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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 675]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period August 7–13, 1981. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: August 7, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was recommended by the committee following discussion at a public meeting on January 27, 1981. A regulatory impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on August 4, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencias deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges continues easier.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effecutate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared policy of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Forms required for operation under this part are subject to clearance by the Office of Management and Budget and are in the process of review.

1. Section 908.975 is added as follows:

§ 908.975 Valencia Orange Regulation 675.

The quantities of Valencia oranges grown in Arizona and California which may be handled during the period August 7, 1981, through August 13, 1981, are established as follows:

(1) District 1: 255,000 cartons;

(2) District 2: 245,000 cartons;

(3) District 3: Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: August 5, 1981.

Frank M. Grasberger,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service

[FR Doc. 81–23167 Filed 8–5–81; 11:05 am]

BILLING CODE 3410-02-M

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Clarification of United States Antitrust Law, Immunity, and Liability Under the Raisin Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will (1) Emphasize the applicability of U.S. antitrust laws to California raisin marketing agreement and order activities, and (2) advise the Raisin Administrative Committee of the restrictions and limitations imposed by the U.S. antitrust laws. The Committee works with the USDA in administering the raisin marketing agreement and order program.

EFFECTIVE DATE: September 8, 1981.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been determined to be a "nonmajor" rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated 19 handlers.

Information collection (reporting and recordkeeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

Notice of this action was published in the December 9, 1980, issue of the **Federal Register** (45 FR 81508), and interested persons were afforded an opportunity to submit written comments. None were received.

The Raisin Administrative Committee is established under the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. Hereinafter both are referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The Committee works with USDA in administering the order which, among other things, authorizes the Committee, with the approval of the Secretary, to establish market research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of raisins in domestic and foreign markets. The act immunizes Committee members and employees from prosecution under U.S. antitrust laws so long as their conduct in administering the order is authorized by the act or the provisions of the order. This rule is intended to emphasize the applicability of U.S. antitrust laws to the Committee's domestic and foreign marketing activities, and to advise Committee members and employees of the restrictions and limitations imposed by those laws.

After consideration of all relevant matter presented, including that in the notice, and other available information, it is hereby found that a new Subpart—Antitrust Immunity and Liability and a new § 989.801 in that subpart, should be established reading as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Subpart—Antitrust Immunity and Liability

§ 989.801 Restrictions applicable to committee personnel.

Members and employees of the Raisin Administrative Committee are immune from prosecution under the United States antitrust laws only insofar as their conduct in administering the Raisin Marketing Order is authorized by the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601 *et seq.*, or the provisions of the order. Under the antitrust laws, Committee members and employees may not engage in any unauthorized agreement or concerted action that unreasonably restrains United States domestic or foreign commerce. For example, Committee members and employees have no authority to participate, either directly or indirectly, whether on an informal or formal, written or oral basis, in any bilateral or international undertaking or agreement with any competing foreign producer or seller or with any foreign government, agency, or instrumentality acting on behalf of competing foreign producers or sellers to (a) raise, fix, stabilize, or set a floor for raisin, sultana, or currant prices, or (b) limit the quantity or quality of raisins, sultanas, or currants imported into or exported from the United States. Participation in any such unauthorized agreement or joint undertaking could result in prosecution under the antitrust laws by the United States Department of Justice and/or suit by injured private persons seeking treble damages, and could also result in expulsion of members from the Committee or termination of employment with the Committee.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: July 31, 1981.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 81-22916 Filed 8-5-81; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 205

[Docket No. ERA-R-80-38]

Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby issues rules concerning the emergency interconnection of electric facilities and the transfer of electricity to alleviate an emergency shortage of electric power pursuant to sections 202(c) and 202(d) of the Federal Power Act. Section 202(c) authorized the Federal Power Commission to order, upon application or on its own motion, a temporary connection of facilties and the generation, delivery, interchange, or transmission of electric energy necessary to alleviate an emergency shortage of electric power. Section 202(d) authorized an entity that is not otherwise subject to the jurisidiction of the Commission to establish temporary emergency connections without thereby becoming subject to the jurisidiction of the Commission and, upon approval by the Commission, to construct, under the same conditions, a permanent connection that would be only for emergency use. The Department of Energy Organization Act transferred the responsbilities under sections 202(c) and 202(d) of the Federal Power Act to the Secretary of Energy.

