



**EDISON ELECTRIC
INSTITUTE**

Energy Policy Act of 2005

SUMMARY OF TITLE XII – ELECTRICITY, TITLE XVIII—STUDIES, AND RELATED PROVISIONS

TITLE XII – ELECTRICITY

Subtitle A—Reliability Standards

Section 1211. Reliability.

Creates a new Federal Power Act Section 215—ELECTRIC RELIABILITY.

Section 1211(a) In General.—This section gives FERC jurisdiction within the United States over an electric reliability organization (ERO), any regional entities and all users and operators of the “bulk power system,” including the entities listed in FPA Section 201(f) (i.e., government-owned utilities and certain electric cooperatives), for purposes of approving and enforcing reliability standards.

Section 215(a) Definitions.—The definition of “reliability standard” includes cybersecurity protection, but does not include a requirement to enlarge, or construct new transmission facilities or generating capacity.

Section 215(b) Jurisdiction and Applicability.—Provides that all users, owners and operators of the bulk power system are required to comply with the reliability standards that take effect under this section. FERC must issue a final rule to implement this section within 180 days of enactment.

Section 215(c) Certification.—FERC is to certify an applicant meeting the requirements, including independence and due process, as the electric reliability organization. If FERC receives more than one application, it is to select the applicant it determines best meets the requirements.

Section 215(d) Reliability Standards.—The ERO must file proposed reliability standards with FERC. FERC may approve the standard if it is just, reasonable, not unduly discriminatory, and in the public interest. FERC is to give due weight to the technical expertise of the ERO with respect to the content of a standard but is not to defer to it with respect to the effect of a proposed standard on competition. The ERO is to rebuttably presume that a proposal from a regional entity organized on an interconnection-wide basis for a reliability standard to be applicable on an interconnection-wide basis meets the standard for approval. If FERC disapproves a standard, it is to remand it to the ERO for reconsideration. FERC can also order an ERO to submit a proposed standard on a specific matter. There shall be a fair process to resolve a conflict between a reliability standard and a FERC-approved rate or tariff. Until the conflict is resolved, the rate or tariff controls.

Section 215(e) Enforcement.—The ERO may impose penalties for violations after notice and an opportunity for a hearing. Penalties do not take effect for 31 days after the ERO files notice with FERC and are subject to review by the Commission. FERC can require compliance on its motion.

Section 215(e)(4) Delegation to a Regional Entity—FERC is to establish regulations allowing the ERO to delegate authority to a regional entity for the purpose of proposing and enforcing reliability standards if the regional entity is governed by an independent, balanced stakeholder board, or a combination independent and balanced stakeholder board; it has the ability to develop and enforce reliability standards; and the agreement promotes effective and efficient administration of bulk power system reliability. FERC may modify such delegation. The ERO and FERC are to presume that a proposal for delegation to a regional entity organized on an interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved.

Section 215(e)(6) Penalties.—Any penalty imposed shall bear a reasonable relation to the seriousness of the violation and consider efforts taken to remedy the violation in a timely manner.

Section 215(f) Changes in ERO Rules.—The ERO must file any proposed changes in its rules for approval by FERC.

Section 215(g) Reports.—The ERO is to conduct periodic assessments of the reliability and adequacy of the bulk power system in North America.

Section 215(h) Coordination with Canada and Mexico.—The President is urged to negotiate international agreements with Canada and Mexico to promote compliance with reliability standards and the effectiveness of the ERO.

Section 215(i) Savings Provision.—The ERO has authority to develop and enforce standards only for the bulk power system. The ERO and FERC do not have authority to order the construction of additional generation or transmission capacity or to set or enforce safety and adequacy standards. Nothing preempts state authority to ensure the safety, adequacy and reliability of electric service within the state, so long as such action is not inconsistent with any reliability standard, except that the state of New York can establish stricter rules so long as such action does not result in lesser reliability outside New York than provided by the reliability standards. FERC is to determine whether any challenged state action is inconsistent with a reliability standard and can stay the effectiveness of any state action pending its issuance of a final order.

Section 215(j) Regional Advisory Bodies.—FERC is to establish a regional advisory body (RAB) on the petition of at least two-thirds of the states within a region that have more than one-half of their electric load served within that region. RAB members are to be appointed by the governors of the participating states and may include representatives from provinces outside the U.S. A RAB may provide advice to the ERO, a regional reliability entity, or FERC regarding the regional reliability entity governance, proposed standards and proposed fees. FERC may give deference to the advice of any RAB if it is organized on an interconnection-wide basis.

Section 215(k) Alaska and Hawaii.— The reliability section does not apply in Alaska or Hawaii.

Section 1211(b) Status of ERO.—The ERO and any regional entity that is delegated enforcement authority are not departments, agencies, or instrumentalities of the U.S. government.

Section 1211(c) Access Approvals by Federal Agencies.—Federal agencies responsible for approving access to transmission and distribution facilities located in the U.S. shall expedite any federal agency

approvals that are necessary to allow the owners or operators of such facilities to comply with reliability standards regarding vegetation management, electric service restoration, or resolution of situations that imminently endanger the reliability or safety of the facilities.

Subtitle B—Transmission Infrastructure Modernization

Section 1221. Siting of Interstate Electric Transmission Facilities.

Section 1221(a) creates a new Federal Power Act Section 216—SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

Section 216(a) Designation of National Interest Electric Transmission Corridors.—

Within one year of enactment, and every three years thereafter, DOE, in consultation with affected states, is to conduct a study of transmission congestion. After input from interested parties, appropriate regional reliability entities and comment from the states, DOE may designate “any geographic area experiencing transmission capacity constraints or congestion that adversely affects consumers” as a “national interest electric transmission corridor.” In determining whether to designate a national interest transmission corridor, DOE may consider specific factors, including constraints or jeopardy to economic growth or economic vitality in the corridor or the end market, the need for diversification of supply, energy independence, enhancement of national defense and homeland security.

Section 216(b) Construction Permit [Backstop Siting Authority].—FERC is authorized, after notice and an opportunity for comment, to issue permits for the construction or modification of transmission facilities in a national interest electric transmission corridor if FERC finds that:

(1) (A) a state in which the facilities are to be constructed is without authority to approve the siting of the facilities or to consider the interstate benefits expected to be achieved by the project; (B) the applicant for a permit is a transmitting utility under the FPA but does not qualify for a permit under state law because it does not serve end-use customers; or (C) the state has siting authority but (i) has withheld approval for the later of one year after the filing of an application or one year after the designation of the relevant national interest electric transmission corridor; or (ii) conditioned approval in such a way that the proposed construction will not significantly reduce transmission congestion or is not economically feasible;

(2) the facilities covered by the permit will be used for interstate electric transmission;

(3) the proposed project is consistent with the public interest;

(4) the proposed project will significantly reduce interstate transmission congestion and protects or benefits consumers;

(5) the proposed project is consistent with sound national energy policy and will enhance energy independence; and

(6) the proposed modification will maximize, to the extent reasonable and economical, the transmission capacity of existing towers or structures.

