

**BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Smart Grid Policy

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Docket No. PL09-4-000

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**SUPPLEMENTAL COMMENTS OF  
EDISON ELECTRIC INSTITUTE**

The Edison Electric Institute (“EEI”), on behalf of its member companies, hereby submits these comments in response to the Notice Requesting Supplemental Comments (“Notice”) issued in the above-captioned docket on May 19, 2009, in which the Federal Energy Regulatory Commission (“FERC” or “Commission”) requests supplemental comments regarding rate recovery for certain Smart Grid investments.<sup>1</sup> In particular, the Commission seeks supplemental comments regarding how it should address requests for rate recovery that may be necessary for public utilities to qualify for awards under two recently announced Department of Energy (“DOE”) Smart Grid funding opportunities, and whether some form of conditional approval or other process could be useful for public utilities seeking to participate in those DOE programs.<sup>2</sup>

EEI is the association of the nation’s shareholder-owned electric utilities and affiliates and associates world-wide; most of which are transmission providers subject to the Commission’s jurisdiction. EEI’s U.S. member companies serve almost 95 percent of the ultimate customers in the shareholder owned segment of the industry and nearly 70 percent of all electric utility ultimate customers in the nation. In addition, most EEI members directly, through affiliate power producers, or both, own electric generation facilities that provide electricity to wholesale markets subject to the Commission’s jurisdiction.

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<sup>1</sup> *Smart Grid Policy*, Notice Requesting Supplemental Comments, 127 FERC ¶ 61,139 (2009). EEI members may file additional individual comments in this docket.

<sup>2</sup> *Id.* at P 7.

## BACKGROUND

The Commission issued its Proposed Policy Statement and Action Plan to articulate its policies and near-term priorities to help achieve the modernization of the Nation’s electric transmission system and to provide “an interim rate policy under which jurisdictional public utilities may seek to recover the costs of Smart Grid deployments before relevant standards are adopted through a Commission rulemaking.”<sup>3</sup> In the Proposed Policy Statement, the Commission made clear its intent that the interim rate policy would be limited to the period until interoperability standards are adopted and any Smart Grid investments that demonstrate system security and comply with FERC-approved Reliability Standards will be eligible for rate recovery and other rate treatments. Proposed Policy Statement at P 46. The Commission also proposed to accept single-issue rate filings submitted by public utilities under Section 205 of the Federal Power Act, 16 U.S.C. 824d (“FPA”). *Id.* Furthermore, the Commission specifically stated it would consider applying these rate treatments to the portion of the smart grid or demonstration project’s cost that is not already paid for by the DOE funds,<sup>4</sup> such as those authorized pursuant to Sections 1304 and 1306 of the Energy Independence and Security Act of 2007 (“EISA”).<sup>5</sup>

Since that time, DOE has issued two notices of future funding opportunities for Smart Grid projects: a Notice of Intent (“NOI”) to Issue a Funding Opportunity Announcement (“FOA”) for the Smart Grid Investment Grant Program and a Draft FOA for Smart Grid Demonstrations (both issued on April 16, 2009). In some cases the Commission’s decisions

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<sup>3</sup> *Smart Grid Policy*, Proposed Policy Statement and Action Plan, 126 FERC ¶ 61,253, at P 2 (March 19, 2009) (“Proposed Policy Statement”).

<sup>4</sup> See Proposed Policy Statement at P 52.

<sup>5</sup> 42 U.S.C. §§ 17384(b) and 17386. The DOE Smart Grid Demonstrations and Investment Grant programs were established by Sections 1304(b) and 1306 of EISA, respectively, and were later modified and funded by the American Recovery and Reinvestment Act of 2009 (“ARRA”). See Pub. L. No. 111-5, 123 Stat. 138 (2009).

concerning rate recovery of certain Smart Grid investments will be intertwined with DOE's programs to provide funding for Smart Grid technology demonstrations and deployments. As the Commission notes in the Notice, applicants to these DOE programs will need to identify the source of funds for their portion of a proposed Smart Grid project. See Notice at PP 1, 6. In some instances, public utilities may seek to fund their portion of the cost of a project receiving funding under DOE's Investment Grant and Demonstrations programs through their FERC-jurisdictional rates. In these instances, DOE may consider the extent to which regulatory approval has been secured as one of many criteria in determining whether to fund a proposed Smart Grid project. For example, the NOI for the Smart Grid Investment Program states that, pursuant to the Draft Merit Review Criteria, one of the criteria applications may be evaluated on is the "extent of institutional and organizational commitment with consideration given to . . . [r]equired approvals from regulatory organizations."<sup>6</sup>

Given the urgency associated with spending stimulus funds in order to achieve the goals set forth in the ARRA of providing a near term stimulus for the economy and preserving and creating jobs, DOE has set an aggressive timetable for submission and approval of applications for Smart Grid project funding. In the case of the Smart Grid Investment Grant Program, DOE expects to release a Final FOA on June 17, 2009, with the first round of applications due to be submitted to DOE by July 29, 2009. While the NOI establishes subsequent application deadlines, DOE has made clear that it is not certain any funding will be available for those later dates.<sup>7</sup> Given this uncertainty over the future availability of ARRA funds, and the commitment to achieving the economic stimulus goals of the ARRA, some electric utilities may seek to file

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<sup>6</sup> NOI at 13.