To establish these regulations, the DOE is amending Chapter II of Title 10 of the Code of Federal Regulations to establish Part 205, sections 370 *et seq.*

DATE: Effective: September 8, 1981.

FOR FURTHER INFORMATION CONTACT:

Richard E. Weiner, Acting Director, Office of Emergency Operations, Department of Energy, Room 4002, 2000 M Street, NW., Washington, D.C. 20461 (202) 653–3949;

James M. Brown, Jr., Division of Utility Systems and Emergency Communications, Department of Energy, Room 4110, 2000 M Street, NW., Washington, D.C. 20461 (202) 653–3825; or

Lise Courtney M. Howe, Office of General Counsel, Department of Energy, Room 5E-064, Forrestal Building, 1000 Independence Avenue, SW., Wasington, D.C. 20585 (202) 252–2900.

SUPPLEMENTARY INFORMATION:

I. Background

On January 2, 1981, the Department of Energy (DOE) gave notice of a proposed rulemaking pursuant to Sections 202(c) and 202(d) of the Federal Power Act (46 FR 71) and invited public comments on the proposed rules. A public hearing on these proposed regulations was held on January 15, 1981, and comments were received from one party at this hearing. The DOE also received written comments from 12 parties on the proposed regulations. The commenting parties made several suggestions, resulting in some changes in the proposed regulations.

II. Discussion of Comments and DOE Response

The following is a discussion of comments received and the DOE's response to these comments.

The American Hospital Association was concerned that the proposed rule could be construed to require those hospitals that produce electricity by means of cogeneration to participate in the activities described in the regulations. They suggested that this rule be made less broad by clearly providing that hospital cogenerators are exempt from the rule's requirements.

The DOE has modified the applicability section of the rule to clarify the definition of "entities" covered by these regulations. This clarified definition makes it clear that hospitals and industrial cogenerators are exempt from these regulations.

Gulf States Utilities Company stated that the use of the word "entity" created some confusion in the proposed regulations. Gulf States suggested that the proposed rule be rewritten to eliminate this confusion, and a new comment period allowed.

The DOE has modified the final rule to describe an "entity" in § 205.370. The regulations also were modified, as appropriate, to use the word "entity" consistently throughout. The DOE does not feel, based on the other comments received, and the changes made, that an additional comment period is necessary.

Eli Lilly and Company expressed concern over the definition of emergency included in the proposed rule. They suggested that including a section similar to the "Factors to be Considered in Declaring an Emergency" contained in 18 CFR 32.62(d) (the predecessor of these regulations) would clarify the situation. Eli Lilly was particularly concerned about the possible impacts on the customers of a supplying utility if emergency assistance was to be rendered for a prolonged period of time. Dow Chemical Company also suggested the inclusion of a "Factors" section.

The factors that DOE will consider in determining whether an emergency exists are specified in § 205.373, "Application Procedures." In addition, § 205.371, "Definition of Emergency," was modified to indicate that the DOE expects a power system experiencing an extended period of inadequate power supply to take appropriate actions to resolve the problem.

