BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Burdensome And Unnecessary Reporting Requirements Of The Public Utility Regulatory Policies Act Need To Be Changed

The Public Utility Regulatory Policies Act of 1978 establishes ratemaking and regulatory standards for electric utilities. The act requires the Department of Energy to annually report to the Congress on State and utility actions. The act also requires utilities to file cost-of-service data biennially with the Federal Energy Regulatory Commission.

The Department of Energy is unclear on the specific contents of the annual reports after the third one, due in 1982, and similar data is available from other sources. Further, the cost-of-service data requirements are burdensome and costly to utilities, and of little current use to States and intervenors.

GAO, therefore, recommends that the Congress repeal the annual reporting requirement effective after the third annual report, and that the Federal Energy Regulatory Commission review and revise its cost-of-service reporting regulations to reduce the burden on utilities. If this review finds the reporting costs to be greater than the reporting benefits, the Commission should ask the Congress to repeal the cost-of-service reporting requirement.

EMD-81-105
SEPTEMBER 14, 1981

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report addresses the need to continue two sections--116 and 133--of the Public Utility Regulatory Policies Act of 1978. Title I of the act was established to encourage conservation of energy supplied by electric utilities, efficiency in use of facilities and resources by these utilities, and equitable rates to electricity consumers. Section 116 requires annual reporting by State regulatory authorities, nonregulated electric utilities, and the Department of Energy, on their status in complying with parts of the act relating to consideration of retail electric regulatory and ratemaking standards. Section 133 of the act requires certain utilities to biennially submit extensive cost-of-service filings to the Federal Energy Regulatory Commission and their respective State regulatory authorities.

We conducted this review to assess the continued need for the legislation in light of proposed administration budget reductions affecting section 116 compliance, and the undetermined usefulness of the section 133 submissions.

Copies of this report are being sent to the Director, Office of Management and Budget; the Secretary of Energy; the Chairman, Federal Energy Regulatory Commission; and the House and Senate Committees and subcommittees having oversight responsibilities for the matters discussed in the report.

Milton J. Socolar

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

BURDENSOME AND UNNECESSARY REPORTING REQUIREMENTS OF THE PUBLIC UTILITY REGULATORY POLICIES ACT NEED TO BE CHANGED

D I G E S T

In November 1978, the Congress passed the Public Utility Regulatory Policies Act. Title I of the act, which addresses retail rate and regulatory policies for electric utilities, was established to encourage conservation of energy supplied by electric utilities, efficiency in use of facilities and resources by these utilities, and equitable rates to electricity consumers. Title I requires each State regulatory authority, in the case of every electric utility for which it has ratemaking authority, and nonregulated electric utilities to consider and determine whether adoption or implementation of 11 ratemaking and regulatory standards is appropriate to achieve the purposes of the act. (See p. 1.)

States and utilities were given three years to complete the process. In addition, States and utilities are required by section 116 to report to the Department of Energy (DOE) on the status of their actions for 11 years. Section 116 further requires DOE to report to the President and the Congress annually for 11 years summarizing State and utility input and DOE actions under title I, and making recommendations on additional Federal actions needed to achieve the purposes of title I. (See p. 2.)

Section 133 of the act requires utilities to file biennially with the Federal Energy Regulatory Commission (FERC) and States extensive cost-of-service data. The legislation does not contain an ending date for the filings. (See p. 2.)

WHY THE REVIEW WAS MADE

GAO initially focused on seven potential problem areas faced by the Federal Government, States, and utilities in complying with title I of the act. Due to proposed administration budget cuts in carrying out title I activities, GAO rescoped the review to address the need to continue major sections--sections 116 and 133--of title I that are legislatively mandated to continue after 1981.

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Tear Sheet

GAO looked specifically at section 116 because DOE is undecided regarding the specific contents of the annual reports to be prepared after the third one. GAO looked specifically at section 133 to determine the cost to utilities to prepare the data and to determine the use of the submissions by the Federal Government since there is no mandated use. (See p. 3.)

QUESTIONABLE NEED FOR CONTINUED ANNUAL REPORTS

States and nonregulated utilities must complete the consideration and determination of the standards by November 9, 1981, and DOE's second annual report projects this will occur. DOE plans to include information on the last 16 months of the 36 month consideration and determination time frame in its third annual report. Although no fiscal year 1982 money is budgeted for preparation of the annual report, DOE officials said that some staff would be devoted to preparing the third annual report. (See pp. 6 and 10.)

DOE is unclear regarding the specific contents of the annual reports after the third one. DOE believes the contents should focus on the status of the consideration process, not the actual implementation of the standards. (See p. 6.)

The preparation of future annual reports is jeopardized by the administration's proposed budget cuts. The effectiveness of the DOE annual reports is somewhat weakened by untimely and nonverified information on actual State and utility progress in considering and making a determination on the standards. (See p. 8.)

Information on State and utility ratemaking status is available from sources other than DOE. Some of the data is more timely than the material presented in DOE's annual report. (See p. 8.)

COSTLY AND BURDENSOME COMPLIANCE WITH SECTION 133

The act requires over 250 electric utilities with annual retail sales exceeding 500 million kilowatt-hours (kWh) to comply with section 133. FERC's implementing regulations require about 170 utilities--those with annual retail sales greater than one billion kWh--to initially file on November 1, 1980 and requires the remaining smaller utilities to initially file by June 30, 1982. The number of utilities in a State required to file ranges from 1 to 24. (See p. 15.)

There is wide variance among utilities regarding the cost to comply with section 133. However, utilities

generally said it is expensive. Officials at some small utilities stated that section 133 costs were especially burdensome to them. Despite serving fewer customers, the load research sample requirements for small utilities are nearly as large as those of the much larger utilities. (See p. 15.)

