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Washington, DC 20548

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August 11, 2009

The Honorable Jeff Bingaman
Chairman
The Honorable Lisa Murkowski
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Joe L. Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Energy Regulatory Commission: Smart Grid Policy*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Energy Regulatory Commission (Commission), entitled “Smart Grid Policy” (Docket No. PL09-4-000). We received the rule on July 20, 2009. It was published in the *Federal Register* as a policy statement on July 27, 2009. 74 Fed. Reg. 37,098.

The policy statement provides guidance regarding the development of a smart grid for the nation’s electronic transmission system, focusing on the development of key standards to achieve interoperability and functionality of smart grid systems and devices. In the policy statement, the Commission also adopts an Interim Rate Policy for the period until interoperability standards are adopted by the Commission. The Interim Rate Policy provides for smart grid devices and equipment to be “used and useful,” thus includable in a public utility’s rate base, for purposes of cost recovery so long as an applicant makes certain showings. The Interim Rate Policy will require an applicant seeking recovery of smart grid costs to demonstrate that the smart grid facilities will advance the goals of the Energy Independence and Security Act of 2007 (EISA), that the reliability and cybersecurity of the bulk-power system will not be adversely affected by the deployment of the smart grid facilities at issue, and that the applicant has minimized the possibility of stranded investment in smart grid equipment, in light of the fact that such filings will predate adoption of interoperability standards. Also, an applicant must agree to provide feedback useful

to the interoperability standards development process, by sharing information with the Department of Energy Smart Grid Clearinghouse.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Michael A. Bardee
Deputy General Counsel
Federal Energy Regulatory
Commission

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL ENERGY REGULATORY COMMISSION
ENTITLED
"SMART GRID POLICY"
(DOCKET NO. PL09-4-000)

(i) Cost-benefit analysis

The Commission did not prepare a cost-benefit analysis in conjunction with this policy statement. The policy statement does estimate that the recordkeeping requirements contained in the Interim Rate Policy of the statement will result in an annualized cost of \$261,000.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission did not address the Regulatory Flexibility Act in the policy statement.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to Title II of the Unfunded Mandates Reform Act of 1995. 2 U.S.C. § 658.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The policy statement was issued using the notice and comment procedures of the Administrative Procedure Act. 5 U.S.C. § 553. On March 16, 2009, the Commission issued a Proposed Policy Statement and Action Plan, which was published in the *Federal Register* on March 26, 2009. 74 Fed. Reg. 13,152. The Commission issued a notice requesting supplemental comments on one additional feature of the Interim Rate Policy on May 19, 2009, which was published in the *Federal Register* on May 21, 2009. 74 Fed. Reg. 23,810. In response to the notice, the Commission received about 70 comment letters, to which the Commission responded in the policy statement. 74 Fed. Reg. 37,098 (July 27, 2009).

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

This policy statement contains information collection requirements that the Commission submitted to the Office of Management and Budget (OMB) for review under the Act. The information collection requirement has the OMB Control Number of 1902-0096 and the Commission estimates that the requirement will have 116 respondents, that the total annual hours for collection will be 1,740 hours, and that the annual cost of this requirement will be \$261,000.

Statutory authorization for the rule

This policy statement was promulgated under the authority of the Federal Power Act, 16 U.S.C. § 824o, and the Energy Independence and Security Act of 2007 (EISA), Pub. L. 110-141, § 1305(d), to be codified at 15 U.S.C. § 17385(d).

Executive Order No. 12,866 (Regulatory Planning and Review)

As this policy statement is promulgated by an independent regulatory agency, it is not subject to the review requirements of the order.

Executive Order No. 13,132 (Federalism)

As this policy statement is promulgated by an independent regulatory agency, it is not subject to the review requirements of the order.