Gulf States suggested in its comments that the regulations should be modified to indicate which party involved in an emergency interconnection would pay for the initial construction and the ultimate removal of such facilities. Dow Chemical also felt that the section "Rates and Charges" should be modified to preclude recovery by the benefiting entity of additional costs, other than fuel costs, incurred in meeting the emergency. Pacific Gas and Electric Company (PG&E) recommended that the applicant be responsible for the costs of providing any necessary transmission facilities or reinforcements and disconnecting or removing these facilities. PG&E further recommended, in the case of a regulated public utility, that recovery of such costs through appropriate rate mechanisms be expressly authorized. The Edison Electric Institute (EEI) made a number of suggestions concerning the allocation of costs. The EEI suggestions would have modified the regulations to ensure that utilities supplying emergency assistance or transmission services, and their customers, would not suffer an economic disadvantage. Portland General Electric Company suggested that the supplying utility should be given the option of requiring the return of any energy during an emergency.

In issuing these regulations the DOE does not intend the customers of the supplying "entity" to suffer any economic disadvantage. However, specific allocation of costs was not included in the regulations since this responsibility is vested in the Federal Energy Regulatory Commission (FERC) and must be addressed by its regulations. Furthermore, as stated in section 202(c) of the Federal Power Act, the terms of any arrangements for carrying out an emergency order under this section will be prescribed only if the affected "entities" cannot reach an agreement on their own.

The American Iron and Steel Institute (AISI) commented that a section 202(c) order could have adverse operating effects on utilities other than those actually ordered to interconnect physically or to provide transmission services. AISI therefore suggested that applications include a showing that: (1) The requested order will not impair any utility's ability to serve its customers; (2) the application has been served on all entities that could be affected by the order; and (3) voluntary means have been undertaken to resolve the emergency and have proved unsuccessful. Houston Lighting & Power Company made the same observations as AISI and suggested essentially the same modifications.

The DOE was persuaded by these comments. Section 205.372 of the final regulations requires that copies of the appliction be served on any "entity" which may be affected directly by the requested order. Applicants also will be required by § 205.373(h) to show that, to the best of their knowledge, the requested relief will not impair unreasonably the ability of any "entity" affected by the requested order to render adequate service to its customers.

The AISI stated that it is essential that there be effective coordination between the DOE and the FERC. In addition, the DOE and the FERC should recognize the expertise and interest of the State regulatory authorities in exercising emergency powers, so that local expertise and health and safety factors may be considered fully without undue prejudice or disadvantage to any utility customers.

The DOE consulted with the FERC in preparing these regulations. In addition, as stated under Part IV of this preamble, "Other Matters," the FERC also formally reviewed this rule. The requirements for providing copies of applications and responses to State authorities is intended to ensure proper coordination with State officials. The DOE intends to utilize any available State and local expertise in resolving an emergency.

The Dow Chemical Company (Dow) commented that the proposed regulations broaden the DOE authority in an unreasonable and unnecessary manner by expanding the definition of an emergency. Dow feels the definition contained in the proposed regulations removes incentives for proper planning for electrical emergencies by including factors which are often within the control of the utility, e.g., inability to obtain adequate amounts of fuel and regulatory actions prohibiting use of some facilities. Dow therefore recommended that the definition in 18 CFR 32.20 be retained. The Northwest Power Pool also stated that if a utility could be assured emergency assistance, via government intervention, it might be reluctant to commit the necessary funds for construction of resources and facilities and could become less willing to enter into pools or other contractual arrangements for the purpose of insuring its own adequacy and reliability. PG&E commented that the regulations more clearly should discourage deliberate or otherwise unwarranted risk-taking by entities which seek to avoid capital expenditures of other problems by relying on neighboring utilities. Public Service Company of Indiana also raised these same concerns, as did Portland General Electric Company. The Edison Electric Institute suggested that this situation could be avoided by limiting emergency orders to a certain time period, e.g., 30 days, beyond which mandatory hearings would be required before extending the emergency order.

The DOE does not intend these regulations to replace prudent utility planning and system expansion. This intent has been reinforced in the final rule by expanding the "Definition of Emergency" to indicate that, while a utility may rely upon these regulations for assistance during a period of unexpected inadequate supply of electricity, it must solve long-term problems itself. The final regulations also recognize that power pools and electric utility contractual or coordination relationships are a basic element in resolving electric energy shortages. Finally, the DOE believes that the definition of an "Emergency" contained in these final regulations does not broaden our authority beyond the former Federal Power Commission regulations, but rather clarifies and better illustrates those situations which can lead to an "Emergency."