According to both FERC and utilities, some of the information required by section 133 duplicates information already collected by the Federal Government. FERC's involvement with the filings is limited to authorizing exemption and extension requests, reviewing the filings for completeness, and serving as a repository for the filings. (See pp. 13 and 14.)

The current use of the section 133 filings by the Federal Government, States, utilities, and special interest groups is minimal. However, the initial filings--submitted in November 1980--are recent. The content, analyses, and potential use of the data has yet to be thoroughly reviewed by States and special interest groups. (See p. 12.)

RECOMMENDATIONS TO THE CONGRESS

GAO recommends that the Congress

--ensure, through the appropriations process, that DOE has sufficient priority to prepare and submit its third annual report to the President and the Congress in a timely fashion. The third report would address actual State and utility progress for the last 16 months of the 36 month consideration and determination process.

--repeal section 116 of the act effective after the completion of DOE's third annual report. This would reduce the paperwork burden on both the Federal Government and the private sector, and eliminate the cost ultimately borne by the individual taxpayer. If there is future interest in the ratemaking status of States and utilities that is not satisfied by available reports, the Congress can request the preparation of such reports at future times. (See p. 19.)

RECOMMENDATION TO THE CHAIRMAN, FERC

GAO recommends that the Chairman, FERC, review and, as appropriate, revise its regulations for implementing

section 133 in order to reduce the cost and burden on utilities. In doing so, FERC should, before the next filings are due,

--review the extent to which data collected under section 133 duplicates other data submitted to the Federal Government,

--assess whether the number of utilities required to comply with section 133 should be reduced in terms of size, number of utilities reporting per State, etc., and

--determine whether the data is actually being used by the parties for which it was intended and the benefits received from use of the data.

If FERC finds that it is cost beneficial to amend its regulations to reduce the number of utilities required to comply with section 133, it should seek such authority from the Congress. However, if FERC shows that overall the costs to utilities to comply with section 133 are greater than the benefits (as demonstrated through the use of the submissions) to States, special interest groups, and other potential users of the filings, then FERC should request that the Congress repeal the section.

AGENCY COMMENTS

GAO requested official DOE and FERC comments on a draft of this report. FERC did not provide official comments. (See p. 20.)

DOE agreed that it should provide sufficient priority to prepare and submit its third annual report in a timely fashion, and that section 116 of the act should be repealed after the completion of the third annual report. (See p. 21.)

DOE disagreed with a proposal in GAO's draft report that section 133 of the act be repealed. DOE believed that the repeal of section 133 would be premature; DOE felt that insufficient time had elapsed since the initial filings to assess the usefulness of the filings to States and intervenors. DOE favored a streamlining of the section 133 requirements, including a reduction in the number of utilities required to report. After considering DOE's reasons for not repealing section 133, GAO is recommending that FERC perform a thorough review of the regulatory burden and the use of information with a view toward possible streamlining and, if appropriate, repeal of the requirement.

Contents

ABBREVIATIONS

APPA	American Public Power Association
DOE	Department of Energy
FERC	Federal Energy Regulatory Commission
FPC	Federal Power Commission
FY	Fiscal year
GAO	General Accounting Office
kWh	kilowatt-hours
NARUC	National Association of Regulatory Utility Commissioners
PURPA	Public Utility Regulatory Policies Act

GLOSSARY

Advertising standard	As defined by PURPA, no electric utility may recover from any person other than the shareholders (or other owners) any direct or indirect expenditure by such utility for promotional or political advertising.
American Public Power Association (APPA)	A national service organization representing over 1400 publicly-owned and locally regulated electric utility systems in 46 States, Puerto Rico, Guam, and Virgin Islands.
Automatic adjustment clause standard	As defined by PURPA, no electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause is determined to provide efficiency incentives at least every 4 years and reviewed to ensure maximum economies at least every 2 years.
Cost-of-service standard	As defined by PURPA, 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.
Covered utility	As defined by PURPA, a utility having total sales of electricity for purposes other than resale exceeding 500 million kilowatt hours in any calendar year beginning with 1976 and before the immediately preceding calendar year.
Declining block rate standard	As defined by PURPA, the energy component of a rate, or the amount attributable to that component, charged by an electric utility for providing electric service during any period for any consumer class, may not decrease as the class' kwh consumption increases during such period unless the utility can demonstrate that the cost attributable to the energy component is decreasing.

Edison Electric Institute (EEI)	The association of investor-owned electric utility companies in the United States. Its members generate 78 percent of all the electricity in the country and service more than 77 percent of all ultimate customers in the Nation.
Electric Power Research Institute (EPRI)	A national organization representing the Nation's electric utility industry--public, private, and cooperative--which conducts a broad program of research and development in technologies for electric power production, transmission, distribution, and utilization that is economically and environmentally acceptable.
Electricity Consumers Resource Council	An organization of industrial electricity consumers who advocate policies on electricity availability and rates.
Information to consumers standard	As defined by PURPA, each electric utility shall transmit to each electric consumer information regarding rate schedules within certain time periods.
Interruptible rate standard	As defined by PURPA, a rate offered to each industrial and commercial electric consumer that shall reflect the cost of providing interruptible service to the class of which such consumer is a member.
Kilowatt-hour (kwh)	A basic unit of electric energy equal to 1 kilowatt of power supplied steadily for 1 hour.
Load management techniques standard	As defined by PURPA, each electric utility shall offer to its electric consumers load management techniques that the State or nonregulated utility determines is (a) practicable and cost-effective, (b) reliable, and (c) capable of providing useful energy or capacity management advantages to the electric utility.
Master metering standard	As defined by PURPA, master metering of new buildings is prohibited or restricted.