<sup>7</sup> NOI at 15.

requests at FERC for rate recovery of Smart Grid investments associated with these DOE funding opportunities in advance of the initial July 29, 2009 application deadline, with the hope of reporting the Commission's decision in their application to the DOE for funding.

As noted in our initial comments in this docket, EEI member companies are actively pursuing Smart Grid demonstration and deployment projects around the country.<sup>8</sup> Many EEI members may seek to participate in DOE's recently announced Smart Grid funding opportunities, and may also request rate recovery for their portion of the costs of FERC-jurisdictional facilities installed through those programs. As a result, EEI and its members have a significant interest in any policies or procedures the Commission develops for rate recovery requests associated with DOE's Smart Grid funding programs.

## **DISCUSSION**

The Commission's Notice seeks comments on how the Commission should address requests for rate recovery from public utilities seeking funding awards from DOE under the programs referenced above, whether some form of conditional approval could be helpful to these applicants, and whether to adopt "processes" for such public utility applicants. See Notice at P 7. Given the timing of the Commission's issuance of the Proposed Policy Statement and DOE's expected announcement of its funding opportunities, the uncertainty that funding will be available at later dates to public utilities, and the importance of supporting the commitment to achieving the near-term economic stimulus goals of the ARRA, the Commission should issue its final interim rate policy, as proposed in the Proposed Policy Statement, as expeditiously as possible. Ideally, the Commission would issue the final interim rate policy before the expected

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<sup>8</sup> See Comments of Edison Electric Institute, at 3-4, 11, filed in the above-captioned docket on May 11, 2009.

release of the DOE Notice of Inquiry for Smart Grid Investment Grant Program on June 17, 2009.<sup>9</sup> The Commission is correct that many utilities will face a timing challenge if they seek to include their portion of the costs of a project funded through the DOE funding programs in FERC-jurisdictional rates. See Notice at P 6. Finalizing the interim rate policy as expeditiously as possible would provide substantial clarity for applicants that are seeking rate recovery from FERC for jurisdictional Smart Grid projects that will also utilize funds from DOE's investment grant and regional demonstrations programs.

The Commission should not adopt a separate policy for projects that seek to access DOE's funding programs. The interim rate policy for jurisdictional Smart Grid investments outlined in the Proposed Policy Statement is largely consistent with the goals of the DOE funding programs. In particular, both the proposed interim rate policy and DOE's NOI and Draft FOA address similar areas of focus, such as reliability and security, accommodation of developing interoperability standards, and the need to share information gathered from early Smart Grid demonstrations and deployments.<sup>10</sup> As indicated previously in this proceeding, EEI believes the Commission is moving in the right direction by proposing to allow utilities with stated rates to file a single-issue rate case for recovery of costs associated with jurisdictional Smart Grid investments. The proposed interim rate policy represents significant encouragement for utilities to continue to enhance the grid and invest in accelerated technologies that promote greater efficiency and creates a smarter more interoperable grid. Accordingly, a single issue rate case to recover jurisdictional Smart Grid costs will allow a utility to justify such expenditures for a specific reason and within a reasonably finite period. By issuing its final interim rate policy on

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<sup>9</sup> Subsequent to issuing its interim rate policy, the Commission should issue its guidance articulating its priorities for Smart Grid interoperability standards development.

<sup>10</sup> See, e.g., Proposed Policy Statement at P 47; NOI at pp. 8-10; Draft FOA at pp. 7-8.

an expedited basis, the Commission will help provide certainty for public utility applicants seeking ARRA funds from the DOE.

In addition to issuing its interim rate policy for Smart Grid cost recovery as soon as practicable, the Commission should also provide for expedited review and conditional approvals of rate filings pursuant to the interim rate policy. In the Proposed Policy Statement, the Commission has proposed an interim rate policy that would establish criteria and information required to obtain cost recovery for jurisdictional Smart Grid investments. See Proposed Policy Statement at PP 51-52. In conducting an expedited review of a public utility's jurisdictional Smart Grid costs, the Commission should allow rate recovery of phased-in upgrades to legacy systems, as well as of stranded costs of legacy systems that are replaced by smart grid equipment. In considering whether to approve rate recovery of jurisdictional Smart Grid investments, the Commission should equally consider upgrades to legacy systems. Taking these steps will further facilitate Smart Grid equipment installation.

Additionally, utilities with formula rates seeking to incorporate jurisdictional Smart Grid investments within their rates should have regulatory certainty from the Commission since their cost mechanism was Commission approved. The Commission should recognize that many utilities are subject to rate formulas that are updated periodically and should provide that investments in approved smart grid projects should be included in the appropriate rate formula at the time the smart grid equipment goes into commercial service without having to wait for the annual update. Such automatic updating will encourage more robust investment in smart grid infrastructure. The Commission should also allow the option of deferred accounting for the cost recovery of near-term deployments of Smart Grid technologies; electric utilities may need to accumulate costs for smaller projects and later make a single issue Section 205 filing. Finally,

when assessing cost recovery for jurisdictional Smart Grid costs, the Commission should account for any tax impacts associated with the receipt of funds from DOE's Smart Grid funding programs. By applying this interim rate policy to such rate filings, the Commission will ensure that such rates meet the requirements under Section 205 of the FPA while also providing public utilities with greater regulatory certainty when submitting their applications for DOE funding due July 29, 2009.

### **CONCLUSION**

**WHEREFORE**, EEI respectfully requests that the Commission consider these comments and ensure that any future Commission action ordered as a result of this proceeding is consistent with them.

Respectfully submitted

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