

Summary of H.R. 6 – Energy Policy Act of 2005

Title XII: Electricity

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Robert Burns
Senior Institute Attorney

ABSTRACT

What follows in this document is a section-by-section summary of Title XII, the Electricity Title, of the Energy Policy Act of 2005. The summary follows each subtitle. Subtitle A concerns Reliability Standards. Subtitle B involves Transmission Infrastructure Modernization, including transmission siting and third-party financing. Subtitle C involves Transmission Operation Improvements. Subtitle D deals with Transmission Rate Reform. Subtitle E contains Amendments to the Public Utility Regulatory Policies Act of 1978 (PURPA), including new PURPA standards for consideration and determination and a prospective repeal of PURPA Qualifying Facility (QF) provisions. Subtitle F deals with the Repeal of the Public Utility Holding Company Act of 1935 (PUHCA). Subtitle G deals with Market Transparency, Enforcement and Consumer Protection, as well as containing amendments to the Federal Energy Regulatory Commission's (FERC) merger authority. Subtitle H contains definitions. Subtitle I has technical and conforming Amendments. Subtitle J deals with Economic Dispatch.

Contents

Subtitle A: Reliability Standards	2	Subtitle F: Repeal of PUHCA	7
Subtitle B: Transmission Infrastructure Modernization	2	Subtitle G: Market Transparency, Enforcement and Consumer Protection	9
Subtitle C: Transmission Operation Improvements	3	Subtitle H: Definitions	10
Subtitle D: Transmission Rate Reform	4	Subtitle I: Technical and Conforming Amendments	10
Subtitle E: Amendments to PURPA	4	Subtitle J: Economic Dispatch	10

SUBTITLE A: RELIABILITY STANDARDS

Section 1211

Amends the Federal Power Act (FPA) to grant FERC jurisdiction over the Electric Reliability Organization, over regional entities, and over all users, owners, and operators of the bulk power system (except in Alaska and Hawaii), for purposes of approving reliability standards and enforcing compliance. Provides for delegation of authority to regional entities. Allows states to take action to ensure safety, adequacy, and reliability within that state so long as the action is not inconsistent with any reliability standard. Special provision for New York. Provides for regional advisory bodies, with members appointed by the state Governor.

SUBTITLE B: TRANSMISSION INFRASTRUCTURE MODERNIZATION

Section 1221

Instructs the Secretary to (1) study electric transmission congestion triennially; and (2) issue a report which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor. Authorizes FERC to issue permits for construction or modification of electric transmission facilities in a national interest transmission corridor if a state commission does not have siting authority, or does not consider interstate benefits, or has withheld approval for more than one year after the filing of an application or one year

after the designation as a national interest electric transmission corridor, whichever is later, or conditioned its approval in such a manner that there will be no significant reduction of transmission congestion.

- Grants the consent of Congress to an interstate compact establishing regional transmission siting agencies in order to: (1) facilitate siting of future electric energy transmission facilities; and (2) implement electric energy transmission siting responsibilities.
- Exempts Electric Reliability Council of Texas (ERCOT) area.
- Ninety days after enactment, requires report to Congress on the status of corridors and rights of way on federal lands.

Section 1222

Authorizes the Secretary, acting through the Administrator of the Western Area Power Administration (WAPA), or the Southwestern Power Administration (SWPA) to engage in specified implementation activities with third parties to upgrade new or existing transmission facilities owned by SWPA or WAPA if the Secretary makes specified determinations. There is a savings provision that nothing in this section affects any requirement of any Federal or state law relating to the siting of energy facilities.

Section 1223

Directs FERC to encourage deployment of advanced transmission technologies.

Section 1224

Authorizes the Secretary to establish an Advanced Power System Technology Incentive Program to deploy certain advanced power system technologies and improve and protect certain critical governmental, industrial, and commercial processes. Specifies, subject to availability of funds, a 1.8 cent/kwh to be paid to the owner or operator of a qualifying advanced power system technology facility and 0.7 cents per kwh paid to the owner or operator of a qualifying security and assured power facility. Authorizes appropriations for FY 2006-2012.

SUBTITLE C: TRANSMISSION OPERATION IMPROVEMENTS

Section 1231

Amends FPA to prescribe implementation guidelines under which FERC may require an unregulated transmitting utility to provide transmission services: (1) at rates comparable to those that it charges itself; and (2) on terms and conditions comparable to those under which it provides transmission services to itself, and that are not unduly discriminatory or preferential. Provides exemption for unregulated transmission utilities that sell not more than four million Mwh per year; does not own or operate any transmission facilities that are necessary for operation an interconnection transmission system or any portion of such system; or meets other public interest criteria determined by FERC. The exemption is subject to revocation if reliability is impaired. FERC may not require a state or municipality to take action under this section if it would violate the private activity bond rule under the Internal Revenue Code.