National Association of Regulatory Utility Commissioners (NARUC)	A quasi-governmental nonprofit organization which represents the governmental agencies of the 50 States, District of Columbia, Guam, Puerto Rico, and the Virgin Islands engaged in the regulation of utilities and carriers. Its chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of public regulation in America.
Nonregulated electric utility	PURPA defines a nonregulated electric utility as any electric utility other than a State-regulated electric utility.
Procedures for termination of electric service standard	As defined by PURPA, an electric utility may not terminate electric service to any electric consumer except when (1) reasonable prior notice is given to the consumer and such consumer has had a reasonable opportunity to dispute the action, and (2) the State or the nonregulated utility has established that the service termination is not dangerous to the health of the consumer, and such consumer establishes their inability to pay in accordance with utility billing requirements or ability to pay only in installments.
Seasonal rates standard	As defined by PURPA, rates charged by an electric utility for providing electric service to each electric consumer class shall be on a seasonal basis reflecting the costs of providing service to each class at different seasons of the year (to the extent costs vary seasonally for such utility).
State regulatory authority	Any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility (other than such State agency), and in the case of an electric utility over which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

Time-of-day rates standard	As defined by PURPA, rates charged by any electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis reflecting the costs of providing electric service to each class at different times of the day.

CHAPTER 1

INTRODUCTION

In response to our energy problems, the Congress passed five separate acts on November 9, 1978, collectively known as the National Energy Act. The Public Utility Regulatory Policies Act (PURPA) (P.L. 95-617), one of the 5 acts, addresses retail regulatory policies for electric and gas utilities, small hydroelectric power projects, crude oil transportation, and certain Federal energy authorities. Now after more than two and one-half years, major mandatory responsibilities under title I of PURPA are nearing their compliance deadlines.

BACKGROUND

Title I of PURPA deals with electric utility retail ratemaking and regulatory policies. The three purposes of title I are to encourage:

--conservation of energy supplied by electric utilities,
--optimum efficiency in use of facilities and resources by electric utilities, and
--establishment of equitable rates for consumers.

Title I requires each State regulatory authority (State), with respect to each utility for which it has ratemaking authority, and each nonregulated electric utility to consider and determine, after public notice and hearing, whether adopting five regulatory standards 1/ and implementing six ratemaking standards 2/ are appropriate to carry out the purposes of the title. The consideration and determination is required only for those utilities with annual retail electric sales exceeding 500 million kilowatt-hours (kWh). To assist in this process, title I authorized a maximum of $40 million in grants for States and nonregulated utilities for fiscal years 1979 and 1980 of which $10 million was appropriated and granted in each of the fiscal years.

1/The five regulatory standards are: master metering, information to consumers, procedures for termination of service, advertising, and automatic adjustment clause.

2/The six ratemaking standards are: cost-of-service, declining block rates, time-of-day rates, seasonal rates, interruptible rates, and load management techniques.

In general, States and nonregulated utilities must complete their consideration and determination process for the five regulatory standards by November 9, 1980, and for the six ratemaking standards by November 9, 1981. Even though the process should be completed by late 1981, States and nonregulated utilities are required by section 116 to report annually for 11 years, beginning in 1979, to the Department of Energy (DOE) on their progress in the consideration and determination process. DOE is also required by section 116 to report annually for 11 years, beginning in 1980, to the President and the Congress on DOE actions under title I and on State and utility progress on the standards. However, DOE is undecided regarding the specific contents of the annual reports to be prepared after the third one. The DOE report is due six months following State and utility submissions to DOE. DOE may also make recommendations in its annual report to the President and the Congress for any new or expanded Federal activities, including legislation, deemed necessary to achieve the purposes of title I. The annual reporting requirement is the major title I provision affecting DOE that is mandated to continue after 1981.

Section 133 requires electric utilities to file extensive cost-of-service data biennially with the Federal Energy Regulatory Commission (FERC) and States. The Congress intended that cost-of-service information be readily available on a timely basis to all concerned parties. The data is expected to be used by interested parties in retail electric rate proceedings. FERC must prescribe the methods, procedures, and format to be used by electric utilities in gathering such information. FERC regulations require that detailed data be submitted on accounting and marginal costs and calculations, and load research. The first filing for utilities with annual retail sales over one billion kWh was due in November 1980 and allowed for "best estimate" load research data. Utilities with annual retail sales between 500 million kWh and one billion kWh must initially file in June 1982. All filings after 1980 must be based on actual load sampling. The legislation does not specify an expiration date for the reporting requirement. No grant funds were authorized to States for use by their regulated utilities to satisfy the cost-of-service reporting requirement of section 133. Nonregulated utilities, however, could and did use some DOE grant funds for section 133 activities.

Legal environment

The future of title I is clouded by a February 20, 1981, Federal district court decision in Mississippi that found titles I and III and section 210 of PURPA 1/ unconstitutional.

1/Title III of PURPA addresses retail policies for natural gas utilities and section 210 addresses cogeneration and small power production.

In that decision, the court viewed PURPA as an attempt by the Federal Government to assume intrastate regulation of public utilities. The court reasoned that Congress's regulatory power extends only to commerce and that the Commerce Clause of the Constitution does not authorize the type of regulation established by Congress in PURPA.

The Solicitor General, representing DOE and FERC, requested Supreme Court review of the decision. Direct appeal to the Supreme Court, rather than to a lower appellate court, is allowed in cases involving the constitutionality of a Federal law (28 U.S.C. 1252). Prior to adjourning for the summer, the Supreme Court docketed the case and arguments may be heard as early as the fall. In its memo to the Solicitor General requesting an appeal, the Department of Justice argues that the challenged sections do not significantly intrude on State authority since States are free to choose whether or not to adopt or implement any of the standards.

Pending Supreme Court decision, the application of the Mississippi decision to other States is unclear. The Mississippi decision only affects a few provisions of title I of PURPA since actions under the other sections have either already been completed or will shortly be so.