Dow commented that the proposed regulations required dual reporting and should be changed to require that the entity receiving the benefit from the interconnection make all reports. The EEI recommended that the utility suffering the emergency should file periodic status reports at the request of either the DOE or the utility supplying the emergency electric energy. These reports would summarize briefly the steps being taken to alleviate the emergency condition.

The DOE was not persuaded to change the reporting requirements as published in the proposed rule. The DOE does not believe that the reports required are burdensome and feels that this information is necessary for the DOE to monitor the emergency situation and decide if an emergency order should be modified or terminated. Under the regulations as proposed, DOE may require periodic status reports, as suggested by EEI, if deemed appropriate. The DOE does not believe that reports should be required at the discretion of the supplying utility.

Houston Lighting & Power Company recommended an additional section to the proposed regulations to provide that any entity whose jurisdictional status might be affected by an emergency order may apply for and receive a section 202(d) order preserving its jurisdictional status. Such a section is not necessary since section 202(d) of the Federal Power Act already states that an order under section 202(c) of the Federal Power Act does not change the jurisdictional status of an "entity."

EEI suggested that when an entity ordered to supply emergency assistance is required to curtail service to its customers, service to customers of the entity suffering the emergency should be interrupted first and their service should be the last to be restored. PG&E also suggested that the requirement for curtailing customers of a supplying entity be clarified, especially with regard to interruptible customers.

The DOE agrees with these comments and has made several changes in the final rule to clarify this situation. In particular, the information specified in "Application Procedures" (§ 205.373) should satisfy these comments. In general, the DOE expects that no supplying "entity" will have to curtail service to its customers in order to alleviate the emergency. Where curtailment is unavoidable, DOE expects that the applicant will curtail its customers before the supplying "entity" must take such action. In addition, the applicant will be expected to curtail its customers at least to the same degree as those "entities" rendering assistance.

PG&E suggested requiring the needed "transfer capability" rather than the needed "thermal capability" in applications for a temporary connection. DOE has changed this requirement in the final rule to require the submission of either the required thermal capacity or power transfer capability. Applicants can include whichever value is more appropriate in each case.

PG&E also commented that a hydroelectric intensive system should be able to meet adverse conditions and, therefore, a 20 percent reduction in water supplies, as specified in the guidelines defining inadequate fuel or energy supply, should not qualify as an emergency. The Federal power marketing agencies commented that the term "normal requirements" is unclear as a measure of available water for a hydroelectric generating system.

DOE was persuaded by these comments and has changed the guidelines in the final rule for hydroelectric systems. The final regulations specify in § 205.375(6) that an emergency will exist when water supplies required for power generation have been reduced to the level where the future adequacy of the power supply may be endangered and no near term improvement in water supplies is projected.

EEI suggested that when an emergency results from a failure of facilities or shortage of fuel or water for generating facilities within a utility's own system, that utility should have responsibility for declaring an end to the emergency. This declaration would be effective unless overruled by the DOE within a specified time period.

While an "entity" receiving an emergency order will be required to report to the DOE when it believes that the emergency has ended (§ 205.377(d)), the DOE must make the determination to terminate any order. This authority to terminate or otherwise modify an order cannot be delegated to the "entity" receiving such order.

The Federal power marketing agencies and PG&E suggested that the 10 day requirement for filing a response to an emergency application is too short and should be lengthened.

The DOE has reviewed this requirement in light of the fact that an emergency could exist which requires expeditious action to insure continuity in the supply of electricity. This review has convinced the DOE that, rather than lengthening this time period, it should be reduced to three days. In cases in which there is no immediate threat to the power supply, § 205.374 provides that the DOE may grant an extension to this three day requirement.

