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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Chapter I

[Docket No. PL09–4–000]

#### Smart Grid Policy; Notice Requesting Supplemental Comments

Issued May 19, 2009.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Request for supplemental comments.

**SUMMARY:** On March 19, 2009, the Federal Energy Regulatory Commission (Commission) issued a Proposed Policy Statement and Action Plan (Proposed Policy Statement) that, among other things, proposed an interim rate policy to encourage the development of smart grid systems. In this notice, the Commission seeks supplemental comments regarding rate recovery for certain smart grid investments.

**DATES:** Comments are due May 28, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Ray Palmer (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6569.

Elizabeth Arnold (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8818.

#### SUPPLEMENTARY INFORMATION:

1. On March 19, 2009, the Federal Energy Regulatory Commission (Commission) issued a Proposed Policy Statement and Action Plan (Proposed Policy Statement) that, among other things, proposed an interim rate policy to encourage the development of Smart Grid systems.<sup>1</sup> Subsequent to the Commission's issuance of the Proposed Policy Statement, the U.S. Department of Energy (Department) announced two Smart Grid funding opportunities to be

offered by the Department that may supply up to 50 percent of the funding for certain Smart Grid projects. In addition, the Department plans to require applicants to identify the source of non-Department funds, along with some evidence as to the certainty of these funds. Given that applicants for these programs might include jurisdictional public utilities that seek rate recovery through FERC-jurisdictional rates for the non-Department portion of funds for transmission-related projects, the Commission seeks supplemental comments on this matter.

#### I. Background

2. In the Energy Independence and Security Act of 2007 (EISA),<sup>2</sup> Congress enacted a number of provisions related to Smart Grid. Section 1301 of the EISA states that it is the policy of the United States to support the modernization of the Nation's electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure that can meet future demand growth and to achieve each of several goals and characteristics, which together characterize a Smart Grid.<sup>3</sup> EISA authorizes the Department to carry out two separate funding programs for Smart Grid projects: (1) Providing up to 50 percent of the cost of certain demonstration projects, as described in section 1304;<sup>4</sup> and (2) providing federal matching funds for Smart Grid investment costs, as described in section 1306.<sup>5</sup> EISA also directed the development of a framework of protocols and standards to achieve interoperability of Smart Grid devices and systems, which was described in detail in the Proposed Policy Statement, and in which the Commission plays a role.<sup>6</sup>

3. In the Proposed Policy Statement, the Commission proposed an interim rate policy for Smart Grid investments, intended to encourage investment in technologies that advance efficiency, security, reliability and interoperability. Specifically, the Commission proposed to accept single-issue rate filings submitted by public utilities under section 205 of the Federal Power Act<sup>7</sup> to recover the costs of Smart Grid

projects involving jurisdictional facilities, provided that certain showings are made.<sup>8</sup> The Commission specifically noted that, “[w]e would also consider applying these rate treatments to the portion of a smart grid pilot or demonstration project's cost that is not already paid for by Department of Energy funds, such as those authorized by EISA sections 1304 and 1306.”<sup>9</sup>

4. Subsequent to the Commission's issuance of the Proposed Policy Statement, the Department released two documents relative to forthcoming solicitations for applications for Smart Grid funding; one of these solicitations was authorized by EISA section 1304, and one authorized by EISA section 1306.<sup>10</sup>

5. In the Notice of Intent, electric utilities are specifically identified as a category of eligible bidders. While the Notice of Intent does not specifically require that an applying electric utility get approval from a regulatory commission for non-Federal funds, the document could be read as indicating a preference for such approval.<sup>11</sup>

6. The Draft Funding Opportunity Announcement does not explicitly address regulatory approvals, but does instruct applicants to submit a funding plan that identifies all sources of project funds, and directs applicants to include a commitment letter from third parties providing a specific minimum dollar amount of cost sharing.<sup>12</sup> For public utilities that plan to match the Federal funds with charges to ratepayers, it is possible that public utilities may seek to obtain an order addressing rate recovery from this Commission for charges subject to this Commission's jurisdiction.

#### II. Request for Comments

7. Given the requirements for potential applications by public utilities

<sup>8</sup> Proposed Policy Statement, 126 FERC ¶ 61,253 at P 46. The Commission also discussed other rate treatments. *Id.* P 51–52.

<sup>9</sup> *Id.* P 52 (footnote omitted).

<sup>10</sup> For the section 1304 program, the Department's National Energy Technology Laboratory issued a Draft Funding Opportunity Announcement numbered DE-FOA-0000036 on April 16, 2009 (Draft Funding Opportunity Announcement). For the section 1306 program, the Department's Office of Energy Delivery and Electric Reliability issued a Notice of Intent to Issue a Funding Opportunity Announcement numbered DE-FOA-0000058A on April 16, 2009 (Notice of Intent).

