

CHAIRMAN’S MARK

APRIL 4, 2003

TITLE V—RENEWABLE ENERGY

Subtitle A—General Provisions

SEC. 501. ASSESSMENT OF RENEWABLE ENERGY RESOURCES.

(a) RESOURCE ASSESSMENT.—Not later than 6 months after the date of enactment of this title, and each year thereafter, the Secretary of Energy shall review the available assessments of renewable energy resources within the United States, including solar, wind, biomass, ocean (tidal and thermal), geothermal, and hydroelectric energy resources, and undertake new assessments as necessary, taking into account changes in market conditions, available technologies, and other relevant factors.

(b) CONTENTS OF REPORTS.—Not later than 1 year after the date of enactment of this title, and each year thereafter, the Secretary shall publish a report based on the assessment under subsection (a). The report shall contain—

(1) a detailed inventory describing the available amount and characteristics of the renewable energy resources; and

(2) such other information as the Secretary believes would be useful in developing such renewable energy resources, including descriptions of surrounding terrain, population and load centers, nearby energy infrastructure, location of energy and water resources, and available estimates of the costs needed to develop each resource, together with an identification of any barriers to providing adequate transmission for remote sources of renewable energy resources to current and emerging markets, recommendations for removing or addressing such barriers, and ways to provide access to the grid that do not unfairly disadvantage renewable or other energy producers.

(c) AUTHORIZATION OF APPROPRIATIONS.— For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy \$20,000,000 for each of fiscal years 2004

1 through 2008.

2 **SEC. 502. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

3 (a) INCENTIVE PAYMENTS.— Section 1212(a) of the Energy Policy Act of 1992 (42 U.S.C.
4 13317(a)) is amended by striking “and which satisfies” and all that follows through “Secretary shall
5 establish.” and inserting “. If there are insufficient appropriations to make full payments for electric
6 production from all qualified renewable energy facilities in any given year, the Secretary shall assign 60
7 percent of appropriated funds for that year to facilities that use solar, wind, geothermal, or closed-loop
8 (dedicated energy crops) biomass technologies to generate electricity, and assign the remaining 40
9 percent to other projects. The Secretary may, after transmitting to the Congress an explanation of the
10 reasons therefor, alter the percentage requirements of the preceding sentence.”.

11 (b) QUALIFIED RENEWABLE ENERGY FACILITY.— Section 1212(b) of the Energy Policy Act
12 of 1992 (42 U.S.C. 13317(b)) is amended —

13 (1) by striking “a State or any political” and all that follows through “nonprofit electrical
14 cooperative” and inserting “a not-for-profit electric cooperative, a public utility described in
15 section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or
16 possession of the United States or the District of Columbia, or a political subdivision thereof, or
17 an Indian tribal government of subdivision thereof;”; and

18 (2) by inserting “landfill gas,” after “wind, biomass,”.

19 (c) ELIGIBILITY WINDOW.— Section 1212(c) of the Energy Policy Act of 1992 (42 U.S.C.
20 13317(c)) is amended by striking “during the 10-fiscal year period beginning with the first full fiscal year
21 occurring after the enactment of this section” and inserting “after October 1, 2003, and before October
22 1, 2013”.

23 (d) AMOUNT OF PAYMENT.— Section 1212(e)(1) of the Energy Policy Act of 1992 (42
24 U.S.C. 13317(e)(1)) is amended by inserting “landfill gas,” after “wind, biomass,”.

25 (e) SUNSET.— Section 1212(f) of the Energy Policy Act of 1992 (42 U.S.C. 13317(f)) is
26 amended by striking “the expiration of” and all that follows through “of this section” and inserting
27 “September 30, 2023”.

28 (f) AUTHORIZATION OF APPROPRIATIONS.— Section 1212(g) of the Energy Policy Act of

1 1992 (42 U.S.C. 13317(g)) is amended to read as follows:

2 “(g) AUTHORIZATION OF APPROPRIATIONS.—

3 “(1) IN GENERAL.— Subject to paragraph (2), there are authorized to be appropriated
4 such sums as may be necessary to carry out this section for fiscal years 2003 through 2023.

5 “(2) AVAILABILITY OF FUNDS.— Funds made available under paragraph (1) shall
6 remain available until expended.”.