PG&E suggested that the applicant be responsible for any charges levied by the DOE or any other government agency for the preparation of an Environmental Impact Statement (EIS) if one is required. The DOE does not foresee the need for preparing an EIS in the case of an order under these regulations. However, if one is required, the DOE would prepare the necessary document at its expense except for any costs associated with supplying the necessary data to the DOE.

EEI commented that removal of temporary facilities within 30 days may be infeasible. DOE has modified the final regulations to allow for an extension to this 30 day period where appropriate.

Finally, PG&E suggested that the DOE develop a screening mechanism under which only those applications in the public interest would be afforded serious review. The DOE intends to review all applications submitted under these regulations. The depth of this review, of course, will depend upon the individual circumstances in each case. The DOE also reserves the right to reject any application at any point in the review process if it judges such action to be appropriate.

III. The Final Regulations

The DOE hereby gives notice of the issuance of regulations under the provisions of sections 202(c) and 202(d) of the Federal Power Act. In accordance with section 202(c) of the Federal Power Act, the DOE may order a temporary connection of facilities and the generation, delivery, interchange, or transmission of electric energy necessary to alleviate an emergency shortage of electric power. Section 202(d) allows an entity that is not otherwise subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC), to establish temporary emergency connections without thereby becoming jurisdictional. Section 202(d) further provides that, upon approval by the DOE, a non-jurisdictional entity may construct a permanent connection to be used only in emergency situations without becoming subject to FERC jurisdiction.

The regulations are adopted as proposed except for the modifications described above, and other minor clarifying and conforming modifications.

IV. Other Matters

Executive Order 12991: Executive Order 12991 (46 FR 13193, February 19, 1981) requires that agencies subject to it prepare a regulatory impact analysis for all major rules as defined in the Order. DOE has determined that the proposed rule is not major, and the preparation of a regulatory impact analysis is therefore not required. Our decision in this regard is based on the following determinations: (1) The proposal is not likely to result in an annual effect on the economy of $100 million or more; (2) there will not be a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and (3) there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Notification of the FERC: Section 404 of the Department of Energy Organization Act (DOE Act), requires that the FERC be notified whenever the Secretary proposes to prescribe rules, regulations and statements of policy of general applicability in the exercise of functions transferred to him under sections 301 and 206 of the DOE Act.

The FERC, on December 19, 1980, was notified of these regulations and requested to make the necessary determination regarding the impact on any function within its jurisdiction. The FERC notified the DOE on February 2, 1981, that it would not take referral of these regulations.

Environmental Impacts: On December 16, 1980, the Assistant Secretary for Environment was requested to determine if the proposed rule constituted a major Federal action significantly affecting the quality of the human environment. The Assistant Secretary for Environment on December 22, 1980, concluded that these regulations are not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Compliance with the Regulatory Flexibility Act: The Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C., section 601 *et seq.*, (September 19, 1980)), requires Federal agencies to consider the impact of proposed regulations on small businesses, small governmental units, and other small entities; to consider the ability of small entities to comply with the proposed regulation; and to consider less stringent alternative compliance standards for small entities. An agency is required to prepare a regulatory flexibility analysis to document its consideration of these factors except in the situation where the agency determines that a regulation will not have a significant economic impact on a substantial number of small entities. DOE certifies that, for the reasons discussed below, the promulgation of this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis will not be prepared.

The DOE does not anticipate receiving a substantial number of applications under these regulations. Only six applications were filed under the previous regulations, 18 CFR 32.60 *et seq.* since the formation of DOE in 1977. There will not be a significant increase in the number of applications filed under these regulations, as set forth below, because they are predicated upon the existence of an emergency which occurs independent of the regulations. Furthermore, there is not a significant economic impact in filing an application since the information required is readily available to any "entity" which would be making an application. Therefore, even if all applications received were from small "entities," there would not be a significant economic impact on a substantial number of such entities.