OBJECTIVE, SCOPE, AND METHODOLOGY

The initial objective of our review was to focus on seven potential problem areas faced by the Federal Government, States, and utilities in complying with title I of PURPA. However, due to proposed administration budget cuts in carrying out title I, we rescoped our job to address major sections of title I that are legislatively mandated to continue after 1981. The refocused objective of our review was to address the need to continue

- --section 116 which requires preparation of annual reports by DOE, States, and nonregulated utilities on the status of the consideration and determination process; and

- --section 133 which requires utilities to submit biennially to FERC cost-of-service filings containing detailed information on accounting and marginal costs and calculations, and load research.

We looked specifically at section 116 because DOE is undecided regarding the specific contents of the annual reports to be prepared after the third one. The status of the consideration and determination process--the major content of the annual reports--through the completion of the mandatory time frames

is expected to be addressed in the third annual DOE report, planned to be issued in June 1982. We looked specifically at section 133 to determine the cost to utilities to prepare the data and to determine the use of the submissions by the Federal Government since there is no mandated use.

We addressed the current status of these sections in terms of two key criteria: cost and effectiveness. Cost is a major element in the development, implementation, and continuation of programs. Our report addresses costs incurred by the Federal Government, States, and utilities in complying with and implementing section 116 and the cost to utilities to comply with section 133. Regarding effectiveness, we assessed actual use, accuracy, timeliness, and the need for the data.

To accomplish our objective, we contacted officials at the Department of Energy, Federal Energy Regulatory Commission, the Department of Justice, 16 State commissions, 10 nonregulated utilities, 11 regulated utilities, and several special interest groups. These organizations represent the primary parties involved in implementing sections 116 and 133. We attempted to select a broad range of States and utilities based on size, activities prior to and subsequent to PURPA, and geographic location. Further, we reviewed all DOE annual reports to the President and the Congress, annual progress reports to DOE from the States and nonregulated utilities we contacted, the DOE budget, section 133 cost-of-service filings from 15 utilities representing filings of voluminous material and some with minimal data, DOE and FERC regulations addressing sections 116 and 133, the transcripts of congressional hearings on PURPA, the House/Senate Conference report, title I legislation, and other reports from various Federal agencies, States, utilities, the Electric Utility Rate Design Study, and special interest groups to obtain information on compliance requirements and progress.

Our report focuses on only two sections of title I and should not be construed as providing a complete and thorough assessment of the remaining sections of title I. Our review did not address such areas as the adequacy of the consideration and determination process, development of voluntary guidelines by DOE, administration of grant funds to States and nonregulated utilities, intervention by DOE and others in ratemaking proceedings, and intervenor compensation. We also did not address section 114 dealing with lifeline electric rates for residential consumers because lifeline is often considered more of a social issue than an energy issue. Life-

line rates--rates generally set below the cost-of-service in order to provide a subsistence level of electric energy--often conflict with the purposes of title I.

CHAPTER 2

NEED FOR FUTURE ANNUAL REPORTS IS QUESTIONED

The effectiveness of the annual reports mandated by section 116 of PURPA is somewhat weakened by untimely and non-verified information on actual State and utility progress in considering the standards, and the lack of a reporting category to correspond to actual activities on the status of the consideration and determination process. In addition, similar information is available from alternative sources. Further, proposed administration budget cuts jeopardize future annual reports.

STATUS OF CONTENTS OF DOE ANNUAL REPORT

The DOE annual report required by section 116 provides a status report on the mandatory consideration and determination process. DOE believes that the reports should not focus on the actual implementation of the standards. According to DOE's second annual report, which was dated May 1981, and reflects State and utility activities under title I through June 30, 1980, most States and nonregulated utilities will complete considering and making a determination on adopting and implementing the 11 standards by the statutory deadlines. Additional statistics reported by DOE show the status of the consideration and determination process for the regulatory and ratemaking standards. Status is divided into: process begun, process completed, and percentage adopting/implementing 1/ the standard where process is completed.

1/According to the DOE annual report, adoption and implementation are synonymous for the ratemaking standards.

Standard	Percentage of covered electric utilities in each category as of June 30, 1980: Process Begun	Process Completed	Adoption/ Implementation where process completed
Regulatory standard			
Master metering standard	82	47	79
Automatic adjustment clause standard	77	51	55
Information to consumers standard	75	35	90
Termination of service standard	89	54	99
Advertising standard	86	48	78
Ratemaking standard			
Cost-of-service standard	73	23	97
Declining block rate standard	70	27	93
Time-of-day rate standard	70	22	78
Seasonal rate standard	71	22	68
Interruptible rate standard	66	16	76
Load management techniques standard	66	21	90

Even though States and nonregulated utilities adopted the standard as appropriate to promote the purposes of the act, our work indicated that actual implementation of the standards has been limited because (1) States and utilities have not yet developed the standard-based rates and (2) customers have not yet accepted the rate if it is voluntary.

Little anticipated effect on status from court case

Although DOE's annual report was issued after the Mississippi Federal district court found title I unconstitutional, it appears that the completion of the consideration and determination process within the mandated time frames will not be unduly affected. The mandatory two year time frame for the five regulatory standards expired before the court decision. There were less than nine months remaining in the three year consideration and determination process for the six ratemaking standards when the court made its decision. Following the decision, the National Association of Regulatory Utility Commissioners (NARUC), on February 26, 1981, approved a resolution asking States to continue implementing PURPA requirements until completion of the Federal appeal process. The States are responsible for con-

ducting the consideration and determination process for about 80 percent of utilities covered by title I. Contrary to the position of NARUC, the American Public Power Association (APPA) has called for repeal of title I because it believes the money spent to comply with title I does not justify the benefits. APPA justifies this position by stating that some municipal utilities spent hundreds of thousands of dollars to prepare for hearings and had no citizens show up. APPA adds that the annual reports required under section 116 are burdensome.

