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David Silverstone

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THE PUBLIC UTILITY REGULATORY POLICIES ACT—A CONSUMERS GUIDE TO TITLE I*

David Silverstone**

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INTRODUCTION

The Public Utility Regulatory Policies Act\(^1\) (PURPA) became law on November 9, 1978. It was part of a larger package of energy legislation passed by the 95th Congress. The legislation was designed to deal exclusively with public utility issues and their impact on energy use and conservation.

PURPA is a product of significant compromise between the President, the House, and the Senate. The original House bill,\(^2\) which adopted much of the President's proposal, was substantially more directory than the final legislation. The bill sought to establish national minimum retail electric rate design standards and policies. A provision in the bill required that rates reflect the costs of service and be based upon the time of day and season in which the energy was being used, except when these factors would not be cost effective.

The Senate version\(^3\) was more advisory than either the President's or the House's version. It generally did not require states to adopt certain types of rates, but rather the Senate version authorized the Secretary of Energy to intervene in state regulatory proceedings in order to advocate three broad purposes: energy conservation, efficient use of facilities, and equitable ratemaking. It did require, however, the establishment of lifeline rates\(^4\) for certain elderly consumers.

The bill that emerged from the conference, which was subsequently enacted into law resembles the Senate version. This is particularly true with regard to the removal of any requirements placed upon states for the adoption of particular types of rate de-

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4. Lifeline is rate form in which the smallest users pay less for electricity than would be justified on cost basis. There are several variations of lifeline rates. The most common is one in which relatively small amount is charged for the first 400 kilowatt hours and increased thereafter.
sign. The bill reflects the Senate's desire to leave rate design authority primarily with state regulatory bodies. The compromise was the result of substantial lobbying by consumers, utilities, and state regulatory commissions acting through the National Association of Regulatory Utility Commissioners. Consumers typically favored the House bill while the utilities and regulation commissions supported the Senate version. It is questionable whether the degree of compromise was so great that the resulting legislation has become little more than an empty shell.

This paper discusses various provisions of PURPA. It concentrates on procedural issues raised by title I and on those issues of most concern to consumers and their representatives. It suggests various strategies for using title I to assist consumer activists who have legal, accounting, economic or engineering backgrounds. Regarding these suggested strategies, however, there are two caveats. First, each suggestion must be evaluated in light of peculiar local conditions. Consideration must be given to resources at hand, disposition and attitude of the regulatory authorities and utilities, and local priorities. Second, the suggestions are meant to assist the consumer activist who is representing principally residential consumers or a subclass of such consumers.

I. Scope of Public Utility Regulatory Policies Act (PURPA)

PURPA has few prohibitions or specific mandates other than those of an information gathering sort. It is designed to insure that regulatory authorities at the federal, state, and local level consider various public utilities practices and accept or reject them as being "appropriate. The Act requires that various hearings be held and procedural rules be followed, and that certain people and interests, including the federal government through the Department of Energy (DOE), be permitted to participate (titles I and III).

In addition, PURPA, in its less publicized titles, requires a lessening of barriers to interconnection among utilities, a wheeling of power by utilities, and a pooling among utilities (title II). It encourages production of electric power by cogeneration and by small facilities utilizing renewable energy sources including biomass and water The prohibition against rate discrimination by electric utilities toward such producers and the provision of certain loan programs to assist in the planning and construction of small hydroelectric facilities also encourages production of electric power (titles II
and IV). Furthermore, the Act addresses the problems associated with the transportation of crude oil (title V) and the availability of crude oil and natural gas (title VI). Finally the Act establishes funding for various research efforts including the Utility Regulatory Institute and coal research laboratories (title VI), and it provides financial assistance to state regulatory authorities and nonregulated utilities to comply with the Act’s requirements (titles I, III, VI).

II. SCOPE OF TITLE I

Title I of PURPA will have little direct impact in the more progressive state regulatory jurisdictions. Over the last several years, these jurisdictions have addressed the PURPA issues of rate restructuring, implementation of restrictions on termination of service, and automatic adjustment clauses. They have opened regulatory decisionmaking to consumer interests by making information available and allowing full participation in various proceedings. Title I’s impact in other less progressive jurisdictions, however, cannot be dismissed lightly. The State of Mississippi and its Public Service Commission, for example, challenged the enactment of PURPA on constitutional grounds. Their complaint, joined by the Mississippi Power & Light Company, claims that the required hearings and information gathering procedures create an unconstitutional burden on the state and usurp the inherent powers of the state to regulate intrastate utilities.

Although the complaint may not be meritorious, it indicates the concern expressed by the less progressive regulatory authorities and utilities. This concern reinforces the opportunity which PURPA provides for consumers to challenge existing energy regulation.

Title I is particularly pertinent to "nonregulated utilities." For many such utilities, notably municipal systems, PURPA may represent the first effort at regulation by other than a local legisla-

5. Title I, Retail Regulatory Policies for Electric Utilities, deals exclusively with electric utilities and their consumers.
7 Amended Complaint of plaintiff.
8. These nonregulated electric utilities include all utilities not regulated by state regulatory authority or the Tennessee Valley Authority 16 U.S.C.A. § 2602(9), (17), (18) (West Cum. Supp. 1979). In addition, nonregulated electric utilities must be of sufficient size with annual sales of 500 million kilowatt-hours or more. Id. § 2612(a). While difficult to generalize, company of 500 million kilowatt-hours in sales probably represents utility serving population of roughly 50,000. This represents residential, commercial, and industrial customers.
tive body. While regulation by the local legislatures may make systems responsive to local needs, such legislatures usually lack the necessary expertise and time to provide adequate oversight. Title I requires open proceedings and written decisions with regard to PURPA concerns, thereby permitting public scrutiny and consumer input into the decisionmaking process, often for the first time.9

The Act requires the Secretary of DOE10 to publish an updated list each year of those electric utilities subject to title I.11 From this list, each state must identify the utilities over which it has jurisdiction. While not stated explicitly in the Act, the legislative history indicates that the failure to include a particular utility on the appropriate list does not excuse it or any regulatory authority that has jurisdiction over it from compliance with title I.12 If a particular utility is omitted from the list but should not have been, consumers should insist on compliance by that utility and the appropriate state authority.

III. TITLE I'S AGENDA

A. Purposes

Title I of PURPA is intended to encourage conservation, efficiency, and equity in the supply and use of electric energy.13 The

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9. All electric utilities, both regulated and nonregulated, with retail sales greater than 500 million kilowatt-hours annually are covered by the requirements of title I. The only exception is, however, that the operations of an electric utility relating to wholesale sales of electric energy are not covered. Id. § 2612(b). These sales, to the extent regulated by the Federal Energy Regulatory Commission, are subject to some directives of other titles of the Act including review of automatic adjustment clauses by the Federal Energy Regulatory Commission. Id. § 824d. If utility has both wholesale and retail sales and the retail sales exceed the limit, coverage is extended to include the retail portion of that utility.

10. While the Act occasionally distinguishes between the Secretary and the Department of Energy (DOE), for purpose of this discussion they are identical and the two will be used interchangeably. Id. § 261(c).

11. The lists are made available by the state utility commissions or the Department of Energy. The first such list was published on March 21, 1979. 44 Fed. Reg. 17,447 (1979).

12. "It should be stressed that the list is informational and for the convenience of the public, but is not intended in any way to affect the legal obligation of any utility, or state regulatory commission with regard to any utility. H.R. CONF REP No. 1750, 95th Cong., 2d Sess. § 102, at 70 (1978), reprinted in [1978] 6 U.S. CODE CONG. & AD. NEWS 7797, 7804 [hereinafter cited as H.R. CONF REP.].

conservation purpose is directed at the ultimate end user of electricity. Efficiency, however, is directed at electric utilities and it pertains to the efficient use of "facilities and resources." The Conference Report specifically includes capital resources within the meaning of resources. Presumably a utility should undertake conservation programs utilizing relatively small amounts of capital before it commits large capital resources to building additional generating plants. The Report states that efficient use includes conserving scarce energy resources by rate reform which substitutes the use of more plentiful [domestic] resources in lieu of less plentiful resources, especially those imported. This may not necessarily mean, for example, that coal should replace oil fired base load plants. Rather, it may mean that rates should be restructured to encourage less usage of oil or natural gas during peak generation hours. Usage should be shifted to the off peak hours when coal fired base load plants are utilized. The equity purpose relates to equitable rates among different consumers and does not refer to balancing the equity between consumers and the return to stockholders or to other notions of a balance between rates and utility profits.

The Conference Report makes clear that intervenors arguing for a particular action should carefully demonstrate that their proposal furthers at least one purpose without producing other adverse effects. For example, if a particular rate structure is being offered on the grounds of equity to consumers, it should also be made clear that its adoption will not adversely affect conservation. It need not be shown, however, that the rate structure encourages conservation in addition to achieving equity.

17. Id. at 69, reprinted in [1978] 6 U.S. CODE CONG. & AD. NEWS at 7803.
18. The DOE in its first intervention under PURPA cited this language to support the completion of the Millstone III Nuclear Plant in Connecticut. Prefiled Testimony of David S. Bardin at 4, Rate Increase of Connecticut Power & Light, No. 781206 (Conn. Div. of Pub. Utility Control, filed Feb. 8, 1979). While this completion may result in greater use of domestic sources of energy to replace foreign oil, it does not utilize rate reform to accomplish this end. It would appear, therefore, that DOE's claimed grounds for intervention and testimony in the Millstone III construction schedule is improper.
19. A good illustration of this example is found in recent District of Columbia decision. Proceeding to Consider Establishment of Time of Day Peak Load Pricing...
Most importantly, title I's purposes supplement otherwise applicable state law 20 and they do not override state law 21. State law regarding electric utility rates often requires no more than that they be just and reasonable. Consequently, state regulatory authorities contend, in some instances, that while they can control the revenue level achieved by a utility, their authority on rate design is minimal. In such states, the Act's three purposes will insure that regulatory authorities have the statutory authority to go beyond revenue considerations and become fully involved in all aspects of utility regulation.