Compliance with the Paperwork Reduction Act of 1980: The Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. sections 3506(c)(5) and 3507), requires approval from the Office of Management and Budget (OMB) prior to imposing a reporting requirement on ten or more respondents. The OMB was requested to approve the data collection activities contemplated in these regulations. On May 13, 1981, OMB approved this information collection through May 31, 1983 (OMB No. 1903-0068).

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations is amended by adding a center heading consisting of §§ 205.370-205.379 to read as set forth below.

Issued in Washington, D.C., on July 29, 1981.

Barton House,

Acting Administrator, Economic Regulatory Administration.

Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101). Federal Power Act, Pub. L. 66-280, 41 Stat. 1063 (16 U.S.C. 791(a))

Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power

§ 205.370 Applicability.

Sections 202(c) and 202(d) of the Federal Power Act are applicable to any "entity" which owns or operates electric power generation, transmission or distribution facilities. An "entity" is a private or public corporation (utility), a governmental agency, a municipality, a cooperative or a lawful association of the foregoing. Under this section, the DOE has the authority to order the temporary connection of facilities, or the generation or delivery of electricity, which it deems necessary to alleviate an emergency. Such orders shall be effective for the time specified and will be subject to the terms and conditions the DOE specifies. The DOE retains the right to cancel, modify or otherwise change any order, with or without notice, hearing, or report. Requests for action under these regulations will be accepted from any "entity," State Public Utility Commission, State Energy Agency, or State Governor. Actions under these regulations also may be initiated by the DOE on its own motion. Orders under this authority may be made effective without prior notice.

§ 205.371 Definition of emergency.

"Emergency," as used herein, is defined as an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power. Such events may be the result of weather conditions, acts of God, or unforeseen occurrences not reasonably within the power of the affected "entity" to prevent. An emergency also can result from a sudden increase in customer demand, an inability to obtain adequate amounts of the necessary fuels to generate electricity, or a regulatory action which prohibits the use of certain electric power supply facilities. Actions under this authority are envisioned as meeting a specific inadequate power supply situation. Extended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities can result in an emergency as contemplated in these regulations. In such cases, the impacted "entity" will be expected to make firm arrangements to resolve the problem until new facilities become available, so that a continuing emergency order is not needed. Situations where a shortage of electric energy is projected due solely to the failure of parties to agree to terms, conditions or other economic factors relating to service, generally will not be considered as emergencies unless the inability to supply electric service is imminent. Where an electricity outage or service inadequacy qualifies for a section 202(c) order, contractual difficulties alone will not be sufficient to preclude the issuance of an emergency order.

§ 205.372 Filing procedures; number of copies.

An original and two conformed copies of the applications and reports required under §§ 205.370 through 205.379 shall be filed with the Division of Power Supply and Reliability, Department of Energy. Copies of all documents also shall be served on: (a) The Federal Energy Regulatory Commission; (b) any State Regulatory Agency having responsibility for service standards, or rates of the "entities" that are affected by the requested order; (c) each "entity" suggested as a potential source for the requested emergency assistance; (d) any "entity" that may be a potential supplier of transmission services; (e) all other "entities" not covered under paragraphs (c) and (d) of this section which may be directly affected by the requested order; and (f) the appropriate Regional Reliability Council.

§ 205.373 Aplication procedures.

Every application for an emergency order shall set forth the following information as required. This information shall be considered by the DOE in determining that an emergency exists and in deciding to issue an order pursuant to sections 202(c) and 202(d) of the Federal Power Act.

(a) The exact legal name of the applicant and of all other "entities" named in the application.

(b) The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed.

(c) The political subdivision in which each "entity" named in the application operates, together with a brief description of the area served and the business conducted in each location.