7 **SEC. 503. RENEWABLE ENERGY ON FEDERAL LANDS.**

8 (a) REPORT.—Within 24 months after the date of enactment of this Act, the Secretary of the
9 Interior, in cooperation with the Secretary of Agriculture, shall develop and report to the Congress
10 recommendations on opportunities to develop renewable energy on public lands under the jurisdiction
11 of the Secretary of the Interior and National Forest System lands under the jurisdiction of the Secretary
12 of Agriculture. The report shall include—

13 (1) 5-year plans developed by the Secretary of the Interior and the Secretary of
14 Agriculture, respectively, for encouraging the development of renewable energy consistent with
15 applicable law and management plans; and

16 (2) an analysis of—

17 (A) the use of rights-of-way, leases, or other methods to develop wind and
18 solar energy on such lands;

19 (B) the anticipated benefits of grants, loans, tax credits, or other provisions to
20 promote wind and solar energy development on such lands; and

21 (C) any issues that the Secretary of the Interior or the Secretary of Agriculture
22 have encountered in managing renewable energy projects on such lands, or believe are
23 likely to arise in relation to the development of renewable energy on such lands;

24 (3) a list, developed in consultation with the Secretary of Energy and the Secretary of
25 Defense, of lands under the jurisdiction of the Department of Energy or Defense that would be
26 suitable for development for renewable energy, and any recommended statutory and regulatory
27 mechanisms for such development; and

28 (4) any recommendations pertaining to the issues addressed in the report.

1 (b) NATIONAL ACADEMY OF SCIENCES STUDY.—

2 (1) Not later than 90 days after the date of the enactment of this section, the Secretary
3 of the Interior shall contract with the National Academy of Sciences to—

4 (A) study the potential for the development of wind, solar, and ocean (tidal and
5 thermal) energy on the Outer Continental Shelf;

6 (B) assess existing Federal authorities for the development of such resources;
7 and

8 (C) recommend statutory and regulatory mechanisms for such development.

9 (2) The results of the study shall be transmitted to the Congress within 24 months after
10 the date of the enactment of this section.

11 **SEC. 504. FEDERAL PURCHASE REQUIREMENT.**

12 (a) REQUIREMENT.— The President, acting through the Secretary of Energy, shall seek to
13 ensure that, to the extent economically feasible and technically practicable, of the total amount of
14 electric energy the Federal Government consumes during any fiscal year, the following amounts shall be
15 renewable energy—

16 (1) not less than 3 percent in fiscal years 2005 through 2007,

17 (2) not less than 5 percent in fiscal years 2008 through 2010, and

18 (3) not less than 7.5 percent in fiscal year 2011 and each fiscal year thereafter.

19 (b) DEFINITION.— For purposes of this section —

20 (1) the term “biomass” means any solid, nonhazardous, cellulosic waste material which
21 is segregated from other waste materials and which is derived from—

22 (A) any of the following forest-related resources: mill residues, precommercial
23 thinnings, slash, and brush, or nonmerchantable material;

24 (B) solid wood waste materials, including waste pallets, crates, dunnage,
25 manufacturing and construction wood wastes (other than pressure-treated, chemically-
26 treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but
27 not including municipal solid waste (garbage), gas derived from the biodegradation of
28 solid waste, or paper that is commonly recycled; or

1 (C) agriculture sources, including orchard tree crops, vineyard, grain, legumes,
2 sugar, and other crop by-products or residues.

3 (2) the term “renewable energy” means electric energy generated from solar, wind,
4 biomass, geothermal, municipal solid waste, or new hydroelectric generation capacity achieved
5 from increased efficiency or additions of new capacity at an existing hydroelectric project.

6 (c) CALCULATION.— For purposes of determining compliance with the requirement of this
7 section, the amount of renewable energy shall be doubled if —

8 (1) the renewable energy is produced and used on-site at a Federal facility;

9 (2) the renewable energy is produced on Federal lands and used at a Federal facility;

10 or

11 (3) the renewable energy is produced on Indian land as defined in Title XXVI of the
12 Energy Policy Act of 1992 (25 U.S.C. 3501 et. seq.) and used at a Federal facility.

13 (d) REPORT.— Not later than April 15, 2005, and every 2 years thereafter, the Secretary of
14 Energy shall provide a report to the Congress on the progress of the Federal Government in meeting
15 the goals established by this section.

