

March 2009

Contacts

Washington Office

1900 K Street NW
Washington, DC 20006

[Patrick J. McCormick III](#)

(202) 778-2218
pmccormick@hunton.com

[Ted J. Murphy](#)

(202) 955-1588
tmurphy@hunton.com

[R. Michael Sweeney, Jr.](#)

(202) 955-1944
rsweeney@hunton.com

[Linda L. Walsh](#)

(202) 955-1526
lwalsh@hunton.com

[Patrick T. Currier](#)

(202) 419-2001
pcurrier@hunton.com

FERC Proposes Smart Grid Policy

The Federal Energy Regulatory Commission (“FERC” or “the Commission”) issued a proposed Smart Grid policy statement and action plan (“Smart Grid Policy”) on March 19, 2009, seeking comments within 45 days of the document’s publication in the Federal Register. Expressing the need for urgent action, Chairman Jon Wellinghoff¹ underscored his goals for Smart Grid: “I expect that this increased efficiency, reliability and flexibility of the electric system [made possible by Smart Grid deployment] will offer consumers more choices and the ability to manage their energy costs, resulting in long-term savings for everyone.”

Among other notable features, the proposed policy statement provides that the Commission would “accept single-issue rate filings...by public utilities to recover the costs of Smart Grid deployments involving jurisdictional facilities....”² As described in greater detail below, the proposed interim rate policy should enable a clearer path to returns on Smart Grid investments by utilities, a major question surrounding Smart Grid development. In addition, permitting the use of single-issue rate filings is significant given that the Commission generally does not permit such filings and

thus utilities could seek rate recovery for Smart Grid investments without having to open their rates to further review.³

The ultimate purpose of the Smart Grid Policy is threefold: (1) to prioritize the development of key interoperability standards of Smart Grid devices and systems;⁴ (2) to provide guidance to the electric industry regarding the need for full cybersecurity for Smart Grid projects; and (3) to provide an interim rate policy geared toward encouraging utility investment in Smart Grid technologies. With this issuance, the Commission has signaled that accelerating the deployment of Smart Grid technologies is an urgent priority and has illustrated the new Chairman’s emphasis on promoting new technology and “clean energy” in the context of stimulating the economy.

Background

Section 1305 of the Energy Independence and Security Act of 2007 (“EISA”) directs the National Institute of Standards and Technology (“NIST”) “...to coordinate the development of a framework that includes

³ Order No. 679, 116 FERC ¶ 61,057 at P 23 (2006).

⁴ FERC describes “interoperability” as the “ability of a system or a product to work with other systems or products without special effort on the part of the customer...” Smart Grid Policy at P 7 (quoting Testimony of Patrick D. Gallagher, Ph.D., Deputy Director, National Institute of Standards and Technology, before the Committee on Energy and Natural Resources, United States Senate (Mar. 3, 2009)).

¹ The White House announced on March 19 that President Obama intends to designate Mr. Wellinghoff as FERC Chairman rather than Acting Chairman.

² Smart Grid Policy, Docket No. PL09-4-000, 126 FERC ¶ 61,253 (Mar. 19, 2009).

protocols and model standards for information management to achieve interoperability of smart grid devices and systems.” Once NIST’s efforts have led to “sufficient consensus” among the cooperating entities on interoperability standards, FERC is required to establish rulemaking proceedings to adopt such standards and protocols to ensure Smart Grid functionality and interoperability. A “sufficient consensus” has not yet been reached, but FERC calls upon NIST in the Smart Grid Policy to move swiftly in developing a workable framework so that FERC can begin rulemaking proceedings. Notably, the Commission signals that it is willing to become more involved in the NIST process to help identify when a “sufficient consensus” has been reached or when negotiations on interoperability standards reach an impasse.

The Smart Grid Policy

In addition to rate recovery, the Smart Grid Policy discusses the urgency of achieving certain Smart Grid functionalities and provides guidance related to the following:

→ *Cybersecurity*: FERC’s goals with respect to cybersecurity and reliability are to ensure that interoperability standards and protocols are consistent with the overarching requirements of FERC’s reliability standards, such as the Critical Infrastructure Protection (“CIP”) standards. FERC sets forth additional considerations that Smart Grid technologies must address, such as the integrity of data communicated, the physical protection of Smart Grid devices, and unauthorized-use impacts.