Sections 216(c) and (d) Permit Applications and Comments.—FERC to establish rules for permit applications, including the opportunity for interested parties, including states and federal agencies, to present their views on a proposed project.

Section 216(e) Rights-of-Way.—If a permit holder cannot obtain the necessary rights-of-way for the project, the permit holder can acquire the rights-of-way through an eminent domain proceeding in the federal district court where the property is located. Any right-of-way acquired under the section shall be used exclusively for the construction, modification, operation or maintenance of transmission and related facilities within a reasonable period of time. The right-of-way shall terminate upon the termination of the use for which the right-of-way was acquired.

Section 216(f) Compensation.—A right of way acquired in an eminent domain proceeding is a taking of private property for which the landowner must receive just compensation, which is the fair market value (including applicable severance damages) on the date of exercise of eminent domain.

Section 216(g) State Law.—Nothing in this section precludes any person from constructing any transmission facilities under state law.

Section 216(h)(1)-(4)—Coordination of Federal Authorizations for Transmission Facilities [Lead Agency].—DOE shall act as lead agency to coordinate all federal authorizations and environmental reviews required to site a transmission facility, including coordination with state siting authorities and Indian tribes. “Federal authorizations” means permits, authorizations or other approvals needed to site a transmission facility under federal law. DOE is required to set deadlines for the review and authorization decisions. DOE is to ensure that once an application with all data considered necessary by the Secretary has been submitted, all permit decisions and environmental reviews under federal laws shall be completed within one year, or if another requirement of federal law makes this impossible, as soon thereafter as is practicable. DOE shall provide an expeditious pre-application mechanism for prospective applicants to confer with agencies involved.

Section 216(h)(5)—DOE is to prepare a single environmental review document to be used as the basis for all decisions on the proposed project under federal law. DOE and other agencies are to streamline the review and permitting of transmission and distribution facilities within corridors designated under Section 503 of the Federal Land Policy and Management Act (FLPMA), by fully taking prior analyses and decisions into account. The review document shall include consideration by the relevant agencies of any applicable criteria or other matters as required by applicable law.

Section 216(h)(6)—If any agency has denied a federal authorization required for a transmission facility, or has failed to act by the deadline established by DOE, the applicant, or any state in which the facility would be located, may file an appeal with the President. Based on the overall record and in consultation with the affected agency, the President may either issue the necessary authorization or deny the application. The President is to issue a decision within 90 days after the appeal is filed and is to comply with all applicable federal laws.

Section 216(h)(7) Implementation.—Within 18 months of enactment, DOE is to issue regulations to implement this provision. Not later than one year after enactment, DOE and the heads of all relevant federal departments and agencies, interested Indian tribes, multi-state entities and state agencies shall enter into a memorandum of understanding to ensure the timely coordinated review and permitting of electricity transmission and distribution facilities.

Section 216(h)(8) Duration.—Each federal land use authorization for an electricity transmission facility must be issued for a duration commensurate with the anticipated use of the facility, as determined by the DOE Secretary, and be issued with appropriate authority to manage the right-of-way for reliability and environmental protection. When such authorizations (or any previously issued authorizations) expire, they can be reviewed for renewal, taking into account economic, health and safety impacts of reliance on the electricity infrastructure.

Section 216(h)(9) Coordination.—DOE is to consult with FERC, reliability organizations, RTOs and ISOs in exercising its responsibilities under this section.

Section 216(i) Interstate Compacts.—Three or more contiguous states may enter into an interstate compact establishing regional siting agencies to facilitate coordination among the states for purposes of siting future

electric transmission facilities and to carry out state transmission siting responsibilities. DOE can provide technical assistance to any regional siting agency. FERC is precluded from exercising its construction permit/backstop siting authority in states that are participating in an interstate compact, unless the states are in disagreement and DOE makes the findings in section (b)(1)(C), i.e., that a state commission has withheld permit approval beyond 1 year of application submittal or designation as a national interest electric transmission corridor or so conditioned the permit as to make the project economically unfeasible or unlikely to significantly reduce congestion.

Section 216(j) Relationship to Other Laws.—Nothing in this section shall be construed to affect any requirement of the federal environmental laws, including NEPA. The appeals provision under the DOE lead agency authority subsection shall not apply to any unit of the National Park System, the National Wildlife Refuge System, the National Trails System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or a National Monument. [As a result, agencies with jurisdiction over such lands are required to coordinate under DOE their authorization decisions, but their final decisions or failure to meet an established DOE deadline cannot be appealed to the President when these specified lands are involved.]

Section 216(k) ERCOT.—This section shall not apply within ERCOT.

Section 1221(b) Corridor and Right-of-Way Report.—Within 90 days of enactment, the Secretaries of Interior and Agriculture, and the Chairman of the Council on Environmental Quality, shall submit a joint report to Congress identifying: 1) all designated transmission and distribution corridors on federal land, the schedule for completing any work and any impediments; 2) the number of pending applications to locate transmission and distribution facilities on federal lands and key information relating to each project; and 3) the number of existing transmission and distribution rights-of-way on federal lands that will come up for renewal within the following 5, 10 and 15 year periods, and a description of how the Secretaries plan to manage such renewals.

Section 1222. Third Party Finance. For both existing and new facilities, DOE, acting through WAPA and SWPA, may participate with other entities in designing, developing, constructing, operating, maintaining or owning an electric power transmission facility and related facilities (“Project”) needed to upgrade existing transmission facilities owned by WAPA and SWPA, if DOE determines that the proposed Project (1) is located in a national interest electric transmission corridor and will reduce transmission congestion or is necessary to accommodate an actual or projected increase in demand for transmission capacity; (2) is consistent with the transmission expansion plan of an RTO, ISO or FERC-approved regional reliability organization, and efficient and reliable operation of the grid; and (3) would be operated in conformance with prudent utility practice. For new facilities, it also adds the requirements that the Project (4) will be operated by, or in conformance with the rules of, the appropriate RTO/ISO, or if one does not exist, the regional reliability organization; and (5) will not duplicate the functions of existing transmission facilities or proposed facilities which are the subject of ongoing or approved siting and related permitting proceedings.

Funds contributed by another entity shall be available without fiscal year limitation and as if they had been appropriated specifically for the Project. Any costs of the Project not paid for by the contributions of another entity shall be collected through transmission rates charged to customers using the new transmission capability provided by the Project.

Nothing in this section affects any requirement of any federal environmental law, including NEPA, any federal or state siting law, or any existing authorizing statutes.

This section does not affect WAPA and SWPA authorities.

DOE shall not accept more than \$100 million in funds from other entities under this subsection for fiscal years 2006 through 2015.