Similarly, states may use the supplementary authority provided by PURPA to address the nonrate design standards of section 2623. 22 For example, a regulatory authority that desired to prohibit ratepayers from being charged for political and promotional advertising often shied away from such a prohibition, fearing that there was no basis in state law for such an action. Now it would be able to cite PURPA 23 and enact that prohibition.

The Act's three purposes of conservation, efficiency, and equity are given further meaning by six ratemaking standards 24 and four regulatory standards. 25

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for Large Demand Customers of Potomac Elec. Power Co., No. 680 (D.C. Public Service Commission, June 28, 1979). The PSC found that time of day rates for large commercial customers would foster equity among such users by having rates track the cost of providing electricity at different times of the day. While the Commission found that conservation may also be fostered by this rate reform, it based its decision principally on equity and on finding that conservation would not be adversely affected.

21. H.R. CONF REP supra note 12, at 71 reprinted in [1978] 6 U.S. CODE CONG. & AD. NEWS 7797, 7805. In that same section the report also states: The intent here is that where State regulatory authority or nonregulated utility finds insufficient authority, pursuant to otherwise applicable State law, under which it may adopt standard then these three purposes of the title provide such authority. In effect, the three purposes expand the discretion of the State regulatory authority or nonregulated utility to adopt the standards.

23. Id. § 2623(b)(5).
24. Id. § 2621.
25. Id. § 2623. There are five regulatory standards. The fifth one, however, regarding procedures to be met prior to termination of service is treated differently. Id. § 2623(b)(4). It is to be considered by regulatory authorities and nonregulated utilities without regard to the furtherance of the three purposes. Id. § 2623(a)(2). As the Conference Report stated, "[t]he conferees treated termination of service differently from the other standards in this section because the provision is generally not related to these purposes but is an important provision to protect consumers from inappro-
B.  

Ratemaking Standards

Ratemaking standards are established in two sections of the Act\textsuperscript{26} and are integrated with the Act's purposes.\textsuperscript{27} Because of their importance, each of the standards is set out below

1. Rates for each class of customer shall be designed to the maximum extent practicable to reflect the cost of providing service to that class.\textsuperscript{28} While setting a cost is left to the state regulatory authority or nonregulated utility it must account for the difference in cost attributable to daily and seasonal time of service, the particular customer, demand, and energy components.\textsuperscript{29}

2. Unless cost justified, the price of the rate's energy component or that portion of the rate attributable to the energy cost, may not decline as consumption increases.\textsuperscript{30} This standard does not relate to the entire rate, just the energy component.\textsuperscript{31} It would be possible for a declining block rate\textsuperscript{32} to meet this standard if the price of the energy component were held constant but the customer and demand component declined as consumption increased. In this case, the customer would still face a declining block rate structure when the rate in its entirety was considered.

3. Rates shall be based upon the time of day when the energy is used, if such rates can be cost justified.\textsuperscript{33} The cost is measured by comparing the long run benefits—lower fuel and generating costs\textsuperscript{34}—to metering and other customer costs associated with such a rate design. If the former exceeds the latter, then such rates are cost justified.


\textsuperscript{27} "The conferees intend that this consideration will focus on how implementation of each standard would affect each utility and its consumers in terms of the three purposes set forth in Section 101. H.R. CONF REP supra note 12 § 111, at 70, reprinted in [1978] 6 U.S. CODE CONG. & AD. NEWS 7797, 7804 (emphasis added).


\textsuperscript{29} Id. § 2625(a).

\textsuperscript{30} Id. § 2621(d)(2).

\textsuperscript{31} An "energy component" is that portion of the rate designed to recover the cost of the fuel used to produce electricity. For example, if oil is used to produce electricity the energy charge for each kilowatt-hour is designed to cover the cost of oil necessary to produce that kilowatt-hour.

\textsuperscript{32} A declining block is rate design in which discounts are given for increasing usage so that the cost per unit of energy decreases as use increases.


4. Rates must vary with the season to the extent that the utility incurs different costs in different seasons.\footnote{16 U.S.C.A. § 2621(d)(4) (West Cum. Supp. 1979).}

5. Cost justified interruptible rates must be offered to all commercial and industrial customers.\footnote{Id. § 2621(d)(5).}

6. A utility must offer its consumers practical, cost effective, and reliable load management techniques if they assist a utility in managing energy and/or capacity requirements.\footnote{Id. § 2621(d)(6).} In order to be cost effective, the technique must provide net long run cost savings as required for time of day rates and be likely to reduce the utility's peak demand.\footnote{Id. § 2625(c).}

## C. Regulatory Standards

Regulatory standards may only indirectly affect the rate structure.\footnote{H.R. CONF REP supra note 12 § 113, at 75, reprinted in [1978] 6 U.S. CODE CONGO & AD. NEWS 7797, 7809.} They still, however, must meet the test of furthering at least one of the Act's purposes. As with the ratemaking standards, the importance of the regulatory standards warrants setting them out below

1. Master metering is prohibited in new buildings if the occupants can control a portion of their own electric usage and the benefits to such occupants exceed the additional costs of individual meters.\footnote{16 U.S.C.A. § 2623(b)(1) (West Cum. Supp. 1979).}

2. An automatic adjustment clause is only permitted if it is found to encourage efficient use of resources and to insure maximum economies in those operations and purchases subject to such a clause.\footnote{Id. § 2623(b)(2), (e)(1).} Audits and reports of utilities utilizing such clauses are permitted although not required.\footnote{Id. § 2625(e)(2).}

3. Each utility must periodically supply existing rate schedules to each customer. These schedules must contain the utilities entire rate structure for all customers.\footnote{16 U.S.C.A. §§ 2623(b)(3), 2625(f)(1), (2) (West Cum. Supp. 1979).}

Significantly, the Conference Report made it explicit that such clauses, if they met procedural requirements, were not "encouraged" nor considered to be "inappropriate. The Report went on to state that cost of service indexing, as used in New Mexico, should not be barred. H.R. CONF REP supra note 12 § 115, at 79-80, reprinted in [1978] 6 U.S. CODE CONGO & AD. NEWS 7797 7813-14.
within thirty or in some cases, sixty days after application or proposal for a change in the rate schedule. Upon a consumer's request, the utility must also supply information relating to that consumer's consumption for the prior year.45

4. The costs of promotional and political advertising can only be recovered from shareholders or other owners of a utility. There are no restrictions, however, on the amount or cost of such advertising. Both promotional and political advertising are broadly defined. There are five exceptions to these definitions. The costs of advertising related to these can be charged to ratepayers. Unlike most states that have adopted similar statutes or regulations, this statute permits institutional advertising to be charged to ratepayers.50

The standards discussed need not be totally accepted. The legislative history of title I indicates that modifying a standard may be appropriate. The Conference Report explains, for example, that it may be appropriate to adapt a standard to fit local conditions. "Adoption of standards which vary insignificantly from the standards spelled out in this section may be treated as adoption of the standards. If the standard adopted does vary more than insignificantly from the standard set forth in the legislation, then that variation will not be considered an adoption of the standard. It will be important to establish that there was a failure to adopt the

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44. Id. §§ 2623(b)(3), 2625(f)(1)(B).
45. Id. §§ 2623(b)(3), 2625(f)(3).

49. Id. § 2625(h)(2).
51. The Conference Report states explicitly:
The conferees expect that the modifications of the standards described in this section may meet the test of appropriateness in the context of particular potential application. The conferees therefore understand that individual States (or utilities) may choose to adapt the standards to their particular situation as documented in the record of the hearing held to examine the standard.
standard if, at the same time, there is failure to comply with the procedural requirements of section 2623(c). 53

D Procedures Regarding Termination of Service to Consumers

In addition to rate and regulatory standards, the PURPA agenda requires specific procedures for terminating electric service to consumers. 54 The statute 55 and legislative history expressly provide that termination procedures are to be adopted without regard to the impact the procedures may have on the Act's purposes of conservation, efficiency and equity. The test for adopting termination procedures is restricted to whether they would be appropriate and consistent with otherwise applicable state law. 56

The statute expressly provides that when considering termination procedures, the Act's three purposes are considered to be a supplement to state law. 57 This appears to be inconsistent with the statement of the Conference Report that termination procedures are not related to the purposes. 58 Despite the inconsistency, it may prove to be important in convincing a regulatory authority or unregulated utility to adopt termination procedures.

If there is no specific statutory authorization for adoption of termination procedures in a particular state, then the regulatory authority or nonregulated utility may take the position that it cannot, as a matter of law, prescribe such restrictions on the termination of customers. If, however, consumers can show that such restrictions on terminations achieve one of the purposes of title I, they could argue that since these purposes supplement state law, they provide the necessary statutory authority upon which to base the promulgation of termination procedures. The main purpose achieved by such procedures is equity thereby insuring that consumers are fairly treated and not terminated before being given an opportunity to dispute the reasons or to pay in installments. There are at least two contrary arguments, however, which may confront the consumers. The first argument is that the adoption of termination procedures will adversely affect conservation because those who get something for nothing will waste it. Also, there is the eq-

54. Id. § 2623(b)(4).
55. Id. § 2623(a)(2).
56. Id.
57. Id. § 2623(a).
uity argument that one consumer should not be given more time to pay a bill than another consumer.

The termination procedures stated in section 2625(g) provide two major protections for consumers. They require prior notice and an opportunity to dispute the reason for termination, and a limitation on termination in certain hardship cases. The prior notice must include a clear and concise statement of the rights and remedies available to the consumer. The reasonable opportunity to dispute may include a hearing or a less formal procedure, but it must allow the consumer an effective opportunity to dispute those reasons for termination.