→ *Inter-system Communication and Coordination*: Develop standards for a common framework and software models for communication among all elements of the Bulk Power System. Specifically, FERC outlines certain communication standards initiated by the Electric Power Research Institute (“EPRI”) and currently utilized by some utilities for enterprise system integration. FERC cites the EPRI standards as serving as a foundation for developing a complete set of communications standards and seeks comment on this approach.

→ *Wide-Area Situational Awareness*: The Smart Grid Policy defines wide-area situational awareness as “the visual display of interconnection-wide system conditions in near real time at the reliability coordinator level and above.”⁵ FERC’s goal with respect to Smart Grid deployment is to ensure that operators of the Bulk Power System have the equipment and technology necessary to provide a complete view of their systems so that they can effectively monitor and operate the system as well as analyze and respond to system conditions and events. Efforts to achieve these goals will require substantial communications and coordination across Regional Transmission Organization (“RTO”) and utility interfaces, and thus FERC encourages RTOs to take a leadership role in this area.

→ *Coordination of Bulk Power Systems with New and Emerging Technologies*: FERC is seeking to identify and develop standards that would help introduce and/or expand

renewable resources, demand response, and electricity storage to help address Bulk Power System operational challenges as well as accommodate emerging technologies and electric transportation.

As noted, FERC also proposes an interim rate policy that would enable utilities with jurisdictional facilities to recover -- through single-issue rate filings -- certain Smart Grid investment costs and thus encourage utilities to deploy Smart Grid technologies in the near term that advance efficiency, security, and interoperability. The interim rate policy would remain in place until the Commission adopts final interoperability standards. The Commission proposes to “consider Smart Grid devices and equipment, including those in a Smart Grid pilot or demonstration project, to be used and useful if an applicant makes certain showings...,” including how the:

- proposed Smart Grid equipment will maintain compliance with all Commission-approved reliability standards, including CIP reliability standards, such that the reliability and security of the transmission grid will not be adversely affected by the technology deployment;
- possibility of stranded investment in Smart Grid equipment will be minimized by designing for the possibility of later upgrades; and
- Smart Grid deployment information will be shared with the Department of Energy (“DOE) Smart Grid Clearinghouse.

Implications and Moving Forward

Although only a proposal, the Smart Grid Policy nevertheless reflects FERC’s

⁵ Smart Grid Policy at P 35.

interest and sense of urgency in taking prompt action to encourage the deployment of Smart Grid technologies. The policy statement is also aligned with the Obama administration's renewable energy policies as well as the energy goals set forth in the recently passed American Recovery and Reinvestment Act ("ARRA"). FERC also is focused on establishing a Smart Grid policy that is coordinated with DOE's Smart Grid efforts. Moreover, the proposal incorporates many of the Commission's

long-standing priorities, such as cybersecurity and reliability, as well as Chairman Wellinghoff's personal interests in developing standards that will facilitate distributed energy resources and energy storage technologies.

Given the relatively expedited comment schedule, utilities and others potentially impacted by Smart Grid policies should consider submitting comments in response to FERC's inquiries. Moreover, in light of FERC's interest in Smart

Grid -- an interest that will remain keen -- entities contemplating transmission incentives subject to FERC approval would be wise to include, where possible, Smart Grid components, as such filings are likely to be viewed more favorably by the Commission.

For more information concerning the Smart Grid Policy, as well as other FERC issues, please communicate with one of the Hunton & Williams attorneys listed in the "Contacts" list.

© 2009 Hunton & Williams LLP. Attorney advertising materials. These materials have been prepared for informational purposes only and are not legal advice. This information is not intended to create an attorney-client or similar relationship. Please do not send us confidential information. Past successes cannot be an assurance of future success. Whether you need legal services and which lawyer you select are important decisions that should not be based solely upon these materials.