(d) Each application for a section 202(c) order shall include the following baseline data:

(1) Daily peak load and energy requirements for each of the past 30 days and projections for each day of the expected duration of the emergency;

(2) All capacity and energy receipts or deliveries to other electric utilities for each of the past 30 days, indicating the classification for each transaction;

(3) The status of all interruptible customers for each of the past 30 days and the anticipated status of these customers for each day of the expected duration of the emergency, assuming both the granting and the denial of the relief requested herein;

(4) All scheduled capacity and energy receipts or deliveries to other electric utilities for each day of the expected duration of the emergency.

(e) A description of the situation and a discussion of why this is an emergency, including any necessary background information. This should include any contingency plan of the applicant and the current level of implementation.

(f) A showing that adequate electric service to firm customers cannot be maintained without additional power transfers.

(g) A description of any conservation or load reduction actions that have been implemented. A discussion of the achieved or expected results or these actions should be included.

(h) A description of efforts made to obtain additional power through voluntary means and the results of such efforts; and a showing that the potential sources of power and/or transmission services designated pursuant to paragraphs (i)–(k) of this section informed that the applicant believed that an emergency existed within the meaning of § 205.371.

(i) A listing of proposed sources and amounts of power necessary from each source to alleviate the emergency and a listing of any other "entities" that may be directly affected by the requested order.

(j) Specific proposals to compensate the supplying "entities" for the emergency services requested and to compensate any transmitting "entities" for services necessary to deliver such power.

(k) A showing that, to the best of the applicant's knowledge, the requested relief will not unreasonably impair the reliability of any "entity" directly affected by the requested order to render adequate service to its customers.

(l) Description of the facilities to be used to transfer the requested emergency service to the applicant's system.

(1) If a temporary interconnection under the provisions of section 202(c) is proposed independently, the following additional information shall be supplied for each such interconnection: (i) Proposed location; (ii) required thermal capacity or power transfer capability of the interconnection; (iii) type of emergency services requested, including anticipated duration; (iv) an electrical one line diagram; (v) a description of all necessary materials and equipment; and (vi) the projected length of time necessary to complete the interconnection.

(2) If the requested emergency assistance is to be supplied over existing facilities, the following information shall be supplied for each existing interconnection: (i) Location; (ii) thermal capacity of power transfer capability of interconnection facilities; and (iii) type and duration of emergency services requested.

(m) A general or key map on a scale not greater than 100 kilometers to the centimeter showing, in separate colors, the territory serviced by each "entity" named in the application; the location of the facilities to be used for the generation and transmission of the requested emergency service; and all connection points between systems.

(n) An estimate of the construction costs of any proposed temporary facilities and a statement estimating the expected operation and maintenance costs on an annualized basis. (Not required on section 202(d) applications.)

(o) Applicants may be required to furnish such supplemental information as the DOE may deem pertinent.

§ 205.374 Responses from "entities" designated in the application.

Each "entity" designated as a potential source of emergency assistance or as a potential supplier of transmission services and which has received a copy of the application under § 205.373, shall have three (3) calendar days from the time of receipt of the application to file the information designated below with the DOE. The DOE will grant extensions of the filing period when appropriate. The designated "entities" shall provide an analysis of the impact the requested action would have on its system reliability and its ability to supply its own interruptible and firm customers. The effects of the requested action on the ability to serve firm loads shall be clearly distinguished from the ability to serve contractually interruptible loads. The designated "entity" also may provide other information relevant to the requested action, which is not included in the reliability analysis. Copies of any response shall be provided to the applicant, the Federal Energy Regulatory Commission, any State Regulatory Agency having responsibility for service standards or rates of any "entity" that may be directly involved in the proposed action, and the appropriate Regional Electric Reliability Council. Pursuant to section 202(c) of the Federal Power Act, DOE may issue an emergency order even though a designated "entity" has failed to file a timely response.

§ 205.375 Guidelines defining inadequate fuel or energy supply.