While discussion with DOE staff indicated some uncertainty about State and nonregulated utility compliance with title I, DOE did point out that many States are "well into" the consideration and determination process and will probably complete it in spite of the Mississippi case. There is only one State--Texas--that has decided to discontinue the title I process until a Supreme Court decision. According to DOE officials, DOE activities under title I have not been curtailed as a result of the Federal district court decision.

EFFECTIVENESS OF THE REPORTS

The effectiveness of the annual report is somewhat weakened by untimely and potentially inaccurate data as well as lack of a reporting category to correspond to actual activities. The requirements of section 116 were designed, among other things, to provide the President and the Congress with information regarding the current status of State and utility progress under title I. As discussed in our recent report 1/ on the need to improve the timeliness of the third annual reports, we found that under existing reporting procedures the information contained in the reports is 4 months old when submitted from States and nonregulated utilities to DOE and 10 months old when reported from DOE to the President and the Congress. Because the data contained in the DOE annual report is out of date when submitted to the President and the Congress, the effectiveness of the report in providing up-to-date information for congressional oversight activities is reduced. Although DOE believes the timeliness of the data in the annual reports should be improved, it has taken no definite steps to correct this situation.

In addition to the issue of timeliness, DOE has not established a monitoring system to assure accuracy of data sub-

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1/"The Department of Energy Needs to Improve the Timeliness of the Third Annual Reports on Title I of the Public Utility Regulatory Policies Act," EMD-81-56, April 28, 1981.

mitted. Further, States voiced concern that the first two response categories regarding status of the consideration and determination process do not accurately reflect the actual stages of the compliance process. The first two status categories are: (1) process not begun and (2) hearing date set but hearings not begun. States pointed out that much activity occurs prior to establishing a hearing date, but the DOE reporting form does not recognize this. Consequently, States believed their rate of progress was underestimated, mainly in the early phases of compliance. This concern is mitigated now because most States have at least established a hearing date. Because of the concerns about the timeliness and accuracy and appropriate reporting categories of the data, States have questioned the value of the annual reports.

ALTERNATIVE SOURCES OF INFORMATION

In addition to the DOE annual report, information pertaining to State and utility progress in the ratemaking area is available from other sources. In 1975, NARUC, with the Electric Power Research Institute, the Edison Electric Institute, the American Public Power Association, and the National Rural Electric Cooperative Association, initiated the Electric Utility Rate Design Study. This study, which has prepared over 80 reports, is designed to increase the regulators' and industry's knowledge of rates and their impacts on energy consumption and utility operations. In January 1981, the NARUC voted to continue funding the Rate Design Study.

In August 1980, NARUC polled its members regarding their progress in complying with title I. In its letter to States, NARUC stated the purpose of its study was to:

> "* * *obtain accurate, current data on the States' PURPA progress. This is a very important questionnaire. We believe it is essential for NARUC to have the accurate, current information the questionnaire seeks so that NARUC will be prepared to respond promptly, fully, and persuasively to Congressional committees which continue to express interest and concern about the progress being made under the voluntary regulatory and ratemaking standards of PURPA. The information you provide will also permit us to clear up some of the confusion that may have been caused by flaws and ambiguities in the Department of Energy's own questionnaire on PURPA."

NARUC's final report, issued December 1, 1980, contained less detailed but more timely information on the State and utility consideration process.

COST OF COMPLYING WITH SECTION 116

When submitting the annual report form for approval to the Office of Management and Budget in 1979 and 1980, DOE provided estimated figures on the staffhours, but not cost, that States and nonregulated utilities used to complete the paperwork required by section 116. In addition, DOE estimated the cost, but not staffhours, to the Federal Government to develop, print, and distribute the form and collect and analyze the results. Listed below are the estimated figures:

Total staffhours to complete form a/	1979	1980
States	6,440	3,928
Nonregulated utilities	3,880	2,366
Total cost to Federal Government b/	$182,535	$259,160

a/DOE explained the reduction in State and utility staffhours as due to clarification of the form and a reduction in data collection requirements.

b/The cost to the Federal Government increased mainly in the area of data analysis.

IMPACT OF BUDGET REDUCTIONS ON ANNUAL REPORTING

Title I requires that DOE continue to prepare an annual report through 1990. However, the administration's proposed fiscal year 1982 budget severely reduces the appropriations for Utility Programs, the DOE office responsible for implementing title I. 1/ DOE's budget for Utility Programs has been reduced from a fiscal year 1980 appropriation of about $29 million, to a fiscal year 1981 appropriation of $17 million, to a fiscal year 1982 request of $5 million. This represents an 83 percent reduction between 1980 and 1982.

1/On May 8, 1981, the Office of Utility Systems' programs were dispersed but not eliminated. The two offices involved in title I work--Rates and Energy Management and Regulatory Interventions--were transferred to Office of Program Operations.

According to DOE's proposed fiscal year budget for Utility Programs,

> "The FY 1982 request reflects resources for the Power Supply and Reliability acitivity to continue programs* * * No funds are requested in FY 1982 for either the Rates and Energy Management activity or the Regulatory Interventions program. Both of these activities aided State utility commissions in complying with the Public Utility Regulatory Policies Act of 1978 (PURPA)."

The budget proposals indicate that no further money is explicitly requested for title I although DOE officials told us that some DOE staff will be devoted to preparing the third annual report. DOE staff are unclear on when the third annual report will be issued and how in-depth the report will be.