16 **SEC. 505. INSULAR AREA RENEWABLE AND ENERGY EFFICIENCY PLANS.**

17 The Secretary of Energy shall update the energy surveys, estimates, and assessments for the
18 insular areas of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the
19 Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia,
20 and the Republic of Palau undertaken pursuant to section 604 of Public Law 96-597 (48 U.S.C. 1492)
21 and revise the comprehensive energy plan for the insular areas to reduce reliance on energy imports and
22 increase use of renewable energy resources and energy efficiency opportunities. The update and
23 revision shall be undertaken in consultation with the Secretary of the Interior and the chief executive
24 officer of each insular area and shall be completed and submitted to Congress and to the chief executive
25 officer of each insular area by December 31, 2005.

26 **Subtitle B—Hydroelectric Licensing**

27 **SEC. 511. ALTERNATIVE CONDITIONS AND FISHWAYS.**

1 (a) FEDERAL RESERVATIONS.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is
2 amended by inserting after “adequate protection and utilization of such reservation.” at the end of the
3 first proviso the following:

4 “The license applicant shall be entitled to a determination on the record, after
5 opportunity for an agency trial-type hearing of any disputed issues of material fact, with respect
6 to such conditions.”.

7 (b) FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by
8 inserting after “and such fishways as may be prescribed by the Secretary of Commerce.” the following:
9 “The license applicant shall be entitled to a determination on the record, after opportunity for an agency
10 trial-type hearing of any disputed issues of material fact, with respect to such fishways.”.

11 (c) ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.—Part I of the Federal Power Act (16
12 U.S.C. 791a et seq.) is amended by adding the following new section at the end thereof:

13 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

14 **“(a) ALTERNATIVE CONDITIONS.—**

15 **“(1) Whenever any person applies for a license for any project works within any**
16 **reservation of the United States, and the Secretary of the Department under whose supervision**
17 **such reservation falls (referred to in this subsection as ‘the Secretary’) deems a condition to**
18 **such license to be necessary under the first proviso of section 4(e), the license applicant may**
19 **propose an alternative condition.**

20 **“(2) Notwithstanding the first proviso of section 4(e), the Secretary shall accept the**
21 **proposed alternative condition referred to in paragraph (1), and the Commission shall include in**
22 **the license such alternative condition, if the Secretary determines, based on substantial evidence**
23 **provided by the license applicant or otherwise available to the Secretary, that such alternative**
24 **condition –**

25 **“(A) provides for the adequate protection and utilization of the reservation; and**

26 **“(B) will either—**

27 **“(i) cost less to implement; or**

28 **“(ii) result in improved operation of the project works for electricity production,**

1 as compared to the condition initially deemed necessary by the Secretary.

2 “(3) The Secretary concerned shall submit into the public record of the Commission
3 proceeding with any condition under section 4(e) or alternative condition it accepts under this
4 section, a written statement explaining the basis for such condition, and reason for not accepting
5 any alternative condition under this section. The written statement must demonstrate that the
6 Secretary gave equal consideration to the effects of the condition adopted and alternatives not
7 accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply;
8 and air quality (in addition to the preservation of other aspects of environmental quality); based
9 on such information as may be available to the Secretary, including information voluntarily
10 provided in a timely manner by the applicant and others. The Secretary shall also submit,
11 together with the aforementioned written statement, all studies, data, and other factual
12 information available to the Secretary and relevant to the Secretary’s decision.

13 “(4) Nothing in this section shall prohibit other interested parties from proposing
14 alternative conditions.

15 “(5) If the Secretary does not accept an applicant’s alternative condition under this
16 section, and the Commission finds that the Secretary’s condition would be inconsistent with the
17 purposes of this part, or other applicable law, the Commission may refer the dispute to the
18 Commission’s Dispute Resolution Service. The Dispute Resolution Service shall consult with
19 the Secretary and the Commission and issue a non-binding advisory within 90 days. The
20 Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that
21 the recommendation will not adequately protect the reservation. The Secretary shall submit the
22 advisory and the Secretary’s final written determination into the record of the Commission’s
23 proceeding.

24 “(b) ALTERNATIVE PRESCRIPTIONS.—

25 (1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a
26 fishway under section 18, the license applicant or licensee may propose an alternative to such
27 prescription to construct, maintain, or operate a fishway. The alternative may include a fishway

1 or an alternative to a fishway.

2 “(2) Notwithstanding section 18, the Secretary of the Interior or the Secretary of
3 Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the
4 proposed alternative referred to in paragraph (1), if the Secretary of the appropriate
5 department determines, based on substantial evidence provided by the licensee or otherwise
6 available to the Secretary, that such alternative—

7 “(A) will be no less protective of the fish resources than the fishway initially
8 prescribed by the Secretary; and

9 “(B) will either—

10 “(i) cost less to implement; or

11 “(ii) result in improved operation of the project works for electricity
12 production, as compared to the fishway initially deemed necessary by the
13 Secretary.