Terminations are restricted in cases where the regulatory authority or the nonregulated utility determines that termination would be especially dangerous to health, or if an occupant is elderly or handicapped even if that occupant is not the consumer but is only "someone in the household." In such cases, termination is prohibited if the consumer is only able to pay for service in installments rather than one lump sum as normally required. As with other regulatory standards, some adaptation of the procedures to fit local conditions may be allowed. Depending upon the relative strength of the different interests and the view of the regulatory authority in a particular locality some weakening of the statutory safeguards could result. For example, the standard prohibits terminations if such would be especially dangerous to health. The precise definition of the term dangerous is left to the various jurisdictions. In a jurisdiction where there is a narrow definition, the standard may be rendered less meaningful.

E. Lifeline Rates

The last item on the PURPA agenda is lifeline rates. Lifeline rates...
is treated apart from the other ratemaking standards of section 2621\(^67\) in order to insure that such rates are permitted, although not required, as an exception to the standard regarding cost based rates in section 2621(d)(1).\(^68\) It permits rates lower than those that would meet a cost of service test to account for certain essential needs of residential consumers.\(^69\) The legislation is intended to emphasize that lifeline rates are permitted and to insure that an opportunity to examine this rate form is provided. It neither encourages nor discourages such a rate, but leaves consideration of it up to the state regulators or nonregulated utility

**IV PURPA Procedure**

Each of the agenda items previously discussed requires a hearing by state regulatory authorities or nonregulated utilities, and each requires that determinations be made in writing. Procedural differences do exist, however, and it is important to understand those differences in order to make full use of PURPA. The discussion that follows examines these similarities and differences in each step of the PURPA procedure from the initiation of a hearing to the rendering of a decision.

**A. Time Limitations**

PURPA requires that consideration of the Act's agenda be commenced no later than November 9, 1980, which is two years from enactment of the legislation. The term commencement, however, varies for the different parts of the agenda.

1. **Ratemaking Standards**

Section 2622(b)(1)\(^70\) requires that consideration of the ratemaking standards be commenced, or a hearing date for such commencement be set, within two years of enactment. The hearing need not conclude nor even begin within the two year period as long as the date for such commencement of consideration is set before the two years expire. Although the two year limit only re-

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\(^67\) *Id.* § 2621.

\(^68\) *Id.* § 2621(d)(1).

\(^69\) Arguments for lifeline type rates have been advanced on the grounds that such rates are cost justified. To the extent these arguments are found compelling, the special exception provision of this section is superfluous. The statute, however, requires special hearing to be held. *Id.* § 2624(b). This factor should still prove useful.

quires the commencement of consideration or the setting of a hearing date, the consideration must be completed and the determination made with respect to the standards within three years from enactment, by November 9, 1981.71 A state regulatory authority or nonregulated utility that delays beyond the time prescribed, however, suffers little penalty. It is only required to undertake the consideration of the standards and to make the determination for a covered utility in the first rate proceeding commenced concerning the utility after the three year limit has expired.72

The viability of even the weak penalty that is mandated may be illusory. The penalty requires that the relevant consideration be made in the first rate proceeding commenced after the three year period has run its course. The Act does not define "commence." If it merely means that the utility files a notice of intent to file for a rate proceeding, then such a filing could be made just before the expiration of the three year limit, with the actual filing months away. Since the proceeding technically commenced before the expiration of the three year period, the consideration of the ratemaking standards would not have to be made during that proceeding. It may have to wait for the next rate proceeding which may not begin for several years.

Furthermore, the Act does not define "proceeding." If read narrowly the term "first rate proceeding" could exclude all but a formal, full blown rate case. A delay of several years might occur if rate increases can be made on an interim basis without a hearing by the legislative body of a municipality.

Finally there is no interpretation of the requirement that consideration and determination must be made "in the first rate proceeding. Query whether a regulatory authority could bifurcate a rate proceeding, make a decision in the first phase on the revenue level question which is the paramount concern of a utility and subsequently consider the question of the ratemaking standards. This tactic could delay the determination of the standards for years.

71. Id. § 2622(b)(2).
72. Id. § 2622(b)(3).

Such penalty is far less severe than the penalties that exist in other areas of federal legislation where state is required to take certain procedural steps. The cutoff of federal funds for the failure to enact State Implementation Plan (SIP) under the Clean Air Act, 42 U.S.C.A. § 7410 (West Supp. 1978), or the denial of all federal highway monies for the failure to enforce truck weight laws are two examples of the greater sticks that could be wielded. 23 U.S.C.A. § 127 (West Cum. Supp. 1979).
Yet, the approach apparently would be within the statutory requirements for making the determination "in the proceeding." These eventualities would violate legislative intent to consider expeditiously the ratemaking standards. They appear, however, to be possible outcomes.

Fortunately there may be opportunities to avoid undue delay of consideration of the ratemaking standards by forcing a consideration through section 2622(a). This section authorizes any intervenor in a rate proceeding to request and require the regulatory authority or nonregulated utility to consider and make the requested determination with respect to the ratemaking standards. The determination must then be made in the rate proceeding in question. If, however, there is a pending or immediately upcoming rate proceeding and if it appears that the regulatory authority or nonregulated utility may delay consideration of the standards, immediate initiation may provide some relief from that expected delay.

2. Regulatory Standards

With regard to the regulatory standards of section 2623, the timing problem is less severe. Sections 2623(a) and (c) require notice and hearing. Either adoption or a written determination not to adopt all or any of the standards and the reasons must be made by November 9, 1980. Any maneuvering to delay will not be successful since a decision as well as consideration must be made by the set deadline. Unfortunately short of judicial review as authorized in section 2633, there is no remedy for noncompliance with this time requirement. There is no explicit provision similar to section 2622(c) which states the consequence of a failure to comply.

73. The Connecticut DPUC did just that in Docket No. 781206. See note 18 supra. The first phase decided June 29, 1979, adjusted the revenue level. The second phase of the proceeding did not even start until July 1979. In this second phase PURPA issues will be discussed. The rule of § 2622(c) cannot be invoked since the three years have not run. 16 U.S.C.A. § 2622(c) (West Cum. Supp. 1979). If state is subject to this rule in the future, however, by having failed to make determination within three years, the state may be able to avoid having to make the decision indefinitely by employing the ruse of bifurcated process.


76. id. § 2623.

77. id. § 2623(a), (c).

78. Id. § 2633.

79. Id. § 2622(c).
Furthermore, intervenor initiated consideration in a pending rate proceeding as was permitted in the ratemaking standards of section 2621\textsuperscript{80} is not authorized.\textsuperscript{81}

### 3. Lifeline Rates

The timing requirement of lifeline rates also lacks clarity. For every electric utility that does not have a lifeline rate in effect by the deadline, there must be held an evidentiary hearing to determine if such a rate should be implemented.\textsuperscript{82} Unfortunately, there is no time limit by which such a hearing must be held or a determination made.\textsuperscript{83}

The legislative history gives no guidance about this time limit. If an electric utility fails to meet the deadline, then the hearing and decision apparently could be delayed indefinitely. This appears contrary to the legislative intent and would nullify any reason for originally including the deadline. Therefore, judicial review appears to be the only recourse if a lifeline hearing or determination is delayed indefinitely. Two arguments to support judicial review can be made. First, a delay beyond two years is contrary to the legislative intent. Second, it is only by reading into the statute some reasonable time limit on holding a hearing and making a determination that any meaning or use can be ascribed to the two year language of the statute.

#### B. Commencement of a PURPA Hearing

As with the time limitation, a PURPA proceeding can be initiated in several ways by several types of persons. Such initiation, however, depends, to an extent, on the section of the PURPA agenda to be addressed.

\begin{itemize}
  \item \textsuperscript{80} \textit{Id.} § 2621.
  \item \textsuperscript{82} 16 U.S.C.A. § 2624(b) (West Cum. Supp. 1979).
  \item \textsuperscript{83} In fact, from the statutory language, it could be inferred that hearing held prior to the expiration of the two year period would not meet the requirements of this section. The Conference Report, however, does state that it is "intend[ed] that the hearing be held after the date of enactment of this legislation and prior proceedings held before \textit{that} time not be referenced as complying with these requirements. H.R. Conf. Rep. \textit{supra} note 12 § 114, at 77 \textit{reprinted} in [1978] 6 U.S. Code Cong. & Ad. News 7797, 7811 (emphasis added). Presumably, therefore, proceeding taking place \textit{after} the date of enactment, but before the expiration of two years, would comply.
\end{itemize}
1. **Ratemaking Standards**

The procedure for initiating a hearing on section 2621\(^{84}\) ratemaking standards is the most flexible. It can be initiated by the state regulatory authority or nonregulated utility or by DOE or, in certain circumstances, by other intervenors.

If initiated by the state regulatory authority or nonregulated utility the only statutorily imposed requirement is that the consideration be preceded by public notice and a hearing.\(^{85}\) The regulatory authority or nonregulated utility can initiate a new proceeding specifically designed to consider the ratemaking standards or can undertake its consideration in "any proceeding respecting the rates of the electric utility"\(^{86}\) If an existing proceeding has already begun, no additional notice is required "if there was adequate prior notice to apprise persons that the issues may be raised."\(^{87}\) In this proceeding any one, or all, of the section 2621\(^{88}\) standards can be considered.

Although there are no additional federal requirements imposed on state regulatory authorities or nonregulated utilities prior to commencement of section 2621\(^{89}\) considerations, the Act specifically requires that to the extent state law is not inconsistent with the statute, such state procedural requirements shall be controlling.\(^{90}\) If state law is inconsistent, the federal procedure overrides those inconsistent sections. For example, a state law providing that no notice is required, or making no provision for such notice, before a nonregulated utility undertakes the consideration of section 2621\(^{91}\) standards would be overridden by the statute. A state law that provided that notice be given by a certain period

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\(^{85}\) *Id.* § 2621(b)(1).