CHAPTER 3

COST AND BURDEN OF COMPLYING WITH SECTION 133 IS NOT JUSTIFIED BY USE

The development of data satisfying section 133 requirements is an expensive undertaking for utilities with limited current use. However, utilities have only recently submitted their first filings. The content, analyses, and potential use of the data has yet to be thoroughly reviewed by States and special interest groups. This chapter focuses on (1) use of the data by FERC, DOE, States, and other entities, and (2) the utility costs of compliance.

CURRENT USE OF DATA LIMITED

The Congress intended that cost-of-service information be readily available on a timely basis to all concerned parties. The data is expected to be used by interested parties in retail electric rate proceedings. Potential users of the data include the Federal Government, State governments, and intervenor and special interest groups. According to FERC, "the required information is expected to be used, at least initially, on a case-by-case basis, involving one utility or a very small number of utilities." Our work indicates that little use has been made of the 133 data and no definite plans have been made to use the data in the immediate future. However, the filings are recent. Most of the first submissions--for utilities with annual retail sales exceeding one billion kWh--were submitted in November 1980. According to both DOE and FERC, it is too early to determine whether future filings are needed. The contents and potential use of the submissions are currently in the process of being reviewed by States and special interest groups. Some States and special interest groups indicated they might use the filings, although they generally could not specify exactly how or when. According to FERC, it may take several filings for States and other potential users to educate themselves on the contents, and determine the usefulness, of the data.

State, utility, and Federal officials pointed out some drawbacks to the data which limit its use, including (1) some of the load research data is "best estimate" and not "actual," (2) the data has not been reviewed by the States or Federal Government for accuracy or completeness, (3) there is non-comparability of the data among utilities due to different reporting periods and non-uniform format, and (4) information is frequently outdated for use in rate hearings. There was some concern among a few States that utilities are simply

"filling in numbers" in order to meet reporting deadlines. Four utilities confirmed that view, telling us they were not really satisfied with their submissions, but filed them anyway to meet deadlines.

Use of data by Federal Government

Although title I requires that utilities prepare detailed operating cost data and submit it to FERC, FERC's involvement with the filings to date has been limited to authorizing utility requests for exemptions and extensions, reviewing the submissions for completeness, and serving as a repository for the filings. FERC has no plans to specifically use the data. Likewise, DOE is not required by law to use the data and has no definite plans to use it. Neither DOE nor FERC is preparing to report to the Congress on section 133.

FERC processed exemption requests from 44 utilities and extension requests from 37 utilities for the 1980 filing. Over 150 utilities were required to file in 1980. FERC had planned to review by February 1981 all utility submissions for completeness, i.e., assure that data had been provided on 63 factors. As of July 31, 1981, this had not been done and FERC could not project when this would be completed. FERC has no definite plans on following up with utilities that have not submitted all the required data.

FERC is not required to verify the accuracy of the data submitted, and has no plans for doing so. DOE officials responsible for title I stated that they will probably look at some of the filings but had no immediate plans to use the data. DOE intervention staff, which has intervened in a limited number of utility rate cases, has used some "section 133-type data" but did not use the section 133 filings to obtain the data. However, the administration's fiscal year 1982 budget provides no funding for the intervention group or other DOE groups responsible for title I.

Use of data by States, utilities, and special interest groups

States

We could find no specific instance of States actually using the section 133 data. It appears there will be little use of the data by the States in their consideration/determination process for the PURPA ratemaking standards.

Some States we visited planned to use the data for non-title I purposes including (1) obtaining avoided cost data needed

for PURPA title II and (2) rate case hearings in general. Several States pointed out that they have the authority to require "section 133-type" data from regulated utilities without the Federal mandate. One State believed the section 133 information was useful to it as it required utilities to submit a large amount of data they would have balked at had the State commission requested it. Some States were unsure whether they would use the section 133 data. Although the cost-of-service filing contains marginal cost data and calculations, staff in some States pointed out that rates have traditionally been based on accounting cost and would probably continue to be in the future, resulting in a part of the filings not being used.

Utilities

Utility officials viewed the filings as unnecessary and costly and said State regulatory commissions did not generally require such detailed or extensive information. They stated that more limited load research and cost data necessary for utility programs was collected prior to PURPA. It was unclear to utilities whether, and how, the Federal Government would use or review the data. Many stated that some of the information is available elsewhere, such as on F.P.C. Form No. 1 1/, in cost-of-service studies, or in rate increase submissions.

FERC agrees that some data on accounting cost duplicates information submitted on F.P.C. Form No. 1, including data on such items as depreciation reserve, depreciation expense, construction work in progress, accumulated deferred income tax, materials and supplies, electric plant held for future use, and payroll. The Edison Electric Institute claims that the "majority of the data collected is either a duplication of existing reported data or detail requested beyond a useful limit for decisionmaking purposes."

Special interest groups

Although the Congress intended the cost-of-service data be used primarily by persons interested in retail electric rate proceedings in the various States, actual or planned use of the data by such persons is limited.

1/F.P.C. Form No. 1, submitted to FERC, is an annual financial report prepared by investor-owned utilities having an annual electric operating revenue of at least $1 million.

We contacted such special interest groups as the Electricity Consumers Resource Council, Common Cause, the National Consumer Law Center, and the Environmental Action Foundation to assess their involvement in using the cost-of-service data. The latter two groups thought they or their State-affiliated organizations would probably use some of the section 133 data to intervene in rate cases. However, they were unaware if any of the section 133 data had specifically been used.

According to FERC, a few persons inquired about obtaining the section 133 filing for a particular utility. FERC directed the persons to the utility or State offices, which were in closer proximity than the FERC office. Kentucky officials said that two groups (Attorney General's Office and Legal Aid Society) within their State requested and received copies of cost-of-service data for some utilities, but these groups would not comment on the exact use to be made of the data.