Section 1223. Advanced Transmission Technologies. FERC shall encourage advanced transmission technologies that increase the capacity, efficiency or reliability of existing or new transmission facilities. These technologies include energy storage devices, controllable load, distributed generation and mobile transformers and mobile substations.

Section 1224. Advanced Power System Technology Incentive Program. DOE is authorized to support deployment of advanced power system technology with incentive payments of 1.8 cents/KWH to eligible owners and operators of advanced power system technologies. An additional 0.7 cents/KWH shall be paid to the owner or operator of a qualifying security and assured power facility (one deemed to be in critical need of secure, reliable, rapidly available, high-quality power for critical governmental, industrial or commercial applications) for power generated at such facility. Incentive payments are limited to the first 10 million KWH produced by a qualifying facility in any fiscal year. Authorizes \$10 million for each of the fiscal years 2006-2012.

Subtitle C—Transmission Operation Improvements

Section 1231. Open Non-Discriminatory Access

Creates a new Section 211A of the Federal Power Act—OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.

Section 211A(a). Definition.— An “unregulated transmitting utility” means an entity that owns or operates facilities used for the transmission of electric energy in interstate commerce and is an entity described in FPA Section 201(f) (a government-owned utility or electric cooperative that owns or operates facilities used for transmission of electricity in interstate commerce).

Section 211A(b) Transmission Operation Services.—Subject to Section 212(h) (which prohibits mandatory retail wheeling), FERC may, by rule or order, require an “unregulated transmitting utility” to provide transmission service at rates that are comparable to those it charges itself and on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission service to itself and that are not unduly discriminatory or preferential.

Section 211A(c) Exemption.—FERC must exempt any unregulated transmitting utility that (1) sells no more than 4 million MWh of electricity per year; or (2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or (3) meets other criteria that FERC determines are in the public interest.

Section 211A(d) Local Distribution Facilities.—The open access requirements do not apply to local distribution facilities.

Section 211A(e) Exemption Termination.—After a hearing and consideration of reliability standards, FERC shall revoke an exemption if it finds on a preponderance of the evidence that the exemption unreasonably impairs reliability of an interconnected transmission system.

Section 211A(f) - (g) Rates and Remand.—The rate changing procedures applicable to public utilities under FPA Section 205 (c) and (d) are applicable to an unregulated transmitting utility for purposes of this section.

FERC may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of this section.

Section 211A(h) Other Transmission Requests.—Unregulated transmitting utilities are still subject to a request for transmission service under FPA Section 211.

Section 211A(i) Limitation.—FERC may not require a state or municipal utility to act under this section if it would violate a private activity bond rule.

Section 211A(j) Transfer of Control.—Nothing in this section authorizes FERC to require an unregulated transmitting utility to join a Transmission Organization.

Section 1232. Federal Utility Participation in Transmission Organizations.

(a)-(c)—Federal power marketing agencies and TVA (“federal utilities”) are authorized to voluntarily join a Transmission Organization. The contract, agreement or arrangement transferring control of transmission facilities to the Transmission Organization shall include performance standards for the operation and use of the transmission system that the federal utility determines necessary or appropriate, including standards that assure cost recovery, monitoring and oversight by the federal utility of the Transmission Organization’s fulfillment of the terms and conditions of the agreement, and a provision that allows the federal utility to withdraw from the Transmission Organization.

(d)—Neither this section, actions taken pursuant to it, nor any other transaction of a federal utility using a Transmission Organization gives FERC jurisdiction over the federal utility’s generation assets, electric capacity or energy that the federal utility is authorized by law to market or the federal utility’s power sales activities.

(e)—No statutory provisions requiring or authorizing a federal utility to transmit electric power or to construct, operate or maintain its transmission system shall be construed to prohibit it from transferring control of its transmission system under this section. Federal utilities are not exempted from any provision of existing federal law relating to the use of the federal utility’s transmission system, environmental protection, fish and wildlife protection, flood control, navigation, water delivery or recreation, or authorize abrogation of any contract or treaty obligation.

Section 1233. Native Load Service Obligation.

Creates new Section 217 of the Federal Power Act—NATIVE LOAD SERVICE OBLIGATION.

Section 217(a) Definitions.—For purposes of this section—

A “distribution utility” means an electric utility that has a service obligation to end-users or to a state or municipal utility or electric cooperative that, directly or indirectly, through one or more additional state utilities or cooperatives provides electric service to end-users.

The term “load-serving entity” means a distribution utility or an electric utility that has a service obligation. The term “service obligation” means a requirement under federal, state or local law or under long term contracts to provide electric service to end-users or to a distribution utility.

Section 217(b) Meeting Service Obligations.—(1) This subsection (as described in Paragraph (2) below) applies to any load-serving entity that as of the date of enactment of this section: (A) owns generation facilities, markets the output of federal generation facilities, or holds rights under one or more wholesale contracts for the purpose of meeting a service obligation; and (B) by reason of ownership of transmission facilities or one or more contracts or service agreements for firm transmission service, holds firm

transmission rights for delivery of output of such generation facilities or purchased energy to meet such service obligation.

(2) Any such load-serving entity is entitled to use such firm transmission rights or equivalent tradable or financial transmission rights to deliver such 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 its service obligation.

(3) If all or part of a service obligation or contractual obligation is transferred to another load serving entity, the successor is entitled to use the transmission facilities or transmission rights associated with the transferred obligation.

(4) FERC is to exercise its authority in a manner that facilitates transmission planning and expansion to meet the reasonable needs of load-serving entities to satisfy their service obligations and enables load-serving entities to secure long term firm transmission rights (or equivalent tradable or financial rights) for long term power supply arrangements made or planned to meet such needs.

Section 217(c) Allocation of Transmission Rights.—The section grandfathers any existing or future methodology for the allocating or auctioning of transmission rights employed by a Transmission Organization if the Transmission Organization was authorized by FERC to allocate or auction transmission rights as of January 1, 2005, and FERC determines that any future allocation or auction is just, reasonable and not unduly discriminatory or preferential; provided, however, that if such a Transmission Organization never allocated transmission rights on its system before January 1, 2005, with respect to any application by the Transmission Organization to change its methodology, FERC shall exercise its authority consistent with the Act and shall take into account the policies expressed in (b)(1),(2), and (3) as applied to firm transmission rights held by a load-serving entity as of January 1, 2005, to the extent that the associated generation ownership or power purchase arrangements remain in effect.

Section 217(d) Certain Transmission Rights.—FERC may make transmission rights not used to meet a service obligation available to other entities.

Section 217(e) Obligation to Build.—This Act does not relieve a load-serving entity from any obligation under state or local law to build transmission or distribution facilities adequate to meet its service obligation.