\(^{86}\) *Id.* § 2622(a).


This statement is taken from that section of the Conference Report which discusses hearings initiated by other than the regulatory authority or nonregulated utility. It would appear, however, to apply here as well. There is no reason to provide for additional notice in one situation and not in the other. A regulatory decision to undertake PURPA questions is more likely to get publicity without additional notice than through the motion of an intervenor.


\(^{89}\) *Id.*

\(^{90}\) *Id.* § 2621(b)(2).

\(^{91}\) *Id.* § 2621(d).
prior to the commencement of the consideration, or that required prehearing conferences, would remain in effect.

A consideration of section 2621 standards may also be initiated by persons other than the state regulatory authority or nonregulated utility. These other persons, however, cannot initiate a new proceeding. They can only initiate the consideration and receive a determination on section 2621 standards if a “proceeding respecting the rates of the electric utility” has already begun. The Conference Report makes it clear that the person requesting the consideration of section 2621 standards can raise any or all of them. Although the conferees clearly had rate cases in mind when they permitted “any proceeding respecting rates” to become PURPA proceedings, the language of the statute appears broader. Almost any proceeding before a state regulatory authority could fit within the rubric of “a proceeding respecting rates,” including but not limited to those involving fuel adjustment charges, issuance of securities, expansion of franchise territory, load forecast, and generation or transmission siting. Presumably any one of these could become a PURPA proceeding although additional notice probably would be required.

Any participant or intervenor can mitigate consideration of section 2621 standards in an existing proceeding. Although the Conference Report refers to parties and intervenors, the term “participant” is generally considered broader than “party” and because it is explicitly contained in the statute, the broader wording would apply. Such persons would include the electric utility which is the subject of the hearing as well as other intervenors. Intervenors include, in addition to anyone permitted to intervene pursuant to state law: The Secretary of DOE, any affected electric utility or any customers of such an affected utility. “Affected utility” is broadly construed to include any utility regulated by the

92. Id.
93. Id.
96. Id. (reference is made to delay in the rate proceeding process).
98. Id. § 2622.
same regulatory authority which may be "affected by precedents set in a case relating to another utility." Thus, this section gives the right of intervention and the ability to initiate the section 2621 consideration to customers of a state regulated utility in proceedings regarding the rates of any other utility regulated by the same state if anything relevant to the ratemaking standards is to be considered.

Section 2631(a) appears to permit intervention by section 2631 parties and subsequent consideration of ratemaking standards at any time while a proceeding is still open. The section, however, requires that intervention "be timely under otherwise applicable law" if the proceeding began but was not completed prior to enactment of the Act. Presumably applicable law includes state law which normally requires intervention at the outset of a proceeding or at least early in the life of a proceeding. The Conference Report implies that intervention after commencement of the proceeding is to be permitted. The Report specifically states: "[I]ntervention [is] to be interpreted broadly to include intervention or participation at the beginning of a proceeding or otherwise..." The conflict may be reconciled by restricting section 2632(c) to its plain meaning. This would result in its application to proceedings begun but not completed prior to the enactment of the Act. Therefore, for any proceeding begun before November 9, 1978, intervention must be timely as defined by state law. For proceedings begun after that date, state or other applicable law must yield to the Act. Intervention as a right will be permitted and consideration of section 2621 standards will be allowed if requested at any time during a proceeding that has not yet been completed.

103. Id. § 2631(a).
104. Id. § 2631.
105. Id. § 2631(c).
109. Id. § 2621(b)(2).
110. Id. § 2621.
111. Id. §§ 2622(a), 2634. A cautionary note, both § 2622(a) and § 2634 may preclude full consideration of standard if such consideration has already taken place.
2. Regulatory Standards

The procedural framework for the commencement of a hearing to consider section 2623\textsuperscript{112} standards is substantially less complex than that for a section 2621\textsuperscript{113} hearing. It is, however, more difficult for consumers to control the timing of such a hearing. There is no clear statutory authority permitting anyone other than the regulatory authority or nonregulated utility to initiate a proceeding respecting the rates charged by an electric utility. Section 2631 states that an intervenor can intervene and participate, as a matter of right, in any ratemaking proceeding "in order to initiate and participate in the consideration of one or more of the standards established by [s]ubchapter II"\textsuperscript{114} Because subchapter II includes both sections 2621\textsuperscript{115} and 2623,\textsuperscript{116} it appears that once a rate proceeding has begun, intervenors can initiate, as well as participate in, a consideration of both sections standards. While section 2631 apparently provides the requisite statutory authority the viability of this interpretation is questionable.

First, there is no specific authority\textsuperscript{117} granting the power of initiation with regard to the section 2623\textsuperscript{118} standards. Second, the legislative history does not support the granting of such authority\textsuperscript{119} Because of these two factors, the right to require consideration of the section 2623\textsuperscript{120} standards in ratemaking proceedings appears doubtful. It is clear, however, that the regulatory authority or nonregulated utility could, if it so chose, include such a consideration in any proceeding, whether called specifically for that purpose or not, as long as such consideration is permitted under otherwise applicable law. Such law refers to both state law and the procedural requirements of the Act such as adequate notice.

\textsuperscript{112} Id. § 2623(b).
\textsuperscript{113} Id. § 2621.
\textsuperscript{114} Id. § 2631(a).
\textsuperscript{115} Id. § 2621.
\textsuperscript{116} Id. § 2623.
\textsuperscript{117} As distinct from the general discussion of the power of intervenors contained in § 2631(a).
\textsuperscript{118} Id. § 2623. As compared, for example, to § 2622(a) containing § 2621 standards.
\textsuperscript{119} In its discussion of § 2623, the Conference Report states, "[t]his section does not require State regulatory authority or nonregulated utility to undertake the consideration of these standards as provided in § 112(a) [§ 2622(a)] whenever an intervenor or participant raises them in any rate proceeding as provided with respect to the standards set forth in § 111(d) [§ 2621(d)]." H.R. CONF REP \textit{supra} note 12 § 111, at 76, \textit{reprinted in [1978]} 6 U.S. CODE CONC. & AD. NEWS 7797, 7810.
3. **Lifeline Rates**

Except for section 2631(a)\(^{121}\) pertaining to who may commence lifeline rate consideration, the statute and legislative history are silent. As previously discussed, section 2631\(^{122}\) may provide authority for the initiation of the consideration of the issue in any convened ratemaking proceeding. Such an initiation, however, need not be honored by the regulatory authority or nonregulated utility until two years after enactment of the Act, and then only if a utility does not have a lifeline rate.\(^{123}\)

C. **Procedures for PURPA Proceedings**

In addition to requirements concerning notice and initiation of consideration of the PURPA agenda, the Act addresses the question of hearing procedures. It leaves much of this procedural requirement to state law.

The Act requires that a separate determination for each item of the PURPA agenda be made for each utility covered by the Act.\(^{124}\) PURPA is silent on whether determination must be made in a separate hearing for each utility or whether generic\(^{125}\) hearings can be held by a state regulatory authority. The Conference Report, however, expressly states that either generic or individual proceedings are permitted in section 2621\(^{126}\) consideration. They may be distinct from rate case proceedings where revenue levels are determined, but the rights of intervenors and other parties must be the same as in rate cases.\(^{127}\) If the generic option is chosen, the standards still must be examined and applied on a utility by utility basis.\(^{128}\)

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\(^{121}\) Id. § 2631(a).

\(^{122}\) Id. § 2631.

\(^{123}\) Of course, the notice and other procedural requirements of the statute must be met.

\(^{124}\) Id. §§ 2621(a), 2623(a), 2624(b).

\(^{125}\) “Generic refers to the practice of some regulatory agencies of holding one hearing at which all utilities within the agency jurisdiction are required to appear and discuss common issues affecting all of them. Any decision reached is binding on each utility. In the past such procedure has been used to hear matters relating to rate design, accounting practices, and termination procedures.

\(^{126}\) Id. § 2621.


\(^{128}\) Id.

Given the description of “affected” utility discussed above, it would appear that generic hearings are almost favored. 16 U.S.C.A. § 2631(a) (West Cum. Supp. 1979). If every utility concerned about precedent involves itself in proceedings involving
No such guidance is available with respect to proceedings for consideration of section 2623\textsuperscript{129} standards and lifeline rates. Because of the general deferral to state procedural law however, it appears that if generic hearings are permitted under state law they could be utilized to consider these standards as well. The caveat that examination and application of the standards must be on a utility by utility basis would still be relevant. Apparently generic proceedings are permitted to consider common issues and general theory but utility by utility examination must be completed.

During the hearing process itself, with only a few albeit important, exceptions, state procedure is controlling. Consideration of sections 2621\textsuperscript{130} and 2623\textsuperscript{131} standards must include a hearing. There is, however no definition within the Act of what constitutes the minimal requirements of a hearing. Section 2631\textsuperscript{132} does provide intervenors with access to relevant information pursuant to state rules of discovery which is a process normally associated with trial type proceedings. But, there appears to be no guarantee in the Act that the hearing must necessarily include such essential rights as an opportunity to present evidence and cross-examine. There appears no bar, for example, in the federal legislation to a state regulatory authority or nonregulated utility from meeting the participation requirements\textsuperscript{133} by merely allowing the intervenor or participant to give a short statement and nothing more.