Expands FERC's jurisdiction to include unregulated transmitting utilities that have already probably filed open access tariffs to get reciprocity.

Section 1232

Prescribes guidelines under which the appropriate federal regulatory authority may arrange to transfer control and use of all or part of its transmission system to a FERC-approved regional transmission organization (RTO).

- Amends federal law to repeal the authority granted each Federal Power Marketing Administration to engage in activities relating to formation and operation of an RTO.

Section 1233

Amends FPA to entitle certain load-serving entities to use firm transmission rights (or equivalent tradable or financial transmission rights) in order to deliver output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet (native load) service obligations.

- Cites circumstances under which certain load-serving entities may not be required, without their consent, to convert firm transmission rights to tradable or financial rights.
- Exempts ERCOT.
- Within one year after enactment, FERC shall, by rule or order, in organized electricity markets, implement its authority in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving

entities and enables them to secure firm transmission rights on a long term basis for long term power supply arrangements made or planned to meet such needs. Nevertheless, nothing in this section authorizes FERC to take any action not otherwise within FERC's jurisdiction.

Section 1234

Instructs the Secretary, in coordination and consultation with the states, to study and report to Congress and the states, on the procedures currently used by electric utilities to perform economic dispatch; on possible revisions to those procedures to improve the ability of non-utility generation to offer their output for sale for the purpose of inclusion in economic dispatch; and the potential benefits of economic dispatch. The Secretary will report to Congress and the states the results of the study and recommendations for any suggested legislative or regulatory changes.

Section 1235

Amends FPA to protect firm transmission rights in transmission contracts in existence at enactment in the Pacific Northwest.

Section 1236

States the Sense of the Congress regarding the locational installed capacity mechanism in New England. It finds that the Governors of the states have objected to the proposed mechanism, arguing that Locational Installed Capacity will not provide adequate assurance that necessary electric generation capacity or reliability will be provided and it would impose a high cost on consumers and have a significant negative economic impact.

The sense of the Congress is that FERC should carefully consider the states' objections.

SUBTITLE D: TRANSMISSION RATE REFORM

Section 1241

Amends FPA to direct FERC to establish, by rule, within one year after enactment, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities to benefit consumer by ensuring reliability, and reducing the cost of delivered power by reducing transmission congestion. The rule can provide a higher return on equity to attract new investment. It can provide for automatic recovery of all prudently incurred costs necessary to comply with mandatory reliability standards and all prudently incurred costs related to transmission infrastructure development.

Section 1242

FERC may approve a participant funding plan that allocates cost related to transmission upgrades or new generator interconnection without regard to whether an applicant is a member of an RTO.

SUBTITLE E: AMENDMENTS TO PURPA

Section 1251

Amends PURPA by adopting three new section 111(d) standards for the consideration and determination by state commissions. These are a net metering standard, a fuel sources standard, and a fossil fuel efficiency standard.

- The Net Metering Standard states that each electric utility shall make available upon request net metering to any electric consumer that the electric utility serves.
- The Fuel Sources Standard states that each electric utility shall develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuel and technologies, including renewables.
- The Fossil Fuel Generation Efficiency Standard states that each electric utility shall develop and implement a ten-year plan to increase the efficiency of its fossil fuel generation.

Each state commission must commence the consideration of these standards not later than two years after enactment. Not later than three years after enactment, each state commission must make its determination of the appropriateness of the standard. There is a prior state action exception.

Section 1252

Amends PURPA by adopting one new section 111(d) standard on time-based metering and communications for the consideration and determination by state commissions.

- The Time-Based Metering and Communications Standard states that, not later than 18 months after the enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate varies during different time periods and reflects the variance, if any, in the utility's cost of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications. The types of time-based rates that may be offered include, among others, time-of-use pricing, critical peak pricing, real-time pricing, and credits for customers with pre-established load reduction programs.
- Each electric utility shall provide each customer requesting time-based rates with a time-based meter capable of enabling the utility and the customer to offer and receive such rate. In states where third-party marketers sell electricity to retail customers, such customers will be entitled to receive the same time-based metering and communications device and service as a retail customer of the electric utility.
- Section 115 of PURPA is amended to require each state commission to conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.
- The Secretary of the Department of Energy is responsible for educating consumers on the availability, advantages, and benefits of advanced metering and communications technologies, including funding demonstration or pilot projects. The Secretary is to work with the state, utilities, and other energy providers, and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs. And, within 180 days of the

enactment, the Secretary will provide Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving such benefit levels by Jan. 1, 2007.