Section 217(f) Contracts.—Grandfathers existing contracts or service agreements for firm transmission rights or service in effect as of the date of enactment. If an ISO in the Western Interconnection had allocated financial transmission rights prior to the date of enactment of this section but had not done so with respect to one or more load-serving entities' firm transmission rights held under contracts or service agreements in effect as of the date of enactment (or held by reason of ownership or future ownership of transmission facilities), such load-serving entities may not be required, without their consent, to convert these firm transmission rights to tradable or financial rights, except where the load-serving entity has voluntarily joined the ISO as a participating transmission owner in accordance with the ISO tariff.

Section 217(g) Water Pumping Facilities.—FERC must ensure that any government-owned utility or cooperative that owns transmission facilities used predominantly to support its own water pumping facilities has comparable native load service protections with respect to those facilities.

Section 217(h) ERCOT.—This section does not apply in ERCOT.

Section 217(i) Jurisdiction.—This section does not authorize FERC to take any action not otherwise within its jurisdiction.

Section 217(j) TVA Area.—A load-serving entity in the TVA service area that has a wholesale power supply contract with TVA shall be considered to hold firm transmission rights for the transmission of such power. Nothing in this subsection affects the requirements of FPA section 212(j) (the TVA “fence” provision). FERC may not issue an order that is contrary to the purposes of section 212(j).

Section 217(k) Effect of Exercising Rights.—It shall not be considered engaging in undue discrimination or preference for an entity to exercise its rights under subsection (b) in order to meet its service obligation.

Section 1233(b) FERC Rulemaking on Long Term Transmission Rights in Organized Markets.—Within one year of enactment, FERC must issue a rule or order implementing subsection (b)(4) in Transmission Organizations with organized electricity markets.

Section 1234. Study on Benefits of Economic Dispatch. DOE, in coordination and consultation with the states, is to conduct a study on current economic dispatch procedures and identify possible revisions to those procedures to improve the ability of nonutility generators to be included in economic dispatch, and the potential consumer benefits of doing so. “Economic dispatch” means the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities. Within 90 days of enactment and annually thereafter, DOE is to report to Congress and the states on the results of the study, including any recommendations for suggested legislative or regulatory changes.

Section 1235. Protection of Transmission Contracts in the Pacific Northwest. Creates a new Section 218 of the Federal Power Act—PROTECTION OF TRANSMISSION CONTRACTS IN THE PACIFIC NORTHWEST.

FERC is prohibited from requiring an “electric utility or person” to convert to tradable or financial rights firm transmission rights held by contract or through ownership of transmission facilities or firm transmission rights obtained by exercising contract or tariff rights associated with these rights. For purposes of this section, an “electric utility or person” is one that, as of the date of enactment of the Energy Policy Act of 2005, holds firm transmission rights pursuant to contract or by reason of ownership of transmission facilities and is located in the Pacific Northwest or that portion of a state included in the geographic area proposed for RTO West [most of Oregon, Washington, Idaho, Montana, Wyoming, Utah, and Nevada].

Section 1236. Sense of Congress Regarding Locational Installed Capacity Mechanism. It is the sense of Congress that FERC should carefully consider the objections of the New England states that the proposal to establish a Locational Installed Capacity (LICAP) mechanism in New England does not provide adequate assurance of generation capacity or reliability and would impose high costs on consumers.

Subtitle D—Transmission Rate Reform

Section 1241. Transmission Infrastructure Investment. Creates a new Section 219 of the Federal Power Act—TRANSMISSION INFRASTRUCTURE INVESTMENT.

Section 219(a) Rulemaking Requirement.—Requires FERC to issue a rule, within one year of enactment, providing transmission rate incentives to benefit consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.

Section 219(b) Contents.—The rule shall promote economically efficient and reliable transmission and generation by promoting capital investment in the enlargement, improvement, maintenance and operation of

transmission facilities regardless of ownership in the facilities, provide a rate of return that attracts investment in transmission, and reasonably reflects the risks involved, and provide for recovery of all prudent costs of complying with mandatory reliability standards and related to transmission infrastructure development under section 216 [Siting of Interstate Transmission Facilities].

Section 219(c) Incentives.—FERC shall provide for incentives for each transmitting utility or electric utility that joins a Transmission Organization. FERC shall ensure that any costs recoverable pursuant to this subsection may be recovered through the transmission rates charged by such utility or by the Transmission Organization that provides transmission service to such utility.

Section 219(d) Just and Reasonable Rates.—All rates approved under this section, including any revisions to the rules, are subject to the requirements of FPA sections 205 and 206 that the rates are just and reasonable, not unduly discriminatory or preferential.

Section 1242. Funding New Interconnection and Transmission Upgrades. FERC may approve a participant funding plan that allocates costs related to transmission upgrades or new generator interconnection whether or not the applicant is a member of a FERC-approved Transmission Organization if the proposed rates are just and reasonable, not unduly discriminatory or preferential and are otherwise consistent with FPA sections 205 and 206.

Subtitle E—Amendments to PURPA

Section 1251. Net Metering and Additional Standards. Amends Section 111(d) of PURPA to add new subsections (11), (12), and (13). These standards require a state regulatory authority and nonregulated electric utility, within two years of enactment, to consider whether to adopt new standards regarding net metering, fuel diversity and fossil fuel generation efficiency.

Section 111(d)(11) Net Metering.—This standard requires each electric utility to make available upon request net metering service to any electric consumer that the electric utility serves. “Net metering” means service to an electric consumer under which electric energy generated by the consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided to the consumer during the applicable billing period.

Section 111(d)(12) Fuel Sources.—This standard requires each electric utility to develop a plan to minimize dependence on one fuel source and to ensure it uses a diverse range of fuels and technologies to generate electricity.

Section 111(d)(13) Fossil Fuel Generation Efficiency.—This standard requires each electric utility to develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

States and nonregulated electric utilities must make their determinations whether to adopt these standards within three years of enactment. States do not have to comply if the state has already adopted or considered a comparable provision.

Section 1252. Smart Metering.**Adds a new “Time-Based Metering and Communications” standard to Section 111(d)(14) of PURPA.**

(a) Time Based Rate Schedules.—This standard requires each state regulatory authority and nonregulated electric utility to make a determination whether it is appropriate to require each electric utility to offer each of its customer classes and individual customers upon request a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance in the costs of generating and purchasing wholesale electricity. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

The types of time-based rate schedules that may be offered include time-of-use pricing, critical peak pricing, real-time pricing, and credits for consumers with large loads who enter into pre-established load reduction agreements that reduce a utility’s planned capacity obligations. Each electric utility shall provide customers a time-based meter on request.

Customers of third-party marketers (in retail competition states) are entitled to receive the same time-based metering and communications device as a retail electric consumer of the electric utility.

Notwithstanding PURPA Section 112, each state regulatory authority shall issue a decision whether to adopt the standards on time-based rate schedules and time-based meters within 18 months of enactment.

(b) State Investigations.—In the determination whether to adopt these standards, these rates shall be considered cost-effective if the long-run benefits of these rates are likely to exceed the costs associated with the use of rates. Each state shall also consider whether it is appropriate for electric utilities to install time-based meters and communication devices.