Officials of seven utilities we visited told us there either are no active intervenor groups in the area or they believe existing groups would have difficulty using the data due to lack of funds and technical expertise. One of those officials believed intervenors would need to hire consultants to be able to use the data. A utility official in Missouri told us the Missouri Public Counsel would be using the section 133 data. However, our discussion with the Public Counsel indicated that section 133 data is not essential to them.

More than half of the utilities visited noted it is company policy to provide intevenor groups with any reasonable data requested. However, this is usually restricted to existing or readily available data.

Officials at two Nebraska utilities said, based on very poor public response to PURPA hearings, they believe the public is essentially uninterested in title I, including section 133. Several other States and nonregulated utilities also indicated public response to title I hearings was quite poor.

COST OF COMPLIANCE BY UTILITIES

The cost of compliance with section 133 varies widely. The legislation currently requires over 250 utilities with annual retail sales exceeding 500 million kWh to comply with section 133. FERC's regulations require about 170 large utilities--those with annual retail electic sales exceeding one billion kWh--to initially file by November 1, 1980, and requires the remaining smaller utilities (about 80) to initially file by

June 30, 1982. The number of utilities in a State required to file ranges from one to 24.

The Energy Information Administration collected data for FERC in September 1980 assessing the cost to complete the filing. Cost estimates for the 23 utilities surveyed ranged from $130 to $625,000. These estimates were collected before the first filing and did not include costs for metering.

Estimates we gathered from utilities ranged from $30,000 to $1.6 million. These figures are estimates since most utilities did not specifically track section 133 related costs. Some utilities included metering costs in their estimates, although the utilities were unsure of how much of the equipment cost should be attributed to title I. Not all utilities were able to provide cost figures.

Some utility officials claimed they may need to spend significant amounts on metering equipment in upcoming years. For example, one utility official indicated a need of 200 additional transponders and associated communication units for their load research sample of non-residential customers at an estimated cost of $250,000. An official at another utility said they needed 100 additional load research meters, though they had not estimated the costs involved. An official at another utility said they may need new translator equipment. An official at a small utility told us consultants had informed them they would need load research equipment costing $500,000 to $750,000 to comply with section 133.

Nine of the eleven utilities contacted in the Midwest have made their major metering equipment purchases to comply with section 133 requirements. Thus, most expenses in future years will involve actual preparation of the section 133 filings and maintenance/personnel expenses related to the load research meters.

Utilities must use their own funds, passed on to consumers in the rate base, to comply with section 133. PURPA did not authorize money to be used directly by utilities to comply with section 133. FERC, the Edison Electric Institute, and others, believe the area that results in the greatest cost and burden for utilities complying with section 133 is the load data area. Officials at some small utilities stated that section 133 compliance was especially burdensome to them. The legislation obliges many relatively small utilities to undertake load research efforts for the first time. According to an Argonne National Laboratory study prepared for DOE, special problems might arise for small utilities that are

preparing an initial research effort: manpower and equipment costs, while similar for all utilities, will involve a considerably greater share of a small utility's budget. A basic problem that small utilities encounter is that a substantial amount of the total cost of a load research survey is relatively fixed and is not related to utility size.

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The requirements of title I of PURPA to consider and determine the appropriateness of the ratemaking and regulatory standards, as well as the grant money provided by DOE, has provided an incentive and has accelerated involvement by States and utilities in the ratemaking area. While both sections 116 and 133 were designed to provide worthwhile information to parties involved in utility rate proceedings, in a time of budget cuts and continuing utility rate increases it is necessary to carefully examine the costs and benefits associated with the regulatory requirements. This is particularly true if information serving the same purpose is available from other sources. Now, more than two and one-half years after PURPA was enacted, major State and utility responsibilities under title I are nearing their compliance deadlines and the continued need for annual reporting by DOE, States, and utilities, as mandated by section 116 of PURPA, is questionable. The continued reporting of and need for the section 133 submissions also needs to be examined. Altering the reporting requirements should not be construed as deemphasizing the importance of the purposes of title I. Conservation, efficiency, and equity are laudable objectives, and should continue to be considered as part of the normal ratemaking process.

Although PURPA requires States, utilities and DOE to continue preparing annual reports after the mandatory deadlines for completing the consideration and determination process, DOE is undecided on the appropriate contents of the reports after the third submissions. DOE currently believes the contents should focus on the status of the process, not on the actual implementation of the standards. At the present time the preparation of the third and future annual reports by DOE is jeopardized by proposed administration budget cuts. Discontinuance of the third annual reports by DOE, States, and nonregulated utilities would leave the actual progress for the last 16 months of the 36 month consideration and determination process unaddressed by DOE.

In our earlier report 1/ on the timeliness of the third annual reports, we noted that the third and final year of the

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1/"The Department of Energy Needs to Improve the Timeliness of the Third Annual Reports on Title I of the Public Utility Regulatory Policies Act," EMD-81-56, April 28, 1981.

consideration and determination process is very important; we recommended that DOE 1) change the reporting dates so that the third annual reports will address the remaining 16 months of the compliance process and 2) monitor the development of its report and staffing level to assure that the third report is issued by June 30, 1982. Although DOE agreed with our recommendation, it has taken no definite steps to accomplish it.

In their second annual reports, most States and utilities projected they will complete the consideration and determination process within the mandatory deadlines. While the Federal district court decision that declared parts of PURPA unconstitutional has caused concern among States, utilities, and the Federal Government, it does not appear it will significantly affect State and utility progress. The effectiveness of the annual reports is somewhat weakened by DOE's use of untimely and non-verified information on the status of State and utility progress. Partially in response to the timeliness issue other groups are doing alternative reports on State activities.

Compliance by utilities with section 133 requirements is expensive and burdensome. Some utility officials noted that more limited load research and cost data necessary for utility programs was collected by States prior to PURPA. Utility officials also pointed out, and FERC concurred, that some of the information reported under section 133 duplicates other data submitted to the Federal Government. Smaller utilities have voiced concern that the requirements of section 133 are nearly as expensive for them as they are for large utilities.