Some protection with regard to section 2621\textsuperscript{134} standards may be afforded by state law. Section 2621(b)(2)\textsuperscript{135} requires that procedures mandated by the state regulatory authority or nonregulated utility be followed except when they are inconsistent with the intervention requirements of sections 2622(a),\textsuperscript{136} 2631,\textsuperscript{137} and 2632.\textsuperscript{138} The Conference Report includes procedures governed by state law such as the nature of evidence, the relationship between

\begin{itemize}
  \item every other utility and consumers of those utilities do likewise,
  \item proceeding concerning one utility may quickly become generic whether desired by the regulatory authority or not.
\end{itemize}

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  \item \textsuperscript{129} 16 U.S.C.A. \textsection{} 2623 (West Cum. Supp. 1979).
  \item \textsuperscript{130} \textit{Id.} \textsection{} 2621.
  \item \textsuperscript{131} \textit{Id.} \textsection{} 2623.
  \item \textsuperscript{132} \textit{Id.} \textsection{} 2631(b).
  \item \textsuperscript{133} \textit{Id.} \textsection{} 2631.
  \item \textsuperscript{134} \textit{Id.} \textsection{} 2621.
  \item \textsuperscript{135} \textit{Id.} \textsection{} 2621(b)(2).
  \item \textsuperscript{136} \textit{Id.} \textsection{} 2622(a).
  \item \textsuperscript{137} \textit{Id.} \textsection{} 2631.
  \item \textsuperscript{138} \textit{Id.} \textsection{} 2632.
\end{itemize}
findings and the record, the burden of proof, and any other matters not inconsistent with the requirements of this title."139 Again, these comments indicate that a trial type of administrative hearing is contemplated by the conferees. To the extent not required by state law however this section does not create that requirement.

Since virtually every state has established procedures that afford at least minimal protection, the fear concerning less than complete hearings may be more imagined than real. For regulatory authorities, this consideration may be accurate. It must be remembered, however, that nonregulated utilities, which previously set rates or made other decisions merely by meetings of the directors, may not have established any procedures for conducting hearings. It is clear that these nonregulated entities will have to provide at least some opportunity for intervenors to be heard. Unfortunately that opportunity may be little more than the opportunity to comment.

The concerns expressed over the lack of a clear requirement for trial type hearings regarding standards for sections 2621140 and 2623,141 are heightened by the fact that in requiring hearings on lifeline rates the Act explicitly requires evidentiary hearings.142 The section requires open public hearings, sufficient notice, an opportunity to present evidence and cross-examine witnesses, decisions based on the record, and judicial review143 Clearly a trial type hearing with all necessary procedural safeguards is contemplated. If the exclusio144 rule of statutory construction is applied to the two sections, it does not appear that adjudicatory hearings were intended for other than lifeline rates. Therefore, because of these infirmities, attention must be paid to state law and proce-

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141. Id. § 2623.
142. Id. § 2624(b).
143. Id. § 2613(b)(A).
144. The expressio unius est exclusio alterius rule states that failure to include provision in one part of statute while including it elsewhere is an indication of legislative intent that it be omitted in the former and its omission was not mere oversight. See 2A Sutherland Statutory Construction § 47.23, at 123 (4th ed. 1973).
dural safeguards. They must be utilized if consumer participation in sections 2621\textsuperscript{145} and 2623\textsuperscript{146} hearings will be meaningful.

D. Intervention in PURPA Proceedings

The Conference Report acknowledged the importance of intervention.\textsuperscript{147} Section 2631\textsuperscript{148} of the Act grants authority to certain persons to intervene in any ratemaking proceeding or other appropriate regulatory proceeding relating to rates or rate design, to participate "in the consideration of one or more of" section 2621(b) standards, section 2623(b) standards, or lifeline rates or other concepts which contribute to the achievement of the purposes of this chapter that is, conservation, efficiency or equity.\textsuperscript{149} This last phrase is construed broadly so that intervention will be allowed without the requirement of proving a case in advance.\textsuperscript{150} Therefore, the right to intervene and participate is not tied necessarily to consideration of the standards or lifeline rates, but rather to the purposes of the title. This is broader than the PURPA agenda. It could include, for example, issues such as the conservation program of a utility its management efficiency or its method for raising capital.

Similarly "participant" is broadly defined. It includes not only the Secretary of DOE and consumers of the utility subject to the hearing, but also other utilities regulated by the same regulatory agency and their consumers.\textsuperscript{151} When the proceeding involves rates or rate design,\textsuperscript{152} or the intervenor wishes to discuss an issue related to any of the purposes of title I, and the intervenor fits the description of an affected utility or customer, then intervention and participation must be allowed.\textsuperscript{153}

\textsuperscript{146} Id. § 2623.
\textsuperscript{147} "The conferees adopted this provision in recognition of the reliance they place on intervention and participation in these proceedings to further the purpose of this title. H.R. CONF REP supra note 12 § 121, at 81, reprinted in [1978] 6 U.S. CODE CONG. & AD. NEWS 7797, 7815.
\textsuperscript{149} Id. § 2631(a).
\textsuperscript{150} H.R. CONF REP supra note 12 § 121, at 82, reprinted in [1978] 6 U.S. CODE CONG. & AD. NEWS 7797, 7816. In fact, the Conference Report goes on to state that, "[a]ny issue which may contribute to the purpose of the title should be given consideration if it may contribute to these purposes. Id.
\textsuperscript{152} The use of the phrase "rates or rate design" clearly implies that the issue could be either overall revenue level or the form of particular rates.
\textsuperscript{153} This right must be exercised, however, in timely manner.
While the right to intervene and participate is broad, it is not clear what type of permitted intervention and participation will be most meaningful. The degree of participation permitted intervenors is left largely to state law. There are exceptions for certain procedural rights granted in evidentiary hearings related to lifeline rates and certain rights to information. In many jurisdictions, especially those that have adopted a form of the Administrative Procedures Act (APA), the degree of participation permitted should be extensive. This may not be true in all states and thus may prove to be a particularly nettlesome problem when dealing with nonregulated utilities.

The right to cross-examine witnesses, for example, except in lifeline rate hearings, is not guaranteed by the federal legislation. Therefore, if state law precludes this right, the right to submit evidence or the right to present fully one's case, then the right to intervene may prove to be illusory. Similarly, the right to obtain information appears to be broad. It gives all intervenors access to all relevant information available to other parties in the proceeding, presumably including the utility itself. Unfortunately, this right could be severely restricted if insufficient opportunity to study the information, or to rebut it, is provided. Therefore, while the Act may get an intervenor into the hearing process, state law will have to be relied upon to make that intervention worthwhile.

E. PURPA Determinations

In terms of substantive changes in rate design or utility practices, almost nothing in title I is mandatory. It is conceivable that if a regulatory authority or nonregulated utility complies with procedural requirements of title I, it can reject all the standards of section 2621, section 2623, and lifeline rates and still comply with PURPA mandates. The grounds for making determinations

154. "The procedures for the type of intervention are left to State law although maximum opportunity under State law to participate should be made available. H.R. CONF REP supra note 12 § 121, at 82, reprinted in U.S. CODE CONG. & AD. NEWS 7797, 7816.


156. Id. § 2631(b).


159. Id. § 2621.

160. Id. § 2623.

161. Id. § 2624(a).
with respect to the aforementioned sections vary and must be discussed separately

1. Ratemaking Standards

The threshold determination for consideration of each section 2621 standard is whether implementation is "appropriate" for the regulatory authority or nonregulated utility "under otherwise applicable state law." State law could either forbid implementation, require it or not discuss it.

Following this determination, it must be decided for each section 2621 standard whether the implementation of the standard is appropriate to carry out the purposes of the title. The crucial word in both steps is appropriate. Unfortunately no definition of the word is found in the statute or legislative history. Some guidance may be offered if the Secretary of DOE prescribes guidelines pursuant to section 2641 or provides information pursuant to section 2642. Until such actions are taken, the definition of "appropriate" is left to regulatory authorities and nonregulated utilities.

It may be determined that implementation of the standard would not be appropriate under state law. If this is the case, the decision not to implement must be made without regard to whether it would be appropriate to carry out one of the Act's purposes. As previously discussed, the purposes of PURPA are a supplement to, not an overriding of, state law. The Conference Report specifically states that when implementation of a standard is found to be appropriate to carry out one of the purposes but is inconsistent with state law, the state law governs and prevents the implementation of the standard.

162. Id. § 2621.
163. Id. § 2621(a). It is clear that separate determination must be made for each of the standards in § 2621(d).
164. Id. § 2621.
165. Id. § 2621(a).
166. Id. § 2641.
167. Id. § 2642. The Secretary of DOE issued Notice of Inquiry on April 12, 1979 soliciting comments regarding the establishment of such guidelines. 44 Fed. Reg. 22,022 (1979). Comments were to be filed by June 11, 1979. No decision had been published at the time this article was prepared.
168. It should be noted that inquiry will still have to be made to determine whether it would be so appropriate in order to comply with § 2621(c)(2). This section requires that if implementation of a standard would be appropriate but it is not done, then the reason for declining to do so must be stated in writing. Presumably, the only reason that need be given is that it violates state law.
If state law does not make implementation of a standard inappropriate, and if one of the purposes will be achieved by implementation of the standard, then, because the purposes are a supplement to state law implementation of the standard “may be accomplished. It must be emphasized that implementation is not required by the Act although implementation in this circumstance could be required by state law. The intention of the drafters “is to preserve the discretion of the State regulatory authorities and nonregulated utilities which is provided by State law”. Therefore, if state law did not require implementation after a finding that such implementation would be appropriate to meet one of the purposes, then failure to so implement would not constitute a violation of this section since this section does not require implementation of any standard.

Relief is possible under state law in the above circumstance. No present state legislation requires implementation of a section 2621 standard if found appropriate to achieve conservation, efficiency or equity. In those states which have adopted some form of the APA, however, state law usually requires that actions of regulatory authorities or nonregulated utilities be based on determinations made on the record. Therefore, if it was determined on the basis of the record that implementation of a standard would be appropriate for achieving a purpose of the Act, the implementation might be required. Failure to do so, without some other contravening determination made on the record as well, would violate state law which then could be enforced through judicial action.