(c)-(e) Demand Response.—DOE is to notify state regulatory authorities and electric utilities about technologies, techniques and ratemaking methods related to advanced metering and communications technologies. DOE is also responsible for educating consumers on the availability, advantages and benefits of advanced metering and communications technologies, including the funding of demonstration or pilot programs; and working with states, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs. DOE shall provide a report to Congress within 180 days of enactment that identifies and quantifies the national benefits of demand response and provides policy recommendations as to how to achieve specific levels of such benefits by January 1, 2007. It is the policy of the U.S. to encourage states to coordinate on a regional basis state energy policies to provide reliable and affordable demand response services to the public. DOE is to provide technical assistance to states and regional organizations formed by two or more states to assist them regarding demand response programs.

Within one year of enactment, FERC must prepare an annual report, by appropriate region, that assesses demand response resources, including the usage of advanced meters and communications technologies; existing demand response and time-based rate programs; the annual resource contribution of demand resources; the potential for demand response as a quantifiable, reliable resource for regional planning purposes; steps taken to ensure that in regional transmission planning and operations, demand resources are treated equitably as a resource relative to the resource obligations of any load-serving entity, transmission provider or transmitting party; and regulatory barriers to improved customer participation in demand response, peak reduction and critical period pricing programs.

(f) Federal Encouragement of Demand Response Devices.—Expresses the policy of the U.S. that time-based pricing and other forms of demand response shall be encouraged, that deployment of devices that enable

consumers to participate in these programs should be facilitated, and that unnecessary barriers to demand response be eliminated. Expresses the policy of the U.S. that the benefits of these programs that accrue to those not deploying these technologies and devices but who are part of the same regional electricity entity shall be “recognized.”

(g)-(h) Time Limitations.—Provides that states must begin the required proceeding under this section within one year of enactment and complete it within two years of enactment.

(i) Prior State Actions.—A state does not have to comply if the state has already implemented or considered a comparable provision, the state regulatory authority has conducted a smart metering proceeding, or the state legislature has voted on the implementation of such a standard.

Section 1253. Cogeneration and Small Power Production Purchase and Sale Requirements.

Section 1253(a) adds—

PURPA Section 210(m)—TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.

PURPA Section 210(n)—RULEMAKING FOR NEW QUALIFYING FACILITIES.

Section 210(m)—Termination of Mandatory Purchase and Sale Requirements.

(m)(1) Obligation to Purchase.—The mandatory purchase obligation under Section 210 of PURPA is repealed prospectively if FERC finds that the qualifying facility (QF) has nondiscriminatory access to (A)(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy and (ii) wholesale markets for long-term sales of capacity and electric energy; or (B)(i) nondiscriminatory transmission and interconnection services provided by a FERC-approved regional transmission entity; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity (long-term and short-term sales), and electric energy (long-term, short-term and real-time) to buyers other than the utility to which the QF is interconnected; or (C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in (A) and (B).

(m)(2) New Facilities.—After the date of enactment, no electric utility is required to enter into a new contract to purchase from or sell electric energy to a facility that is not an “existing” QF, unless the facility meets the standards for new QFs that FERC is required to promulgate. An “existing” QF is one that was a QF on the date of enactment or had filed a notice of self-certification or recertification prior to the date that FERC issues the new QF criteria.

(m)(3) Commission Review.—FERC is to grant an application from an electric utility for relief from the mandatory purchase obligation on a service territory-wide basis if the utility demonstrates that the competitive conditions set forth above have been met.

(m)(4) Reinstatement of Obligation to Purchase.—FERC can reinstate the obligation to purchase upon a demonstration that the competitive conditions are no longer met.

(m)(5) Obligation to Sell.—After the date of enactment, the obligation to enter into a new contract to sell electric energy to a QF is eliminated if FERC finds that competing retail electric sellers are willing and able to sell and deliver electric energy to the QF and the electric utility is not required by state law to sell electric energy in its service territory.

(m)(6) Existing Contracts.—Rights and remedies under existing contracts in effect or pending approval before the appropriate state regulatory authority or nonregulated electric utility on the date of enactment (including the right to recover costs of purchasing electric energy or capacity) are not affected.

(m)(7) Cost Recovery.—FERC is to promulgate and enforce regulations to ensure that an electric utility recovers all prudently incurred costs associated with any legally enforceable PURPA obligation entered into or imposed under this section.

Section 210(n)—Rulemaking for New Qualifying Facilities.

(n)(1)—Within 180 days of enactment, FERC must issue a rule revising the criteria for new QFs seeking to sell electric energy pursuant to PURPA Section 210 to ensure – (i) that the thermal energy output of a new QF is used in a productive and beneficial manner; and (ii) the electrical, thermal and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a QF to its host facility; (iii) continuing progress in the development of efficient electric generating technology. The revised criteria shall be applicable only to facilities that seek to sell electric energy pursuant to the mandatory purchase obligation of PURPA Section 210. For all other purposes, QF status shall be determined in accordance with the rules and regulations under PURPA.

(n)(2)—The criteria currently in effect will continue to apply to a facility that was a QF on the date of enactment or had filed with FERC a notice of self-certification or application for certification prior to the date on which FERC issues the final rule changing the QF criteria.

Section 1253(b)—Elimination of Ownership Limitations. Eliminates the ownership limitation in the definition of “qualifying small power production facility” in FPA Section 3(17) and in the definition of “qualifying cogeneration facility” in FPA Section 3(18).

Section 1254. Interconnection.

Adds a new PURPA section 111(d)(15) standard—INTERCONNECTION

(a) Adoption of Standard.—Requires each electric utility, upon request by any consumer it serves, to interconnect onsite generation facilities to local distribution facilities. Interconnection services shall be offered based on IEEE standards. The agreements and procedures under which the services are offered shall promote current best practices of interconnection for distributed generation, including stipulated model codes adopted by associations of regulatory agencies and shall be just and reasonable and not unduly discriminatory or preferential.

(b) Compliance and Time Limitations.—Each state regulatory authority and each non-regulated utility must begin to consider adoption of this standard within one year of enactment and must complete consideration within two years of enactment.

The new standard does not apply to an electric utility in a state that has, prior to enactment, implemented, conducted a proceeding to consider implementation of the same or comparable standard or where the state legislature has voted on implementation of the same or comparable standard.

Subtitle F—Repeal of PUHCA

Section 1261. Short Title. “Public Utility Holding Company Act of 2005”

Section 1262. Definitions. Includes a definition of “holding company,” that amended during conferences which provides that the term does not include (i) financial institutions that own, control, or hold voting securities in a public utility or public utility holding company so long as the securities are held as collateral

for a loan, held in the ordinary course of business as a fiduciary, or acquired solely for purposes of liquidation in connection with a loan previously held for at least two years; or (ii) a broker or dealer that holds voting securities in a public utility or public utility holding company, so long as the securities are not beneficially owned by the broker or dealer or acquired within 12 months in the ordinary course of business as a broker, dealer or underwriter with the bona fida intention of effecting distribution of the securities.