There is limited current use of the section 133 filings by the Federal Government, States, special interest groups, and utilities. The known future use of the section 133 filings is unclear at this time. However, the submissions are recent--the majority of first filings were submitted in November 1980. The Federal Government, States, and special interest groups need time to examine the content, analyses, and potential use of the data contained in the filings. There are some drawbacks to the data which limit its use, including (1) some of the load research data is "best estimate" and not "actual," (2) the data has not been reviewed by the State or Federal Government for accuracy or completeness, (3) there is non-comparability of the data among utilities due to different reporting periods and non-uniform format, and (4) information is frequently outdated for use in rate hearings.

RECOMMENDATIONS

We recommend that the Congress

--ensure, through the appropriations process, that DOE has sufficient priority to prepare and submit its third annual report to the President and the Congress in a timely fashion. The

third report would address actual State and utility progress for the last 16 months of the 36 month consideration and determination process.

--repeal section 116 of the PURPA effective after the completion of DOE's third annual report. This would reduce the paperwork burden on both the Federal Government and the private sector, and eliminate the cost ultimately borne by the individual taxpayer. If there is future interest in the ratemaking status of States and utilities that is not satisfied by available reports, Congress can request the preparation of such reports at future times.

We recommend that the Chairman, FERC, review and, as appropriate, revise its regulations for implementing section 133 in order to reduce the cost and burden on utilities. In doing so, FERC should, before the next filings are due,

--review the extent to which data collected under section 133 duplicates other data submitted to the Federal Government,

--assess whether the number of utilities required to comply with section 133 should be reduced in terms of size, number of utilities reporting per State, etc., and

--determine whether the data is actually being used by the parties for which it was intended and whether the benefits received from use of the data outweigh the costs.

If FERC finds that it is cost beneficial to amend its regulations to reduce the number of utilities required to comply with section 133, it should seek such authority from the Congress. (FERC's Office of General Counsel has indicated that it is doubtful that the agency has authority to amend its regulations in this manner.) However, if FERC shows that overall the costs to utilities to comply with section 133 are greater than the benefits (as demonstrated through the use of the submissions) to States, special interest groups, and other potential users of the filings, then FERC should request that the Congress repeal the section.

AGENCY COMMENTS AND OUR EVALUATION

Comments on our draft report were solicited from DOE and FERC. DOE's comments, which are summarized below along with our views, represented the official comments of the agency. FERC did not provide official comments.

DOE agreed with our recommendations to (1) ensure that DOE provide sufficient priority to prepare and submit its third annual report in a timely fashion, and (2) repeal section 116 of PURPA after the completion of the third annual report. However, DOE pointed out that the third annual report should be

the last report only because the bulk of the considerations will have been completed and not (1) because the information is not verified or (2) because there is no reporting category or (3) because similar reports are available. Regarding the first point, DOE said that data in the reports is verified from several perspectives, i.e. it is sworn to, it is computer-edited for consistency, it is checked with the Energy Information Administration, and State write-ups are resubmitted for their approval. However, the verification relates mainly to statistical information, such as number of customers by class and amount of sales by class. As pointed out in our report, DOE has not established a monitoring system to assure accuracy of the data submitted on actual progress on the standards. On the second point, DOE commented that only one status category was found to be missing; the remaining categories correspond to actual activities of the consideration and determination process. We changed our report to reflect the lack of a category indicating the process has begun but no hearing date has been established. This category was missing on both the first and second annual reports. Regarding the third point, DOE pointed out that, although similar reports are available, these reports differ from the DOE annual report and are not official progress reports. We agree the reports are not identical. However, they do provide the information requested by the Congress, i.e., an indication of State and utility progress in the consideration and implementation of the eleven PURPA standards. Their not being official documents does not undermine their usefulness. The alternative reports are sometimes more up to date, such as the NARUC report released in December 1980, thus enhancing their usefulness.

DOE disagreed with a proposal in a draft of this report that section 133 of PURPA be repealed because it is an expensive undertaking for utilities with limited current or expected use of the filings. DOE believed that our proposal was premature; DOE felt that insufficient time had elapsed since the initial filing to assess the usefulness of the filings to States and intervenors. DOE pointed out that section 133 data has been useful in non-title I areas such as (1) providing a base for implementing section 210 of PURPA, and (2) developing load duration curves. DOE also mentioned future potential uses of filings such as for capacity planning and customer class studies. In addition, DOE mentioned it may be difficult for intervenors and other interested parties to obtain needed section 133-type data from States if section 133 of PURPA is repealed. DOE favors a streamlining of the section 133 requirements, including a reduction in the number of utilities required to report.

After considering DOE's comments, we are recommending that FERC review and, as appropriate, revise its regulations for implementing section 133 in order to reduce the cost burden

on utilities. However, if FERC shows that overall the costs to utilities to comply with section 133 are greater than the benefits (as demonstrated through the use of the submissions) to States, special interest groups, and other potential users of the filings, then FERC should request that the Congress repeal the section.

DOE also mentioned that front-end and startup costs have already been borne by utilities in complying with section 133; therefore, future costs will not be as great. We disagree with this position, because not all utilities have prepared section 133 filings. Only the very large utilities--those with retail sales exceeding one billion kWh--were required to file in 1980. These large utilities could provide estimated rather than actual load research figures in the first filings and thus avoid sizable expenses, such as metering purchases needed to comply with section 133. In addition, smaller utilities--those with retail electric sales between 500 million and one billion kWh--have not yet filed and have not incurred all expenses to comply. Further, these smaller utilities often have fewer customers over which to spread the costs of compliance.

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