This outcome is unlikely and, therefore, relief under state law should not be expected. It is difficult to imagine that a regulatory authority would find a standard in conformity with state law and appropriate to achieve a purpose of the Act and then fail to implement it without also making some other contravening determination, based on the record, upon which to support its rejection. Most likely state law requires no more than that a determination be based on the record, thereby allowing broad discretion to the

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171. While implementation is not required by the Act, written determination and reason for failing to so implement is required, and failure to make public that writing does violate federal law. Id. § 2621(c)(2).
173. Id. at 72, reprinted in [1978] 6 U.S. CODE CONG. & AD. NEWS at 7806.
regulatory authority or nonregulated utility to consider any factors deemed appropriate and to base a decision on any such factor which has a basis in the record. In this circumstance, the regulatory authority even if it rejected implementation of a standard after finding that it would help achieve one of the purposes, would not be in violation of state law if it also determined that there were sufficient reasons on the record to reject implementation. To comply with federal law it would then merely have to state these reasons for rejection.

For example, if a regulatory authority or nonregulated utility with broad discretion in state law to consider many factors in making its decision, heard evidence that cost justified rates would help achieve equity but would also adversely affect economic development, and it rejected implementation of such rates due to its impact on development, it would have violated neither state nor federal law Federal law would be satisfied because the reason for rejecting implementation of the standard was given. State law would be satisfied because the decision was based on the record. If a state found implementation of a section 2621 standard to be appropriate under state law but inappropriate to achieve one of the purposes of conservation, efficiency or equity it could still implement that standard or a concept related to that standard. 175

Consumers should be aware of the possibility of a partial or phased implementation of a ratemaking standard including the possibility of some exceptions for some ratepayers. Section 2627(b) permits implementation of different ratemaking standards, but only if permitted by state law If such different standards were implemented, the discussion above regarding state law appears to control. The Conference Report contains an extensive discussion of the ability to implement partial or phased implementation. It does not mention a need for justification of such action in state law 178

If such partial or phased implementation was adopted, it is unclear whether that would constitute implementation of a

177 "Different" according to the Conference Report includes more or less stringent standards, or modification of the standards. H.R. CONF REP supra note 12 § 117, at 81, reprinted in [1978] 6 U.S. CODE CONG. & AD. NEWS 7797, 7815.
ratemaking standard. If it did not constitute such an implementation, the reason would have to be stated, and compliance with section 2621(c)(2)\textsuperscript{179} would be required. Further since the Act itself gives no authority for such a partial or phased implementation, presumably some authority under state law would have to be found, despite the Conference Report language. If, on the other hand, partial or phased implementation was considered to be implementation of a standard in furtherance of the achievement of one of the Act's purposes, then no section 2621(b)(1)\textsuperscript{180} declaration needs to be made. Assuming such action was not barred by state law then, since it supplements state law it would provide sufficient authority for such an implementation. The question of whether such partial or phased implementation is, in fact, implementation will have to await court decision. It seems fair to conclude, however, that a court will only interfere with an administrative decision to implement partially or in phases if the implementation undertaken is merely a token or symbolic one.

2. Regulatory Standards

Section 2623\textsuperscript{181} standards are treated in a fashion similar to section 2621\textsuperscript{182} standards but with two important differences.\textsuperscript{183} First, implementation of the latter's standards could be rejected even if found appropriate under state law and appropriate to achieve one of the purposes of the Act. This could be done without violating federal law although such a rejection could violate state law. With regard to the former's standards, it is arguable that federal law itself prohibits their rejection where they are appropriate under state law and they achieve one of the purposes of the title.\textsuperscript{184} Section 2623(a)(1)\textsuperscript{185} states that the standards contained in section 2623(b),\textsuperscript{186} with the exception of section 2623(b)(4)\textsuperscript{187} concerning termination procedures, shall be adopted if appropriate to

\begin{itemize}
  \item 180. Id. § 2621(b)(2).
  \item 181. Id. § 2623.
  \item 182. Id. § 2621.
  \item 183. Whether state law permits such rejection would depend on the resolution of the identical issues raised with regard to rejection of § 2621 standards.
  \item 184. As with § 2621 standards, the Secretary may issue voluntary guidelines pursuant to § 2641. See note 197 and accompanying text supra. Inquiry was published on April 12, 1979.
  \item 186. Id. § 2623(b).
  \item 187. Id. § 2623(b)(4).
\end{itemize}
carry out the purposes of this Chapter, is otherwise appropriate, and is consistent with otherwise applicable State law. The section 2623(b)(4) standard shall be adopted if it is found to be "appropriate and consistent with otherwise applicable state law." The crucial difference between the "may" of section 2621(c) and the "shall" of section 2623(a) requires adoption of the latter's standards if they meet the tests of appropriateness.

The only caveat to this reading of the legislation is the "otherwise appropriate" language of section 2623(a)(1) and "appropriate" language of section 2623(a)(2). This language appears to add another standard to the two previously discussed. Those standards pertained to achieving one of the Act's purposes and maintaining consistency with state law while these phrases seem to leave it to the unfettered discretion of the regulatory authority or nonregulated utility to determine whether the standard is appropriate for adoption.

This last interpretation of the "appropriate" language is buttressed by the Conference Report. It states that discretion regarding implementation of sections 2623 and 2621 standards is broad. Further it states: "[The regulatory] authority and [nonregulated] utility are not required by these sections to adopt or implement such standards."

It appears, therefore, that adoption of a section 2623 standard is mandatory if it is appropriate to achieve one of the purposes of the Act and is consistent with state law. The statute, however, presents an exception for regulatory authority or nonregulated utility. The regulatory authority or nonregulated utility could find that the standard is appropriate to achieve one of the title's purposes and is consistent with state law but not appropriate to adopt because of otherwise applicable state law. Then adoption would not be required.

188. Id. § 2623(a)(1). As with § 2623(a)(1) standards, § 2623 standards must be considered separately. The test is applied to each standard separately not as a group.
189. Id. § 2623(b)(4).
190. Id. § 2623(a)(2).
191. Id. § 2621(c).
192. Id. § 2623(a).
193. Id. § 2623(a)(1).
194. Id. § 2623(a)(2).
197. Id. § 2623(a).
198. As with § 2621(c)(2), if a standard is not adopted the reason for the rejection must be stated in writing.
The second important difference regards what constitutes adoption of a standard. Again, section 2627 is applicable, and the comments above pertinent to that section are relevant. Unlike its statements about partial or phased implementation of section 2621 standards, however, the Conference Report in discussing section 2623 standards specifically states, "Adoption of standards which vary insignificantly from the standards spelled out in this section may be treated as adoption of the standards for purpose of the subsection." It appears, therefore, that unless the standard is entirely adopted, it must be treated as rejected. This requires that the reasons stated for such a rejection conform with section 2623(c) requirements.

3. Lifeline Rates

The proceeding concerning lifeline rates must be an evidentiary hearing and, therefore, must include a written decision based on a written record. There are intentionally no statutory requirements, however, regarding acceptance or rejection of such a rate form. The Conference Report states that while a full hearing is required, there is "no judgment made in Federal law as to how it should be resolved." This wide open discretion may make judicial review of little consequence since a court will be loath to substitute its expertise for that of an agency supposedly experienced in these matters.

F Effect of Prior Proceedings on the PURPA Agenda

The drafters of the PURPA legislation recognized that many of the issues they were addressing were concepts not entirely new to
state utility regulation. They also recognized that requiring reconsideration of issues previously dealt with by some regulatory authorities and nonregulated utilities would be expensive and possibly without benefit. Therefore, they included in Title I two provisions to deal with this potential problem of duplication, sections 2634 and 2622(a). These provisions, despite their well-intentioned attempt to avoid duplication, could make meaningful intervention and participation in PURPA considerations difficult, if not impossible. Again, the treatment of the various portions of the PURPA agenda is different and each requires a separate analysis.

Both sections 2634 and 2662(a) are relevant to the duplication questions regarding consideration of the implementation of section 2621 standards. The drafters were concerned with duplication of efforts made prior to, and subsequent to, the enactment of PURPA. The problem of subsequent duplication of efforts arose because intervenors, in any proceeding commenced with respect to the rates of an electric utility can initiate consideration of the implementation of section 2621 standards. The drafters were especially concerned that the power to initiate this portion of the PURPA agenda could be used solely for purposes of delaying the rate proceeding process. Therefore, they made it clear that if a standard already had been considered in accordance with the requirements of this title, subsequent considerations need not be as extensive. The subsequent considerations could take into account any prior determinations and the evidence upon which they were based. There is one limitation on this incorporation by reference. If the consideration is from a proceeding either completed at the time of enactment of the statute or pending at that time, the section 2634 requirements concerning substantial compliance with the procedural aspects of PURPA must be met. There are no

208. Id. § 2622(a).
209. Id. § 2634.
210. Id. § 2622(a).
211. Id. § 2621.
212. Id.
214. Id.
216. Id. § 2634.
limitations, other than state law and, ultimately judicial review on incorporation by reference from proceedings begun subsequent to the enactment of the Act.217

Clearly the reference to a prior proceeding poses a real threat to intervenors who might not have participated in it. For example, if all homeowners who use electricity as a heat source wish to argue against seasonal rates but did not intervene in an early proceeding when the issue of such a standard was explored, they may be foreclosed from having a full hearing on this issue. This would preclude their right to present evidence and cross-examine adverse witnesses in the subsequent proceeding even though their particular point of view was not represented at the earlier proceeding.