An inadequate utility system fuel inventory or energy supply is a matter of managerial and engineering judgment based on such factors as fuels in stock, fuels en route, transportation time, and constraints on available storage facilities. A system may be considered to have an inadequate fuel or energy supply capability when, combined with other conditions, the projected energy deficiency upon the applicant's system without emergency action by the DOE, will equal or exceed 10 percent of the applicant's then normal daily net energy for load, or will cause the applicant to be unable to meet its normal peak load requirements based upon use of all of its otherwise available resources so that it is unable to supply adequate electric service to its ultimate customers. The following conditions will be considered in determining that a system has inadequate fuel or energy supply capability:

(1) System coal stocks are reduced to 30 days (or less) of normal burn days and a continued downward trend in stock is projected;

(2) System residual oil stocks are reduced to 15 days (or less) of normal burn days and a continued downward trend in stocks is projected;

(3) System distillate oil stocks which cannot be replaced by alternate fuels are reduced to 15 days (or less) of normal burn days and a continued downward trend in stocks is projected;

(4) System natural gas deliveries which cannot be replaced by alternate fuels have been or will be reduced 20 percent below normal requirements and no improvement in natural gas deliveries is projected within 30 days;

(5) Delays in nuclear fuel deliveries will extend a scheduled refueling shutdown by more than 30 days; and

(6) Water supplies required for power generation have been reduced to the level where the future adequacy of the power supply may be endangered and no near term improvement in water supplies is projected.

The use of the prescribed criteria does not preclude an applicant from claiming the existence of an emergency when its stocks of fuel or water exceed the amounts and time frames specified above.

§ 205.376. Rates and charges.

The applicant and the generating or transmitting systems from which emergency service is requested are encouraged to utilize the rates and charges contained in approved existing rate schedules or to negotiate mutually satisfactory rates for the proposed transactions. In the event that the DOE determines that an emergency exists under section 202(c), and the "entities" are unable to agree on the rates to be charged, the DOE shall prescribe the conditions of service and refer the rate issues to the Federal Energy Regulatory Commission for determination by that agency in accordance with its standards and procedures.

§ 205.377 Reports.

In addition to the information specified below, the DOE may require additional reports as it deems necessary.

(a) Where the DOE has authorized the temporary connection of transmission facilities, all "entities" whose transmission facilities are thus temporarily interconnected shall report the following information to the DOE within 15 days following completion of the interconnection:

(1) The date the temporary interconnection was completed;

(2) The location of the interconnection;

(3) A description of the interconnection; and

(4) A one-line electric diagram of the interconnection.

(b) Where the DOE orders the transfer of power, the "entity" receiving such service shall report the following information to the DOE by the 10th of each month for the preceding month's activity for as long as such order shall remain in effect:

(1) Amounts of capacity and/or energy received each day;

(2) The name of the supplier;

(3) The name of any "entity" supplying transmission services; and

(4) Preliminary estimates of the associated costs.

(c) Where the DOE has approved the installation of permanent facilities that will be used only during emergencies, any use of such facilities shall be reported to the DOE within 24 hours. Details of such usage shall be furnished as deemed appropriate by the DOE after such notification.

(d) Any substantial change in the information provided under § 205.373 shall be promptly reported to the DOE.

§ 205.378 Disconnection of temporary facilities.

Upon the termination of any emergency for the mitigation of which the DOE ordered the construction of temporary facilities, such facilities shall be disconnected and any temporary construction removed or otherwise disposed of, unless application is made as provided in § 205.379 for permanent connection for emergency use. This disconnection and removal of temporary facilities shall be accomplished within 30 days of the termination of the emergency unless an extension is granted by the DOE. The DOE shall be notified promply when such removal of facilities is completed.

§ 205.379 Application for approval of the installation of permanent facilities for emergency use only.

Application for DOE approval of a permanent connection for emergency use only shall conform with the requirements in § 205.373. However, the baseline data specified in § 205.373(d) need not be included in an application made under this section. In addition, the application shall state in full the reasons why such permanent connection for emergency use is in the public interest.

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