS; (2) established guidelines for the long-term operation of the project to meet environmental and recreational objectives; and (3) created a long-term monitoring program.

The House passed its version of the Glen Canyon legislation.[35] The Senate companion bill[36] was amended by the Senate Energy and National Resources Committee and included as part of the omnibus reclamation projects bill.[37] The Senate passed the omnibus reclamation projects bill but it later stalled in the House because of conflicts over reclamation reform.

Senator John McCain has announced his intention to reintroduce the Glen Canyon legislation as a Senate bill in the 102nd Congress.

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35. H.R. 4498, 101st Cong., 2d Sess. (1990).
36. S. 2807, 101st Cong., 2d Sess. (1990).
37. H.R. 2567, 101st Cong., 2d Sess. (1990).

E. Integrated Resource Planning by Power Marketing Agencies

Under the direction of the Department of Energy (DOE), the PMAs are beginning to explore the feasibility of developing "integrated resource planning" programs. BPA already has such a program, fashioned under the authority of the Northwest Power Act. WAPA has commenced development of a program in consultation with its customers. Other PMAs may follow suit, although the relatively smaller role played by preference power in meeting customer needs in the Southeastern and Southwestern Power Administration regions may vitiate the application of integrated resource planning programs originating from these regional PMAs.

F. Clean Air Act

1. Acid Deposition Control

Title IV of the Clean Air Act Amendments of 1990 limits sulfur dioxide and nitrogen oxides emissions produced by fossil fuel combustion devices that produce electric energy.

Section 402(a) affects contracts for the exchange of electric energy for hydropower supply. The effect of this provision is that utilities arranging to supply electric energy to PMAs under exchange agreements for hydropower must provide any necessary allowances. If actual hydropower supply falls below contractual expectations and the utility must supply electric energy to the PMA from a fossil fuel source, section 402 requires the utility and not the PMA to obtain the allowances necessary for the additional electric energy.

Section 402(b) specifically exempts PMAs from the provisions and requirements of the Act but does not exempt persons selling or providing electric energy to a PMA.

2. Visibility

Section 816(a) authorizes EPA and the National Park Service to perform a five year study of sources and source regions of visibility impairment and regions that provide predominantly clean air. The research is to include expansion of current visibility related monitoring in class I areas, assessment of current sources of visibility impairing pollution and clean air corridors, adaptation of regional air quality and clean air corridors, adaptation of regional air quality models for the assessment of visibility, and studies of atmospheric chemistry and physics of visibility. EPA is to provide interim findings of the study within three years.

Under section 816(b), within two years, and every five years thereafter, EPA is to assess the progress and improvements in visibility in class I areas under the Clean Air Act.

Section 816(c) also authorizes EPA to create Visibility Transport Commissions for the study of adverse impacts on visibility from potential or projected growth in emissions for sources located in the Visibility Transport Regions. EPA is specifically authorized to create a Visibility Transport Commission for the region affecting visibility in the Grand Canyon. Within four

years after establishment, the Commissions are to report to EPA recommending measures for remedying the adverse impacts.

G. Proposals to Modify PMA Repayment

Congress did not change the repayment policies of the PMAs in 1990 despite continued Administration efforts to do so. Administration efforts included a proposal in the fiscal year 1991 budget to alter repayment schedules, followed by several attempts to win approval of repayment changes during the White House/Congressional budget summit.