The only possible protection against such an eventuality would be a state law that would prevent incorporation in certain instances.218 Connecticut General Statutes,219 for example, require that before such incorporation can be accomplished through administrative notice, parties must be apprised of such a possibility and be given an opportunity to examine the materials and contest their inclusion. Thus, state law would insure, at a minimum, that the incorporation would not occur without notice and opportunity to argue why it should not be allowed. If the incorporation were not allowed, then intervenors would have an opportunity to initiate the consideration of section 2621220 standards desired and to make the best case for adoption or rejection. Therefore, when faced with a possible decision that consideration has already been performed, reference to state law is critical.

The limitation of section 2634221 regarding duplication of efforts made prior to passage of the Act applies to considerations of both sections 2621222 and 2623223 standards. It is the latter’s only limitation. The section 2634224 limitation is in two parts. The first refers to proceedings or actions completed prior to the Act’s

217. Presumably, if the reference is from proceeding begun after the enactment of the legislation, the proceeding would have been in full compliance with these procedural requirements. If there is not such full compliance, then the reference may not be permitted.
221. Id. § 2634.
222. Id. § 2621.
223. Id. § 2623.
224. Id. § 2634.
passage. As long as there has been "substantial compliance" with the procedural requirements of the Act and any of the section 2621 or section 2623 standards have been duly considered and either implemented or not, there need not be a subsequent consideration of that same standard. Substantial compliance does not necessarily require "the full right of participation and intervention as required by [section] 2631." It does, however at least with respect to section 2621 standards, mean that there has to have been a utility-by-utility analysis of the appropriateness of these standards to carry out the purposes of the Act. There has to be a consideration of section 2621 standards relative to the Act's purposes, not just to state law or other considerations. No other guidance to the meaning of "substantial compliance" is given. The decision of the regulatory authority and nonregulated utility in this regard, however, is subject to judicial review.

The second part of section 2634 refers to proceedings or actions commenced before passage of the Act but not yet completed. To avoid duplication, the requirements of the Act must be complied with in that part of the proceeding or action occurring after passage to the maximum extent practicable except as otherwise provided in [section] 2631(c). This language does not require notice to have been issued in accordance with the Act nor does it "require restarting the entire proceeding to give any person a right to participate or intervene if such right would be untimely as stated in [section 2631(c)]."

"Maximum extent practicable" could, however, mean that additional notice be rendered during the proceeding so that everyone can be apprised of the new importance of the proceeding and respond accordingly. Furthermore, it could mean that the proceeding be adjourned until a later date to give adequate time for preparation. Other practical solutions to the duplication problem exist. These include reopening a portion of the proceeding or allowing

225. Id.
226. Id. § 2621.
227. Id. § 2623.
228. Id.
229. Id. § 2621.
232. Id. § 2634.
new evidence on only certain issues. These steps would insure that duplication is avoided and at the same time insure that intervenors are not denied an opportunity to present their best possible case. The Conference Report does state that if no determination has been made with regard to a section 2621 standard, then the section 2621 requirements of a written decision based on findings and evidence on the record should be followed.

Regarding lifeline rates, the legislation is clear that no hearing held or determination made prior to passage of the Act will suffice. The evidentiary proceeding required by the Act must be held subsequent to passage of the Act. There must be full compliance with the procedural requirements. Section 2634 is inapplicable. Apparently the conferees were not concerned with duplication, and there is little doubt that intervenors will be provided ample opportunity to be heard.

Prior proceedings, therefore, could, with the exception of consideration of lifeline rates, have a substantial impact on the scope, and even on the necessity of PURPA hearings. The impact of such prior proceedings on consideration of the ratemaking standards is most severe. When the force of section 2621(a), permitting incorporation by reference of evidence from prior proceedings, is combined with the force of section 2634, limiting the procedural rights of intervenors, the former's requirements may be met with little more than the most cursory proceeding. Furthermore, even such cursory proceedings may be unnecessary. This is true since the first part of section 2634 permits proceedings completed prior to passage of the Act to satisfy the Act if they were conducted in substantial compliance with the procedural requirements of title I and were considered the relevant standards.

The requirement of consideration of section 2623 regulatory standards cannot be satisfied by the incorporation by reference from prior proceedings. This is scant comfort, given the power of

235. Id. § 2621(d).
236. H.R. CONG. & AD. NEWS 7797, 7819.
238. Id. § 2624(c).
239. Id. § 2621(a).
240. Id. § 2634.
241. Id.
242. Id. § 2623.
the first part of section 2634\textsuperscript{243} which applies to the requirements of section 2623\textsuperscript{244} as well as to the requirements of section 2621.\textsuperscript{245}

V Judicial Review

Congress left most of the work of title I to those agencies at the state level and initial enforcement of the Act to the state courts.\textsuperscript{246} A utility or consumer denied the right given by section 2631(a)\textsuperscript{247} to intervene and participate in a proceeding must first go to state court to enforce that right.\textsuperscript{248} If the state court fails to enforce the right, then access to the United States District Court is available\textsuperscript{249} as well as to the state appellate process.\textsuperscript{250}

The Conference Report makes clear that the intent of judicial review is to make the enforcement of the right to intervene and participate "as rapid as possible."\textsuperscript{251} It permits access to the federal court system even if the initial denial in the state court was on the grounds that the appeal was premature or interlocutory.\textsuperscript{252}

Significantly litigation to protect intervention and participa-

\begin{itemize}
\item \textsuperscript{243} Id. § 2634.
\item \textsuperscript{244} Id. § 2623.
\item \textsuperscript{245} Id. § 2621.
\item \textsuperscript{246} The establishment of state courts as initial appellate bodies is subject to two exceptions. First, federal agency utilities may be excluded under § 2633(c)(2). Secondly the right of intervention and participation by the Secretary of DOE is permissible according to § 2631(a).
\item \textsuperscript{248} Id. § 2632(b)(2).
\item \textsuperscript{249} Id. § 2633(b)(2).
\item \textsuperscript{250} Id. § 2633(b)(3).
\item \textsuperscript{251} H.R. CONF REP \textit{supra} note 12 § 123, at 84, reprinted in [1978] 6 U.S. CODE CONG. & AD. NEWS 7797, 7818. What is unclear is the extent to which § 2633(b)(3) permits simultaneous appeal to state appellate courts and the federal courts with the possibility of conflicting decisions. The language of this section protects the right of access to federal court even if review and enforcement is being sought in any state court at any time. Presumably potential intervenor could pursue both courses simultaneously: intervening and participating after the first favorable decision. Both courts, however, may balk at this "forum shopping."
\item \textsuperscript{252} Id. It is questionable whether federal court can be utilized if the denial of relief in state court was based on procedural defect relating strictly to state law, such as improper form of pleading. Perhaps, more importantly, it is debatable whether access to federal court would be permitted if the state court rendered no decision. That is, the state court heard the person appeal, but simply took no action. The proceeding at which intervention and participation was sought could be over before the state court made this decision, thereby possibly rendering an appeal or federal court claim moot. In the event of this possibility, it may be appropriate to seek injunctive relief of the pending state court decision. If the relief is denied, immediate access to federal court should be sought on the ground that any eventual relief by the state court will be worthless.
\end{itemize}
tion rights does not extend to the right to initiate a consideration of section 2621 standards. Therefore, one could force a regulatory authority or nonregulated utility to permit an intervention through the above process but could not use it to force an initiation of the consideration of the section 2621 standards. The omission was apparently intentional. The Conference Report states that the federal court "cannot require any particular outcome from the intervention, nor that any issue raised by an intervenor be considered appropriate."255

This omission, however, should not be interpreted to mean that relief is unavailable if a regulatory authority or nonregulated utility ignores or disregards the requirements of title I regarding consideration of the ratemaking or regulatory standards or lifeline rates and takes no action whatsoever within the applicable time limits to consider these issues. Section 2633(c)(1) permits any person including the Secretary of DOE to bring an action in state court pursuant to the procedures of that state court to enforce the title's requirements. Enforcement of obligations to hold hearings and make determinations, for example, through the use of a writ of mandamus, can be achieved through this section.259

Aside from the situations noted above and selective review by the United States Supreme Court of final decisions of the highest state court,260 judicial enforcement of the requirements of Title I is left to the state courts pursuant to applicable state procedures.261 Those procedures include burdens of proof;262 methods of judicial review: hearing de novo or on the record below; practice and

254. Id.
257 This assumes that the utility in question is not federal agency. If it is, the enforcement action can be brought in federal court under § 2633(c)(2).
259. H.R. CONF REP supra note 12 § 123, at 84, reprinted in [1978] 6 U.S. CODE CONG. & AD. NEWS 7797, 7818. This enforcement right would probably not be ripe until the time limits provided for within the Act had expired. What action must be accomplished within the stated time limits is open to some question. Furthermore, the question of whether any action must be taken is open to some interpretation given the uncertainties raised by § 2634.
261. Id. § 2633(c)(1).
pleading; and form of relief. The only exceptions to this general
deferral to state procedural rules are contained in sections
2633(c)(2) and 2633(c)(3). The former grants standing to appeal
from any determination made in any proceeding to any person who
intervened or otherwise participated in the original proceeding.
The latter permits the Secretary of DOE to act as an amicus curiae
in any judicial review of a proceeding even if the Secretary did not
participate in the original proceeding. The scope of judicial re-
view authorized by title I is limited mostly to review of the actions
of the regulatory authority or nonregulated utility with regard to its
treatment of procedural issues.

Any exception to this limitation must be referred to state law
since the review is pursuant to any applicable state procedures. State procedures apparently include the scope of review permitted
by state law. Thus, the extent to which a court can review the
decision of the regulatory authority or nonregulated utility and sub-
stitute its judgment is a subject for state law.