14 “(3) The Secretary concerned shall submit into the public record of the Commission
15 proceeding with any prescription under section 18 or alternative prescription it accepts under
16 this section, a written statement explaining the basis for such prescription, and reason for not
17 accepting any alternative prescription under this section. The written statement must
18 demonstrate that the Secretary gave equal consideration to the effects of the condition adopted
19 and alternatives not accepted on energy supply, distribution, cost, and use; flood control;
20 navigation; water supply; and air quality (in addition to the preservation of other aspects of
21 environmental quality); based on such information as may be available to the Secretary,
22 including information voluntarily provided in a timely manner by the applicant and others. The
23 Secretary shall also submit, together with the aforementioned written statement, all studies,
24 data, and other factual information available to the Secretary and relevant to the Secretary’s
25 decision.

26 “(4) Nothing in this section shall prohibit other interested parties from proposing
27 alternative prescriptions.

1 (a) IN GENERAL.— Not later than 180 days after the date of the enactment of this section, the
2 Secretary of the Interior and the Secretary of Agriculture shall enter into and submit to the Congress a
3 memorandum of understanding in accordance with this section regarding leasing and permitting for
4 geothermal development of public lands and National Forest System lands under their respective
5 jurisdictions.

6 (b) LEASE AND PERMIT APPLICATIONS.—The memorandum of understanding shall—

7 (1) identify known geothermal resources areas on lands included in the National Forest
8 System and, when necessary, require review of management plans to consider leasing under the
9 Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) as a land use; and

10 (2) establish an administrative procedure for processing geothermal lease applications,
11 including lines of authority, steps in application processing, and time limits for application
12 processing.

13 (c) DATA RETRIEVAL SYSTEM.— The memorandum of understanding shall establish a joint
14 data retrieval system that is capable of tracking lease and permit applications and providing to the
15 applicant information as to their status within the Departments of the Interior and Agriculture, including
16 an estimate of the time required for administrative action.

17 **SEC. 523. LEASING AND PERMITTING ON FEDERAL LANDS WITHDRAWN FOR MILITARY PURPOSES.**

18 Not later than 1 year after the date of the enactment of this Act, the Secretary of the Interior
19 and the Secretary of Defense, in consultation with interested states, counties, representatives of the
20 geothermal industry, and interested members of the public, shall submit to the Congress a joint report
21 concerning leasing and permitting activities for geothermal energy on Federal lands withdrawn for
22 military purposes. Such report shall —

23 (1) describe any differences, including differences in royalty structure and revenue
24 sharing with states and counties, between—

25 (A) the implementation of the Geothermal Steam Act of 1970 (30 U.S.C. 1001
26 et seq.) and other applicable Federal law by the Secretary of the Interior; and

27 (B) the administration of geothermal leasing under section 2689 of title 10,

1 United States Code, by the Secretary of Defense;

2 (2) identify procedures for interagency coordination to ensure efficient processing and
3 administration of leases or contracts for geothermal energy on federal lands withdrawn for
4 military purposes, consistent with the defense purposes of such withdrawals; and

5 (3) provide recommendations for legislative or administrative actions that could facilitate
6 program administration, including a common royalty structure.

7 **SEC. 524. REINSTATEMENT OF LEASES TERMINATED FOR FAILURE TO PAY RENT.**

8 (a) LEASE REINSTATEMENT.—Section 5(c) of the Geothermal Steam Act of 1970 (30 U.S.C.
9 1004(c)), is amended in the last sentence by inserting “or was inadvertent,” after “reasonable
10 diligence.”.

11 **SEC. 525. ROYALTY REDUCTION AND RELIEF.**

12 (a) RULEMAKING. – Within one year after the date of enactment of this Act, the Secretary shall
13 promulgate a final regulation providing a methodology for determining the amount or value of the steam
14 for purposes of calculating the royalty due to be paid on such production pursuant to section 5 of the
15 Geothermal Steam Act of 1970 (30 U.S.C. 1004). The final regulation shall provide for a simplified
16 methodology for calculating the royalty. In undertaking the rulemaking, the Secretary shall consider the
17 use of a percent of revenue method and shall ensure that the final rule will result in the same level of
18 royalty revenues as the regulation in effect on the date of enactment of this provision.