Section 1263. Repeal of the Public Utility Holding Company Act of 1935. PUHCA is repealed.

Section 1264. Federal Access to Books and Records. Gives FERC authority to require that each holding company, associate company and affiliate company make available to FERC books, accounts, memoranda, or other records that FERC determines are relevant to costs incurred by a public utility or natural gas company that is an associate of a holding company and that are necessary or appropriate to protect utility customers with respect to jurisdictional rates. FERC commissioners and staff are to keep such information confidential, except as directed by FERC or a court.

Section 1265. State Access to Books and Records. Provides that upon written request of a state commission having jurisdiction to regulate a public utility company in a holding company system, a holding company, associate company or affiliate company is to make available to the state commission books, accounts, memoranda and other and records that have been identified in reasonable detail in a proceeding before the state commission, that the state commission determines are relevant to costs incurred by such public utility and are necessary for the effective discharge of the responsibilities of the state commission with respect to such proceeding. States can obtain books and records under state law or other applicable federal law. Provides for confidentiality of trade secrets and sensitive commercial information.

Section 1266. Exemption Authority. Within 90 days after the effective date of the subtitle (i.e., 6 months and 90 days), FERC is to issue a final rule exempting from the federal books and records requirement any person that is a holding company solely with respect to a qualifying facility (QF), exempt wholesale generator, or foreign utility companies. FERC can exempt other records for any class of transactions that it finds is not relevant to jurisdictional rates.

Section 1267. Affiliate Transactions. Preserves the authority of FERC or a state commission to determine if a jurisdictional public utility company can recover in rates costs incurred through transactions with affiliates.

Section 1268. Applicability. Provides that, unless otherwise specified, PUHCA provisions do not apply to the U.S. government, any state or political subdivision, any foreign government authority not operating in the U.S., or any agency, authority or instrumentality of any of the above.

Section 1269. Effect on Other Regulations. Preserves authorities of FERC or state commissions under other applicable law to protect utility customers.

Section 1270. Enforcement. Authorizes FERC to use its enforcement authorities under FPA sections 306-317 to enforce this subtitle.

Section 1271. Savings Provisions. Permits continuation of activities authorized as of the date of enactment and preserves FERC authority under the FPA and the Natural Gas Act. Tax treatment under section 1081 of the Internal Revenue Code as a result of compliance with the PUHCA of 1935 shall not be affected in any manner due to the repeal of that act and the enactment of the PUHCA of 2005.

Section 1272. Implementation.

Directs FERC to promulgate regulations to implement this subtitle and to submit recommendations to Congress for technical and conforming amendments within 4 months of enactment.

Section 1273. Transfer of Resources. Provides that the SEC is to transfer books and records to FERC.

Section 1274. Effective Date. Provides that, except for section 1292 (implementation actions taken by FERC), the subtitle takes effect 6 months after the date of enactment. Action taken by a public utility company or a holding company to comply with FERC standard of conduct rules issued prior to the effective date shall not be subject to any regulatory requirement under PUHCA.

Section 1275. Service Allocation. In this section, “public utility” has the meaning in section 201(e) of the FPA. Authorizes FERC, in response to a utility or state commission request, to determine the allocation to any public utility in a holding company system of any costs of non-power goods or administrative or management services acquired by such public utility from an associate company. Nothing in this section affects the authority of FERC or a state commission under any other law.

Directs FERC to issue rules within 4 months (effective no earlier than the effective date of this subtitle) after enactment to exempt from the requirements of this section 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. Authorization of Appropriations. Authorizes such funds as may be necessary to carry out the PUHCA subtitle.

Section 1277. Conforming Amendments to the Federal Power Act. Repeals FPA Section 318, dealing with conflicts in jurisdiction between PUHCA and the FPA. Amends other FPA sections to update references to PUHCA.

Subtitle G—Market Transparency, Enforcement, and Consumer Protection

Section 1281. Electricity Market Transparency Rules. Creates a new Section 220 of the Federal Power Act—ELECTRICITY MARKET TRANSPARENCY RULES.

(a)(1) FERC is directed to facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and protection of consumers.

(2) FERC may prescribe rules to carry out this section. The rules shall provide for the dissemination on a timely basis of information about the availability and prices of wholesale electricity and transmission service to FERC, state commissions, buyers and sellers of wholesale electricity, users of transmission services, and the public.

(3) FERC may obtain the information in (2) from any market participant and rely on entities other than FERC to receive and make public the information, subject to the disclosure rules in (b).

(4) In carrying out this section, FERC shall consider the price transparency provided by existing price publishers and providers of trade processing services and rely on them to the maximum extent possible. FERC can establish an electronic system if it determines that existing price publishers are not adequately providing price discovery or market transparency. Nothing in this section, however, shall affect any electronic information filing requirements in effect under the FPA as of the date of enactment of this section.

(b)(1) FERC shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security.

(2) In determining what and when information should be made available under this section, FERC shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion that can be facilitated by untimely public disclosure of transaction-specific information.

(c)(1) Within 180 days of enactment, FERC shall conclude a Memorandum of Understanding with the Commodity Futures Trading Commission (CFTC) relating to information sharing, including provisions ensuring that information requests to markets within the respective jurisdiction of each agency are coordinated to avoid duplication, and provisions regarding the treatment of proprietary trading information.

(2) This section shall not affect the exclusive jurisdiction of the CFTC under the Commodity Exchange Act (CEA).

(d) FERC shall not require entities who have a de minimis market presence to comply with the reporting requirements of this section.

(e)(1) Except as provided in (2), the statute of limitations bars the imposition of civil penalties under this section for any violation occurring more than 3 years from the date on which the person is provided notice of the proposed penalty under FPA section 316A.

(2) The 3-year statute of limitations does not apply in any case in which FERC finds that a jurisdictional seller has engaged in fraudulent market manipulation activities materially affecting the contract in violation of FPA section 222.

(f) This section does not apply in ERCOT.

Section 1282. False Statements.

Creates a new Section 221 of the Federal Power Act— PROHIBITION ON FILING FALSE INFORMATION.

No entity (including entities described in Section 201(f)) shall willfully and knowingly report any information relating to the price of wholesale electricity or availability of transmission capacity, which information the entity knew to be false at the time of the reporting, to a federal agency with the intent to fraudulently affect the data being compiled by the agency.

Section 1283. Market Manipulation.

Creates new Section 222 to the Federal Power Act—PROHIBITION OF ENERGY MARKET MANIPULATION.

(a) It is unlawful for any entity (including an entity described in section 201(f)), directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or transmission services subject to FERC jurisdiction, any manipulative or deceptive device or contrivance (as those terms are used in section 10(b) of the Securities Exchange Act of 1934) in contravention of FERC rules and regulations.