In most states, however, this exception will provide little, if
any check on the discretion of regulatory authorities or non-
regulated utilities in dealing with the substantive issues raised by
title I. Courts are loath to interfere with the judgment of adminis-
trative agencies and, as a general rule, defer to their expertise.
They are usually bound, by statute or otherwise, not to substitute
their judgment for that of the administrative agency Their review
will extend no further than to insure that all required procedural
steps have been followed.

As previously stated, the treatment and enforcement of all
procedural rights granted by title I are subject to judicial review

264. Id. § 2633(c)(3).
265. Id. § 2633(c)(2).
CODE CONG. & AD. NEWS 7797, 7819. Unless permitted by state law he could not InI-
tiate such an appeal unless he participated in the administrative proceeding. Section
2633(c)(1) also permits appeals to be taken by other persons "if state law otherwise
267. 16 U.S.C.A. § 2633 (West Cum. Supp. 1979). The focus on procedural is-
sues is not surprising given that the Act, while identifying variety of issues to be
discussed, mandates little with respect to the substantive area of utility regulation.
268. Id. § 2633(c)(1).
CODE CONG. & AD. NEWS 7797, 7818.
270. Id. "The findings and determinations are reviewable under the sub-
stantive standards of review as established under State law. Id."
These include the right to intervene and participate, the obligation to commence proceedings within certain time limits, and the requirement of hearings and written determinations containing certain findings based on a record.\textsuperscript{271}

Judicial review with regard to these procedural issues should be more effective than with regard to substantive issues. The courts are more familiar and comfortable with such issues. In addition, deference to administrative expertise should be of less concern to a court since it presumably is the expert in deciding if a procedural right granted by statute has been observed in the administrative process. To the extent there are uncertainties in the Act with regard to such procedural rights, however, the state courts will be called upon to interpret the intent behind the federal law. Some state courts will be reluctant to do so and may defer to the judgment of the regulatory authority or nonregulated utility on the grounds that it is in the best position to resolve the uncertainty by reason of its familiarity with the law. For example, title I requires a hearing to be held to consider sections 2621\textsuperscript{272} and 2623\textsuperscript{273} standards. It says little about the type of hearing and procedural safeguards required in that hearing. A regulatory authority or nonregulated utility may try to argue that a hearing does not require that intervenors be granted the right to cross-examine witnesses but merely that they be permitted to make a statement. A state court may defer to this interpretation. It may do so on the grounds that the regulatory authority or nonregulated utility knows best what constitutes a consideration of the standard and the type of evidence and record necessary to determine whether the implementation or adoption of the standard will achieve one of the purposes of the title.

An intervenor faced with the above possibility is not without hope. One can argue that the federal law intended that a hearing would include the right to cross-examine. In addition, “hearing” may be defined by state law to include the right to cross-examine adverse witnesses and to participate fully in a trial proceeding. If hearing is so defined, then it could be argued that because the federal law is a supplement to and not a replacement of state law these protections of state law must extend to the hearings. To do

\textsuperscript{271} Of course, any procedural rights granted by state law are subject to judicial review to the extent permitted or required by state law.


\textsuperscript{273} Id. § 2623.
otherwise would constitute a violation of state law. Since state law cannot be ignored, any hearing that did not include these safeguards would be infirm without regard to the resolution of the question under federal law. It appears, therefore, that while judicial review can provide some relief, its ability to remedy all but the clearest procedural violations of law is limited.

VI. PURPA STRATEGY CONSIDERATIONS

What must be obvious to even a casual observer is that Title I of PURPA, while presenting many possibilities for favorably affecting the regulation and practices of electric utilities, mandates no actual change in current utility practices. There is not any guarantee that the consideration of ratemaking and regulatory standards that appear to be required will take place in an effective and worthwhile manner. Given these circumstances, consumers must carefully consider the strategy to be employed in order to use PURPA to their utmost advantage.

It is impossible to design an overall strategy that will work best in every possible situation. Each state regulatory authority and utility will respond differently to PURPA. Therefore, strategy must be planned accordingly. There are, however, several considerations to be noted for designing the appropriate strategy.

First, the overall political climate should be assessed, and the general population's level of consciousness about the issues raised by the PURPA agenda should be determined. If the question of electric rate and regulatory reform is not a public issue, the regulatory authority or nonregulated utility will be freer to dispense with the PURPA agenda expediently. Hearings will be simple and quick, barely meeting the minimum PURPA requirements. If the regulatory authority or nonregulated utility is ill-disposed to PURPA, even such rudimentary compliance may not be accomplished.

If, on the other hand, utility issues have been the subject of substantial public debate, it is more likely that the issues may not be swept successfully under the rug. There will be less success in efforts by a regulatory authority or nonregulated utility to claim, for example, that section 2634274 frees it from the need for any additional hearings or proceedings. Hearings are more likely to be full trial proceedings rather than just notice and comment proceed-

274. Id. § 2634.
ings. In several states, efforts at legislation similar to PURPA have failed on the ground that the federal law has taken care of the problem. If it can be demonstrated that the federal law has not resolved the problem, additional state legislation could be forthcoming.

Secondly the amount of money available to regulatory authorities will be an important concern. Funding will amount to $10 million\textsuperscript{275} for the fiscal year 1979-80, with that money scheduled to become available in October 1979. Without adequate funds, any examination of the PURPA agenda will, almost by definition, be cursory. There must be funds for adequate staff and consultants to make a complete inquiry into the PURPA agenda.

Thirdly the attitude of the state regulatory authority or nonregulated utility will also be crucial in planning a PURPA strategy. If a state Public Utilities Commission considers the PURPA agenda to be a waste of time, then strategy will have to take this into account. It may dictate, for example, that a consideration of section 2621\textsuperscript{276} standards be initiated as soon as possible. As discussed, it may be possible for a consideration of these standards to be avoided for years and an expeditious invocation of the power to initiate the consideration may be required.

Fourthly the political and financial strength of consumer groups or those representing them could also dictate PURPA strategy. If, for example, a consumer group lacks sufficient funds, it may wish to delay consideration of all or a portion of the PURPA agenda until sufficient funds are available through section 2632\textsuperscript{277} or some other source.\textsuperscript{278}

There may be other reasons why a delay in undertaking the PURPA agenda should be considered. It may be important to wait until necessary information pursuant to section 2643\textsuperscript{279} is available.

\textsuperscript{275} This includes the total federal appropriation for state regulatory authorities and nonregulated utilities to deal with PURPA considerations. H.R. 4930, 96th Cong., 1st Sess. (1979). Additional sums may be available in particular jurisdictions through state appropriations, other federal grants, or assessment powers provided for in state law.


\textsuperscript{277} Id. § 2632.

\textsuperscript{278} It may be considerable length of time before funding mechanism pursuant to § 2632(b) is established with sufficient scope to be meaningful.

\textsuperscript{279} 16 U.S.C.A. § 2643 (West Cum. Supp. 1979). This section requires utilities to file with the Federal Energy Regulatory Commission and any state regulatory authority which has ratemaking authority for that utility certain information regarding the costs of serving its customers. The information required to be filed is extensive
This could take up to two years or even longer in some instances.\textsuperscript{280}

Of course, consumers may have little control over the timing of consideration of the PURPA agenda. Consideration may be undertaken of the entire PURPA agenda by the regulatory authority or nonregulated utility on its own initiative as has already occurred in some jurisdictions. In addition, a utility or DOE could initiate consideration of section 2621\textsuperscript{281} standards even against the wishes of the regulatory authority or nonregulated utility. These proceedings cannot be ignored by consumers because of the impact they may have on future proceedings. If they are ignored, consumers at a later time, when they are prepared to address the PURPA agenda, may find themselves shut out of effective participation because of the prior proceeding rule of sections 2622\textsuperscript{282} and 2634.\textsuperscript{283} To avoid this possibility, consumers should be monitoring all proceedings that could consider the PURPA agenda and be prepared to intervene if such a consideration commences.\textsuperscript{284}

Given these strategic problems raised by the uncertainties of PURPA, consumers with limited resources should consider targeting their resources to those areas of greatest concern. If a state has already established adequate, although not perfect, procedures that must be followed prior to termination of service or if a state regulatory authority has decided that time of use rates are desirable and implementation has begun, although not at a rapid enough pace, then perhaps a consumer group, assuming it is generally in favor of these measures, should concentrate on the other PURPA issues. It could choose to concentrate on adequate consumer information, automatic adjustment clauses, or intervenor funding. While such a strategy may preclude complete relief, it does make some relief more likely

\textsuperscript{281} Id. § 2621.
\textsuperscript{282} Id. § 2622.
\textsuperscript{283} Id. § 2634.
\textsuperscript{284} Monitoring should be done carefully to avoid the problems of untimely intervention. Id. § 2631(c).
VII. Conclusion

The PURPA legislation is a result of significant compromise. A decision on whether the legislation is meaningful must wait until answers to the questions raised herein are provided. These answers will come over the next several years as the result of action by regulatory bodies, utilities, and consumer groups. It is conceivable that PURPA will be ignored and will result in little regulatory action of any kind. On the other hand, if state regulatory bodies adopt the spirit of PURPA, significant activity and advancement in utility ratemaking can be expected.

In order for PURPA to fulfill its purpose, it is critical that adequate funding be provided consumer groups and regulatory agencies. The funding is required if they are to be given the capability of dealing in a substantive way with the issues raised by PURPA. Without such adequate funding, state regulatory bodies will be forced to exercise their discretion to avoid the expense of dealing with PURPA issues. It would be unfortunate if the current mood of less regulation and less government involvement were used to defeat the intent of PURPA. The government involvement already exists through the substantial array of regulatory bodies. Additional funding, particularly for consumer groups, will enhance and not overburden the existing regulatory scheme. This is one area in which increased government involvement will actually result in increased control not by the government but by the public.