<sup>11</sup> The Notice of Intent states that the evaluation of proposals will include “\* \* \* the likelihood that the proposed work can be accomplished \* \* \* with additional merit given to applications that \* \* \* [o]ffer the greatest extent of institutional and organizational commitment with consideration given to: \* \* \* [r]equired approvals from regulatory organizations.” Notice of Intent at 12–13.

<sup>12</sup> Draft Funding Opportunity Announcement at 32–33.

<sup>1</sup> *Smart Grid Policy*, 126 FERC ¶ 61,253 (2009). As the Proposed Policy Statement described, Smart Grid advancements will apply digital technologies to the electric transmission system and enable real-time coordination of information from various resources to bring new efficiencies to the grid. *Id.* P 1.

<sup>2</sup> Public Law No. 110–140, 121 Stat. 1492 (2007).

<sup>3</sup> EISA sec. 1301, to be codified at 15 U.S.C. 17381.

<sup>4</sup> To be codified at 42 U.S.C. 17384, as amended by the American Recovery and Reinvestment Act of 2009, Public Law No. 111–5, Title IV, Subpart A (ARRA).

<sup>5</sup> To be codified at 42 U.S.C. 17386, as amended by the ARRA.

<sup>6</sup> See Proposed Policy Statement, 126 FERC ¶ 61,253 at P 7–8.

<sup>7</sup> 16 U.S.C. 824d.

to the two Department programs referenced above, the Commission seeks comments on how it should address requests for rate recovery that may be necessary for public utilities to qualify for awards under these programs. We also seek comment on whether some form of conditional approval could be useful to public utility applicants with respect to jurisdictional Smart Grid facilities. The Commission invites comments on whether the Commission, consistent with its obligations to ensure just and reasonable rates under the Federal Power Act (FPA), should adopt processes for public utilities that may apply for funding for jurisdictional Smart Grid facilities through the Department's Smart Grid funding opportunities.

### III. Document Availability

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

9. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By the Commission.

**Kimberly D. Bose,**  
Secretary.

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## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

#### 29 CFR Parts 403 and 408

RIN 1215-AB62

#### Labor Organization Annual Reports

**AGENCY:** Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document extends the period for comments on the proposed rule published on April 21, 2009 (74 FR 18172). The proposed rule would rescind the regulations published on January 21, 2009 (74 FR 3677), which made several revisions to the current Form LM-2, which is used by the largest labor organizations to file their annual financial reports under the Labor-Management Reporting and Disclosure Act of 1959, as amended, and established a procedure by which the Secretary of Labor may revoke, under certain circumstances, a particular labor organization's authorization to file a simplified annual report, Form LM-3. The comment period, which was to expire on May 21, 2009, is extended to June 22, 2009.

**DATES:** Comments on the proposed rule published on April 21, 2009 (74 FR 18172) must be received on or before June 22, 2009.

**ADDRESSES:** You may submit comments, identified by RIN 1215-AB62, only by the following methods:

*Internet*—Federal eRulemaking Portal. Electronic comments may be submitted through <http://www.regulations.gov>. To locate the proposed rule, use key words such as "Labor-Management Standards" or "Labor Organization Annual Financial Reports" to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Delivery:* Comments should be sent to: Denise M. Boucher, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210. Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

The Office of Labor-Management Standards (OLMS) recommends that you confirm receipt of your delivered comments by contacting (202) 693-0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877-8339 (TTY/TDD). Only those comments submitted through <http://www.regulations.gov>, hand-delivered, or mailed will be accepted. Comments will be available for public inspection at <http://www.regulations.gov> and during normal business hours at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Denise M. Boucher, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-1185 (this is not a toll-free number), (800) 877-8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 21, 2009 (74 FR 18172), the Department published a notice of proposed rulemaking that would rescind the regulations published on January 21, 2009 (74 FR 3678). Interested persons were invited to submit comments on or before May 21, 2009, 30 days after the publication of the notice.

Public commenters have requested an extension of time to submit comments. The Department has decided to extend the comment period until June 22, 2009. An extension of this duration is appropriate because it will afford parties additional time to submit comments on the proposal without unduly delaying final action on the proposal. In the rulemaking that led to promulgation of the January 21 regulations, the Department provided an initial 45 day comment period (73 FR 27346) that was later extended 15 additional days after requests for an extension (73 FR 34913). The extension of the comment period for the April 21 notice of proposed rulemaking to June 22 adds 32 days to the initial 30 day comment period.

The proposed rule to rescind the regulations published on January 21, 2009 is available on the Web site maintained by OLMS at <http://www.olms.dol.gov>. Anyone who is unable to access this information on the Internet can obtain the information by contacting the Employment Standards Administration at 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, at [olms-public@dol.gov](mailto:olms-public@dol.gov) or at (202) 693-0123 (this is not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).