(b) Nothing in this section shall be construed to create a private right of action.

Section 1284. Enforcement. (a) Complaints.—Amends FPA Section 306 to add an “electric utility” to the list of entities that may file a complaint and adds “transmitting utility” to the list of entities against which a complaint may be filed.

(b) Investigations.—Amends FPA Section 307(a) to provide that a “transmitting utility” may be the subject of an investigation.

(c) Review of Commission Orders.—Amends FPA Section 313 to include “electric utility” in the list of entities that can seek review of a FERC order.

(d) Criminal Penalties.— Amends FPA Section 316 to increase criminal fines for violations of the FPA from \$5,000 to \$1 million and from two years imprisonment to five years. Additional fines under Section 316(b) are increased from \$500 to \$25,000 for each and every day during which the offense occurs. Strikes FPA Section 316(c), which makes criminal penalties inapplicable to violations of FPA Section 211-214.

(e) Civil Penalties.—Expands civil penalties under FPA Section 316A to cover violations of any provision of Part II of the FPA and increases civil penalties from \$10,000 to \$1 million per day for each day the violation continues.

Section 1285. Refund Effective Date.

Amends FPA Section 206(b)—

Authorizes FERC to establish the refund effective date in a proceeding as the date on which the complaint was filed. In the case of a proceeding initiated by FERC, the refund effective date is the date on which notice of FERC’s intent to initiate the proceeding is published. These provisions would replace the current 60-day waiting period for the refund effective date. If FERC has not made a decision within 180 days of the initiation of a proceeding, FERC must state the reasons why it has failed to do so and state its best estimate as to when it reasonably expects to make a decision.

Section 1286. Refund Authority.

Amends FPA Section 206 by adding a new subsection (e).

(e)(1) For purposes of this subsection, the term “short term sale” means an agreement for the sale of electric energy at wholesale in interstate commerce that is for a period of 31 days or less (excluding monthly contracts that are subject to renewal). An “applicable Commission rule” is one applicable to sales by public utilities that FERC determines after notice and comment should also be applicable to the section 201(f) entities under this subsection.

(2) If an entity described in section 201(f) voluntarily makes a short-term sale of electricity through an organized market in which the rates for the sale are established by FERC-approved tariff and the sale violates the terms of the tariff or applicable Commission rules in effect at the time of such sale, the entity shall be subject to the Commission’s refund authority with respect to the violation.

(3) This section does not apply to (A) an entity (including affiliates of the entity) that does not sell more than 8 million megawatt hours of electricity per year or (B) any electric cooperative.

(4) FERC has refund authority with respect to a short term sale by BPA only if the sale is at an unjust and unreasonable rate, and in that event, may order a refund only for short term sales made by BPA at rates that are higher than the highest just and reasonable rates charged by any other entity for a short term sale in the same geographic market or most nearly comparable period as the sale by BPA. With respect to any federal power marketing agency or TVA, FERC shall not exercise any regulatory authority or powers under this subsection other than ordering refunds.

Section 1287. Consumer Privacy and Unfair Trade Practices.

The FTC may issue rules protecting consumer privacy and prohibiting slamming (changing the selection of an electric utility without the consumer’s consent) and cramming (the sale of goods and services to an electric consumer without the consumer’s consent). If the FTC determines that a state’s regulations provide equivalent or greater protection than the provisions of this section, the state regulations shall apply in that state in lieu of the FTC regulations.

Section 1288. Authority of Court to Prohibit Persons from Serving as Officers, Directors, and Energy Traders.

Amends FPA section 314 [Enforcement] by adding a new subsection (d)—

(d) A court hearing an enforcement action brought by FERC may prohibit, conditionally or unconditionally, and permanently or for a time period set by the court, any person who has engaged in practices that violate new FPA section 221 [Filing False Information] from acting as an officer or director of an electric utility or from purchasing or selling electric energy or transmission subject to FERC's jurisdiction.

Section 1289. Merger Review and Reform.

Amends Section 203(a) of the Federal Power Act.

Section 203(a)(1) A public utility must secure FERC approval before it can:

(A) sell, lease or dispose of the whole of its facilities in excess of \$10 million (increased from \$50,000 under current law);

(B) merge or consolidate such facilities;

(C) purchase or acquire securities of a public utility in excess of \$10 million; or

(D) purchase, lease or otherwise acquire an existing generation facility that has a value in excess of \$10 million and that is used for interstate wholesale sales subject to FERC's ratemaking jurisdiction.

(2) Prior FERC approval is required before any holding company in a holding company system that includes a transmitting utility or an electric utility may purchase, acquire or take securities in excess of \$10 million in value or directly or indirectly merge or consolidate with, a transmitting utility, an electric utility company or another holding company in a holding company system that includes a transmitting utility or an electric utility company with a value in excess of \$10 million.

(3) Upon receipt of an application FERC shall give reasonable notice in writing to the governor and state commission of each of the states in which physical property that is part of the transaction is located.

(4) In order to approve the proposed transaction, FERC must make a finding that it will be consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless FERC determines that the cross-subsidization, pledge or encumbrance will be consistent with the public interest.

(5) FERC is required to adopt a rule to expedite merger and facility disposition approval. Such rule shall identify the class of transactions or specify criteria for transactions that will normally satisfy the criteria for FERC approval. FERC shall give expedited review to such transactions. FERC must grant or deny any other application within 180 days after the application is filed, and may extend that period an additional 180 days on a finding of good cause, after which it must grant or deny the application.

(b) These amendments to FPA section 203(a) take effect six months after the date of enactment.

(c) Transition Provision—The amendments to FPA section 203(a) shall not apply to any application under section 203 that was filed on or before the date of enactment.

Section 1290. Relief for Extraordinary Violations.

(a) This section applies to any contract entered into in the Western Interconnection prior to June 20, 2001, with a seller of wholesale electricity that FERC has –

- (1) found to have manipulated the electricity market resulting in unjust and unreasonable rates, and
- (2) revoked the seller's market-based rate authority.

(b) In the case of such a contract, notwithstanding new FPA section 222 [market manipulation], any provision of Title 11, U.S. Code [bankruptcy], or other provisions of law, FERC has exclusive jurisdiction to determine whether a requirement to make termination payments for power not delivered by the seller, or any successor in interest, is not permitted under a rate schedule (or contract under such a schedule) or is

otherwise unlawful on the grounds that the contract is unjust and unreasonable or contrary to the public interest.

(c) This section applies to any proceeding pending on the date of enactment of this section involving a seller described in (a) in which there is not a final, nonappealable order by FERC or any other jurisdiction determining the respective rights of the seller.

Subtitle H—Definitions

Section 1291. Definitions. The definitions include:

“Electric utility”—Changes the definition of “electric utility” to add federal power marketing administrations.