- States are encouraged to coordinate their energy policies on a regional basis to provide reliability and affordable demand side management. The Secretary is to provide technical assistance to states and regional organizations formed by two or more states. Not more than one year after enactment, FERC will prepare and publish an annual report that assesses demand response resources by appropriate region. It is the policy of the United States to encourage time-base pricing and other forms of demand response.
- State commissions must begin their consideration not later than one year after enactment and make their determination not later than two years after enactment. There is a prior state action exception.

Section 1253

Terminates the PURPA Section 210 Obligation to Purchase Requirement. Declares that, after the enactment, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying facility if FERC finds the QF has nondiscriminatory access to (1) an independently administered, auction-based day-ahead and real-time wholesale market; (2) transmission and interconnection services administered pursuant to an open access (nondiscriminatory) transmission tariff and competitive wholesale markets with a meaningful opportunity to sell capacity and energy to buyers other than the host

utility; or (3) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as such markets. The obligation to purchase can be reinstated if FERC finds that the conditions which relieved the obligation to purchase are no longer met.

- After the enactment, no electric utility is required to enter into a new contract or obligation to sell electric energy to a QF if FERC finds that (1) competing retail suppliers are willing and able to sell and deliver electric energy to the QF; and (2) the electric utility is not required by state law to sell electric energy in its service territory.
- After the enactment, no electric utility shall be required to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing cogeneration QF unless the facility meets the criteria for cogeneration QF facilities established by FERC in a new rule. Not later than 180 days after the enactment, FERC will issue a rule revising the criteria for new cogeneration QF facilities to ensure that the new cogeneration QF is not a “PURPA machine.”
- Grandfathers existing QF contracts.
- Eliminates ownership limitations for QFs.
- FERC shall issue and enforce regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a QF in accordance with legally enforceable obligations entered into or imposed by PURPA section 210 recovers all prudently incurred costs associated with the purchase.

Section 1254

Amends PURPA by adding a section 111(d) standard on interconnection for state commission consideration and determination. The interconnection standard states that each electric utility to make available, upon customer request, interconnection service to any electric consumer it serves (under which an on-site generating facility on the consumer's premises is connected to local distribution facilities.) Interconnection services will be based on IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems. In addition, agreements and procedures shall be established whereby the services are offered that promote best practices of interconnection for distributed generation, including , but not limited to, practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

- Consideration must commence not later than one year after enactment. Determination by the state commission must be not later than two years after enactment. There is a prior state action exception.

SUBTITLE F: REPEAL OF PUHCA

Section 1261

Short Title

Section 1262

Definitions.

Section 1263

Repeals PUHCA.

Section 1264

Provides FERC with access to books and records of public utility holding companies and their affiliates and subsidiaries.

Section 1265

State commissions upon written request get access to books and records that (1) have been identified in reasonable detail in a proceeding before the state commission, (2) the state commission determines are relevant to costs incurred by a state jurisdictional public utility, and (3) are necessary for the effective discharge of the responsibilities of the state commission with respect to such proceeding. Books and records are subject to confidentiality to protect any trade secrets or sensitive commercial information. Otherwise applicable state law concerning the provision of books, accounts, memoranda, and other records is not preempted.

Section 1266

Requires FERC to exempt, from section 1264 related to federal access to books and records, any person who is a holding company solely with respect to QFs, exempt wholesale generators, or foreign utility companies. FERC will also preempt a person or transaction from section 1264 if FERC finds the books or records are not relevant to the jurisdictional rates of a public utility or natural gas company, or if FERC finds any class of transactions are not relevant to the jurisdictional rates of a public utility or natural gas company.

Section 1267

Saves FERC and state authority to regulate cost recovery on affiliate transactions and to prevent cross-subsidization.

Section 1268

This does not apply to governmental entities.

Section 1269

Saves FERC and state commission authority under otherwise applicable law to protect utility consumers.

Section 1270

FERC Enforcement powers.

Section 1271

Savings provision grandfathering previously legal activities or transactions.

Section 1272

The Commission will issue regulation not later than four months after the enactment.

Section 1273

SEC books and records are transferred to FERC.