19 (b) LOW TEMPERATURE DIRECT USE . – Notwithstanding the provisions of section 5(a) of the
20 Geothermal Steam Act of 1979 (30 U.S.C. 1004(a)), with respect to the direct use of low temperature
21 geothermal resources for purposes other than the generation of electricity, the Secretary shall establish a
22 schedule of fees and collect fees pursuant to such schedule in lieu of royalties based upon the total
23 amount of geothermal resources used. The schedule of fees shall ensure that there is a fair return to the
24 public for the use of the low temperature geothermal resource. With the consent of the lessee, the
25 Secretary may modify the terms of a lease in existence on the date of enactment of this Act in order to
26 reflect the provisions of this subsection.

27 **Subtitle D —Biomass Energy**

28 **SEC. 531. DEFINITIONS.**

1 For the purposes of this subtitle:

2 (1) The term “eligible operation” means a facility that is located within the boundaries of
3 an eligible community and uses biomass from federal or Indian lands as a raw material to
4 produce electric energy, sensible heat, transportation fuels, or substitutes for petroleum-based
5 products.

6 (2) The term “biomass” means pre-commercial thinnings of trees and woody plants, or
7 non-merchantable material, from preventative treatments to reduce hazardous fuels, or reduce
8 or contain disease or insect infestations.

9 (3) The term “green ton” means 2,000 pounds of biomass that has not been
10 mechanically or artificially dried.

11 (4) The term “Secretary” means —

12 (A) with respect to lands within the National Forest System, the Secretary of
13 Agriculture; or

14 (B) with respect to Federal lands under the jurisdiction of the Secretary of the
15 Interior and Indian lands, the Secretary of the Interior.

16 (5) The term “eligible community” means any Indian Reservation, or any county, town,
17 township, municipality, or other similar unit of local government that has a population of not
18 more than 50,000 individuals and is determined by the Secretary to be located in an area near
19 federal or Indian lands which is at significant risk of catastrophic wildfire, disease, or insect
20 infestation or which suffers from disease or insect infestation.

21 (6) The term “Indian tribe” has the meaning given the term in section 4(e) of the Indian
22 Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

23 (7) The term “person” includes —

24 (A) an individual;

25 (B) a community;

26 (C) an Indian tribe;

27 (D) a small business or a corporation that is incorporated in the United States;

1 or

2 (E) a nonprofit organization.

3 **SEC. 532. BIOMASS COMMERCIAL UTILIZATION GRANT PROGRAM.**

4 (a) IN GENERAL.—The Secretary may make grants to any person that owns or operates an
5 eligible operation to offset the costs incurred to purchase biomass for use by such eligible operation
6 with priority given to operations using biomass from the highest risk areas.

7 (b) LIMITATION.—No grant provided under this subsection shall be paid at a rate that exceeds
8 \$20 per green ton of biomass delivered.

9 (c) RECORDS.— Each grant recipient shall keep such records as the Secretary may require to
10 fully and correctly disclose the use of the grant funds and all transactions involved in the purchase of
11 biomass. Upon notice by the Secretary, the grant recipient shall provide the Secretary reasonable
12 access to examine the inventory and records of any eligible operation receiving grant funds.

13 (d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are
14 authorized to be appropriated \$12,500,000 each to the Secretary of the Interior and the Secretary of
15 Agriculture for each fiscal year from 2004 through 2008, to remain available until expended.

16 **SEC. 533. IMPROVED BIOMASS UTILIZATION GRANT PROGRAM.**

17 (a) IN GENERAL.—The Secretary may make grants to persons in eligible communities to offset
18 the costs of developing or researching proposals to improve the use of biomass or add value to biomass
19 utilization.

20 (b) SELECTION.—Grant recipients shall be selected based on the potential for the proposal
21 to—

22 (1) develop affordable thermal or electric energy resources for the benefit of an eligible
23 community;

24 (2) provide opportunities for the creation or expansion of small businesses within an
25 eligible community;

26 (3) create new job opportunities within an eligible community, and

27 (4) reduce the hazardous fuels from the highest risk areas.

28 (c) LIMITATION.—No grant awarded under this subsection shall exceed \$100,000.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are
2 authorized to be appropriated \$12,500,000 each to the Secretary of the Interior and the Secretary of
3 Agriculture for each fiscal year from 2004 through 2008, to remain available until expended.

4 **SEC. 534. REPORT.**

5 Not later than 3 years after the date of enactment of this subtitle, the Secretary of the Interior
6 and the Secretary of Agriculture shall jointly submit to the Congress a report that describes the interim
7 results of the programs authorized under this subtitle.

8