Revises definition of “transmitting utility” to include any entity that owns or operates transmission facilities used for transmission in interstate commerce or for the sale of electricity at wholesale. The definition removes the specific reference to “electric utility,” which is based on sale of electricity and other specific references to certain entities, such as QFs. The revised definition covers PMAs, munis and coops, as under the current law definition.

“Regional Transmission Organization” or “RTO” means an entity of sufficient regional scope approved by FERC to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure nondiscriminatory access to such facilities.

“Independent System Operator” or (“ISO”) means an entity approved by FERC to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure nondiscriminatory access to such facilities.

“Transmission Organization” means an RTO, ISO, independent transmission provider, or other FERC-approved transmission organization.

Amends FPA Section 201(f) to include electric cooperatives that have RUS financing or that sell less than 4 million MWH per year. This exempts most electric cooperatives from provisions of the FPA, unless it is specifically referenced that the provision applies.

Subtitle I—Conforming Amendments

Subtitle J—Economic Dispatch

Section 1298. Economic Dispatch. (a) Amends the Federal Power Act by adding a new section 223—JOINT BOARDS ON ECONOMIC DISPATCH.

- (a) FERC is required to convene joint boards on a regional basis pursuant to FPA section 209 to study the issue of security constrained economic dispatch for the various market region. FERC is to designate the appropriate regions to be covered by each joint board.
- (b) FERC is to request each state to nominate a representative for the appropriate regional joint board and is to designate a FERC commissioner to chair and participate as a member of each board.
- (c) The sole authority of each joint board is to consider issues relevant to what constitutes “security constrained economic dispatch” and how this mode of operation affects or enhances the reliability and affordability of service to customers in the region concerned and to make recommendations to FERC regarding such issues.
- (d) Within one year of enactment, FERC is to submit a report to Congress regarding the recommendations of the joint boards, including any consensus recommendations for statutory or regulatory reform.

ELECTRICITY-RELATED PROVISIONS IN TITLE XVIII – STUDIES

Section 1802. Study of Energy Efficiency Standards. DOE-contracted NAS study of whether energy efficiency goals are best served by measuring site vs. source energy consumption. Due in 1 year.

Section 1804. LIHEAP Report. HHS report on how LIHEAP could be used more effectively to prevent loss of life from extreme temperatures. Due in 1 year.

Section 1812. Backup Fuel Capability Study. DOE study on the effect of having a backup fuel capability at gas-fired generating and industrial facilities, including the effect on the supply and cost of natural gas. Due in 1 year.

Section 1813. Indian Lands Rights-of-Way. DOE-DOI joint 1-year study of issues regarding energy rights-of-way on tribal land. Findings shall include: analysis of historic rates of compensation paid for energy ROW on tribal land; recommendations for appropriate standards and procedures for determining fair and appropriate compensation to tribes; an assessment of tribal self-determination and sovereignty interests; and an analysis of relevant national energy transportation policies. Due in 1 year.

Section 1815. Interagency Review of Competition in the Wholesale and Retail Markets for Electric Energy. Task force including DOJ, FERC, FTC, DOE, and RUS to analyze wholesale and retail electric competition. Due in 1 year. Must consult with states, utilities and the public and provide 60 days for comment on a draft.

Section 1816. Study of Rapid Electrical Grid Restoration. DOE study of benefits of using mobile transformers and substations to rapidly restore electrical service after equipment failure, natural disasters, acts of terrorism, or war. Due in 1 year.

Section 1817. Study of Distributed Generation. DOE, in consultation with FERC, to study potential benefits of cogeneration and small power production and rate impediments. Due in 18 months.

Section 1818. Natural Gas Supply Shortage Report. DOE report on natural gas supply and demand, and make recommendations to bring them into balance. Due in 180 days.

Section 1822. Effect of Electrical Contaminants on Reliability of Energy Production Systems. NAS study of the effect that electrical contaminants (such as tin whiskers) may have on the reliability of energy production systems, including nuclear energy. Contract due in 180 days.

Section 1824. Final Action on Refunds for Excessive Charges. Directs FERC to (1) seek to conclude its California proceedings; (2) seek to ensure that refunds owed to California are paid; and (3) issue a status report to Congress by the end of 2005.

Section 1826. Passive Solar Technologies. DOE study of issues related to the use of passive solar technologies for electricity generation. Due in 120 days.

Section 1829. Energy and Water Savings Measures in Congressional Buildings. Architect of the Capitol study; includes factors related to reliability in the event of power fluctuations, shortages, or outages. Due in 180 days.

Section 1831. Review of Energy Policy Act of 1992 Programs. DOE study and recommendations regarding alternative fueled vehicle provisions of 1992 EPAct. Due in 180 days.

Section 1832. Study on the Benefits of Economic Dispatch. DOE, working with states to study current procedures, possible changes to and potential benefits of revising dispatch procedures to improve ability of non-utility generators to offer their resources. Due 90 days and annually thereafter.

Section 1833. Renewable Energy on Federal Land. National Academy of Sciences study, commissioned by DOI, of potential wind, solar and ocean energy resources on federal land. Contract required in 90 days. Study due in 2 years.

Section 1834. Increased Hydroelectric Generation at Existing Federal Facilities. Joint DOE, DOI study in consultation with Corps of Engineers. Due in 18 months.

Section 1836. Resolution of Federal Resource Development Conflicts in the Powder River Basin. DOE study of conflicts between use of federal coal and all coalbed methane. Due in 180 days.

Section 1839. Transmission System Monitoring. DOE and FERC study of the feasibility of real-time information on functional status of transmission lines in the Eastern and Western Interconnections. Due in 6 months.

Section 1840. Report Identifying and Describing the Status of Potential Hydropower Facilities. DOI report on the status of potential hydropower facilities included in water storage studies undertaken by DOI for projects that have not been completed or authorized for construction; specifies numerous details to be included. Due in 90 days.

ELECTRICITY-RELATED PROVISIONS IN **TITLE III—OIL AND GAS**

Section 367. Fair Market Value Determinations for Linear Rights-of-Way Across Public Lands and National Forests. Requires that fee schedules be updated within one year, based on the value of the land and pursuant to BLM regulations issued in April 2005.

Section 368. Energy Right-of-Way on Corridors on Federal Land.

Section 368 establishes a 2-year deadline for the designation of corridors for energy facilities in 11 Western states, including completing all environmental reviews and incorporation into relevant land use plans. The Secretaries of Agriculture and Interior are also to develop expedited procedures for designating corridors in the future, as necessary, and for expediting permitting for transmission lines proposed to be sited within a designated corridor.

A 4-year deadline is established for identifying corridors in the other 39 states, including establishing a schedule for action.

Section 372. Consultation Regarding Energy Rights-of-Way on Public Land. This section requires the Secretary of Energy to work with other federal land agencies to complete a memorandum of understanding for coordinating the authorizations for utility facilities, which includes the generation, transmission and distribution of electricity.

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