Section 1274

Effective Date is six months after the enactment.

- Provides that, prior to the effective date of the repeal of PUHCA (which is six months after the enactment), if FERC

approves and makes effective any final rules modifying the standards of conduct for entities that own, operate, or control facilities for the transmission of electricity in interstate commerce or the transportation of natural gas in interstate commerce, any action taken by a public utility company or utility holding company to comply shall not subject that company to regulatory requirements of the PUHCA.

Section 1275

Service Allocation. FERC reviews the allocation of non-power goods or administrative or management services at the election of the holding company system or a state commission. FERC and the state commission still can exercise their own cost allocation authority under other applicable law. FERC is to issue rules not later than four months after enactment to exempt any company in a holding company system whose public utility operations are confined substantially to a single state and any other class of transactions that FERC finds is not relevant to the jurisdictional rates of a public utility.

Section 1276

Authorizes appropriations.

Section 1277

Conforming amendments to FPA.

SUBTITLE G: MARKET TRANSPARENCY, ENFORCEMENT AND CONSUMER PROTECTION

Section 1281

Amends FPA to require FERC to issue rules establishing an electronic information system for public access to information that facilitates price transparency and participation in markets subject to FERC jurisdiction, including information about the availability and market price of wholesale electric energy and transmission services.

- Preserves the exclusive jurisdiction of the Commodity Futures Trading Commission regarding accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act.

Section 1282

Prohibits market manipulation by the filing of false information regarding the wholesale price of electricity. Prohibits round trip trading.

Section 1283

Prohibits any energy market manipulative or deceptive device or contrivance in contravention to FERC rules.

Section 1284

Increases civil and criminal penalties for violations of the Federal Power Act.

Section 1285

Makes refunds effective earlier. Requires FERC to reach a final decision under section 206 (b) in 180 days and state the reason why.

Section 1286

Extends FERC's authority to order refunds to most section 201(f) entities voluntarily making short-term sales.

Section 1287

Authorizes the Federal Trade Commission (FTC) to issue rules: (1) protecting the privacy of electric consumers from the disclosure of consumer information in connection with the sale or delivery of electric energy to an electric consumer; (2) prohibiting the change of selection of an electric utility without the consumer's informed consent (slamming); and prohibiting the sale of goods and services to an electric consumer without express authorization by law or the electric consumer (cramming). If the FTC determines a state's regulation provide equivalent or greater protection than its rules, such state regulations shall apply in lieu of the FTC regulations.

Section 1288

A court has authority to prohibit persons from serving as officers or directors of public utilities or energy traders if they violate section 222 or FERC rules and regulations implementing section 222.

Section 1289

Amends FPA to increase the value of public utility property which may be disposed of without FERC authorization from \$50,000 to \$10,000,000. Prescribes

FERC guidelines for approval of mergers using as public interest standard. Provides for notification to the Governor and state commission in which physical property affected is situated. Provides for expedited review. Takes effect one year after enactment.

Section 1290

Gives FERC authority to provide relief for any contract entered into in the Western Interconnection prior to June 20, 2001, with a wholesale seller that FERC has found to have manipulated the electricity market resulting in unjust and unreasonable rates and revoked the seller's authority to sell any electricity at market-based rates.

SUBTITLE H: DEFINITIONS

Section 1291

Redefines terms in FPA. Electric utility includes the Tennessee Valley Authority and each Federal Power Marketing Administration. Amends Transmitting Utility to include any entity that owns, operates, or controls facilities used for the transmission of electric energy -- in interstate commerce; or for the sale of electric energy at wholesale.

SUBTITLE I: TECHNICAL AND CONFORMING AMENDMENTS

Section 1295

Sets forth conforming amendments to FPA.

SUBTITLE J: ECONOMIC DISPATCH

Section 1298

Directs FERC to convene joint board on a regional basis (joint state-FERC boards) to study the issue of security constrained economic dispatch for various market regions. FERC will designate the appropriate regions to be covered by each such joint board. The sole authority of each joint board is to consider what constitutes security constrained economic dispatch and how such a mode of operating an electric energy system affects or enhances the reliability and affordability of service to customer in the region concerned and to make recommendations to FERC regarding such issues. Within one year after enactment, FERC will issue a report regarding the recommendations of the joint boards.

The National Regulatory Research Institute

1080 Carmack Road
Columbus, Ohio 43210-1002
Phone: 614-292-9404
Fax: 614-292-7196
www.nrri.ohio-state.edu

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