

Summary of FERC-Related Provisions in the Energy Independence and Security Act

There appear to be only two portions of the Energy Independence and Security Act (EISA) that directly affect FERC: section 529 concerning demand response and Title XIII (sections 1301 through 1309) concerning smart grid.

Demand Response

Section 529 of EISA requires FERC to complete a National Assessment of Demand Response within 18 months of enactment. In contrast to the demand response report required under section 1252(e)(3) of EAct 2005 (primarily a factual accounting of existing demand response programs and advanced meters), the Assessment required under EISA section 529 appears to envision a more analytical effort both to estimate demand response potential in five and ten year horizons and to determine how to overcome the barriers to achieving that potential. The section also requires FERC to develop a methodology for annual updates of such estimates but does not explicitly require FERC to conduct such annual updates.

Within one year after completion of the Assessment, FERC must complete a National Action Plan on Demand Response that: 1) identifies the technical assistance needed by the States; 2) designs a national communications program; and 3) develops analytical tools, model regulatory provisions, and model contracts for use by customers, states, utilities, and demand response providers. FERC is tasked with developing the Plan with the participation of a broad range of industry, State utility commission, and non-governmental stakeholders, seeking consensus where possible and “decid[ing] on optimum solutions to issues that defy consensus.” The Plan must be published along with any “favorable and dissenting comments submitted by participants.” Six months after completion of the Plan, FERC and DOE must submit to Congress a proposal for implementing the Plan. EISA section 529 authorizes up to \$10 million per year for three years to be appropriated for this effort.

Section 529 does not appear to alter Federal or state jurisdiction over demand response in any way. Rather, the provision appears to have been inspired by the National Action Plan for Energy Efficiency developed by DOE and EPA in conjunction with over 50 other organizations to assist stakeholders in their pursuit of greater energy efficiency. Thus, we should be able to build upon the ongoing NARUC-FERC Collaborative Dialogue on Demand Response as we implement this section. In fact, the section directs FERC to avoid duplication of effort.

Smart Grid

Title XIII of EISA addresses smart grid issues. The section within this title that has the

greatest significance for FERC is section 1305. Section 1305 tasks the National Institute of Standards and Technology (NIST) with spearheading the development of a framework that includes protocols and standards for interoperability of smart grid devices and systems (essentially cross-platform communications standards that, ideally, enable every device connected to the grid to communicate with the grid and respond appropriately to signals from the grid). NIST is directed to “seek input and cooperation from” several relevant entities including FERC. The development of the framework will begin within 60 days of enactment, which suggests that FERC may be consulted within the next several months. Once FERC is satisfied that NIST’s “work has led to sufficient consensus,” FERC is directed to “institute a rulemaking proceeding to adopt such standards and protocols as may be necessary to insure smart-grid functionality and interoperability in interstate transmission of electric power, and regional and wholesale electricity markets.” The precise scope of such a rulemaking, given FERC’s jurisdiction, is unclear, but the process appears analogous to FERC review and approval of NAESB standards.

Other sections of the title have relevance for FERC as well, but envision less of a direct role for the Commission. Section 1301 states that it is the policy of the United States to support modernization of the transmission and distribution system and to achieve certain goals associated with that modernization. In addition to development of interoperability standards, these goals include: identification and lowering of unreasonable or unnecessary barriers to adoption of smart grid technology; and dynamic optimization of grid operations and resources.

Section 1302 requires DOE to file a report on the status of smart grid deployments one year after enactment and every two years thereafter, in consultation with a variety of other entities including FERC.

Section 1303 requires FERC to designate at least one employee to participate on a smart grid task force organized by DOE. This task force has the mission of insuring the awareness, coordination, and integration of all Federal government activities related to smart grid technologies and practices. The smart grid task force will embody an identifiable Federal entity to “embody” the Federal role in the national transition toward a smart grid, but “without disrupting the work of the Divisions of Offices from which its members are drawn.”

Section 1304 requires DOE to initiate a variety of smart grid-related R&D efforts in consultation with a variety of entities including FERC. Several of the R&D efforts relate to demand response policies adopted by FERC or to our oversight of system reliability. Subsection (9) specifically identifies FERC activity by requiring DOE, in consultation with FERC, to propose interconnection protocols for plug-in hybrid vehicles

Section 1307 amends PURPA to require state commissions to consider requiring

jurisdictional utilities to undertake investments in smart grid technologies and to allow recovery of prudent investments and operating costs in approved rates. This section also sets a regulatory standard requiring utilities to provide information to their customers on time-based electricity prices, usage patterns, and sources of power.

Section 1309 tasks DOE with studying and preparing a report for Congress on the security ramifications of smart-grid technology in consultation with a variety of affected entities including FERC.