



Domenici-Barton Energy Policy Act of 2005

A Memorandum for ELCON Members

August 4, 2005

Introduction

The Domenici-Barton Act—officially the Domenici-Barton Energy Policy Act of 2005—lives up to the various superlatives given to the legislation by the press and various Washington pundits. The bill is 1725 pages long, consists of 18 titles, and authorizes \$85 billion (over ten years) in spending and tax credits. Much public attention at the end of the conference focused on the absence of provisions on MTBE and the Renewable Portfolio Standard (RPS) in the final Conference Report. But the big surprise is the fact that the bill is so “green.” A common theme throughout the legislation is clean energy (including but not limited to renewable energy), conservation, fuel diversity and efficiency. The only uncertainties left are the usual unintended consequences, how much money will eventually be appropriated, and the rulemakings necessary to implement many of the provisions.

This memorandum for ELCON members analyzes the act’s contents from the perspective of the large industrial electricity buyer and cogenerator, with an emphasis on mandates directed at the Federal Energy Regulatory Commission (FERC) in Title XII (“Electricity”), particularly those provisions related to demand response, upgrading the transmission infrastructure, partial repeal of PURPA, and the repeal of PUHCA. In addition, several incentive programs mandated in other titles that deal with the next generation of nuclear power plants and clean coal plants have the potential to produce significant long-term benefits to consumers in the electricity markets.¹ The memo begins with these measures.

¹ It was reported in the trade press that a panel of five Standard & Poor’s credit analysts claim that the energy bill’s incentives for nuclear generation and transmission are not likely to offset the tremendous regulatory and financial risks associated with such new investments.

Summary of Electricity-Related Provisions in the Domenici-Barton Act

Title or Subtitle	Impact on Electricity Markets & Regulation
Title V – Coal	Authorizes \$5.23 billion over ten years, mostly as direct subsidies to projects employing coal gasification and advanced combustion technologies.
Title VI – Nuclear Matters	Authorizes the construction of a prototype “next generation” nuclear plant, and provides substantial loan guarantees to cover costs of construction delays for the first six new nuclear power plants.
Title XII -- Electricity	
Subtitle A—Reliability Standards	Authorizes FERC to certify a new Electric Reliability Organization (ERO) to replace NERC. The ERO would be capable of enforcing reliability standards and impose penalties for violations.
Subtitle B—Transmission Infrastructure Modernization	Gives FERC backstop authority to site interstate transmission facilities. Authorizes 1.8 cents/kWh production credit for advanced power technologies.
Subtitle C—Transmission Operation Improvements	Requires munis & coops to provide open access transmission; establishes a “transmission rights-goes-with-the-load” requirement; requires a study on economic dispatch; prohibits tradable or financial transmission rights in the Northwest; and a “sense of the Congress” resolution directs FERC to “carefully consider” New England states’ opposition to LICAP.
Subtitle D—Transmission Rate Reform	Requires FERC rulemaking implementing incentive pricing and PBR for new transmission investments. Reaffirms that FERC “may approve” participant funding.
Subtitle E—Amendments to PURPA	Establishes new federal PURPA standards for state adjudication: (1) net metering, (2) time-based rates and metering, (3) fuel diversity, and (4) fossil fuel generation efficiency. Prospectively repeals PURPA’s mandatory purchase and sale requirement for QFs, provided that certain competitive conditions prevail in the markets. Removes 50% ownership requirement.
Subtitle F—Repeal of PUHCA	Six months after enactment, PUHCA is repealed. FERC and the States are given access to books and records of holding companies and FERC’s merger authority is tweaked (in Subtitle G) to offset the loss of PUHCA.
Subtitle G—Market Transparency, Enforcement, and Consumer Protection	Authorizes FERC to require the posting of electricity and natural gas pricing information to provide price discovery and market transparency. Manipulative or deceptive practices are prohibited with the intent to manipulate market prices. FERC’s merger review authority is reaffirmed and slightly expanded.

Expected FERC Rulemakings Triggered by the Enactment of the Domenici-Barton Act

This table lists the rulemakings that are mandated or authorized in the Domenici-Barton Act. ELCON should consider intervening in most of these rulemakings. The priority rankings are preliminary ELCON staff assessments and are intended to initiate discussion.

Provision	Subject of Rulemaking	Timing of the Rulemaking	Priority
Reliability Standards	Establish rules for certifying the new Electric Reliability Organization (ERO)	Final rule due no later than February 15, 2006	High
Reliability Standards	Certify the ERO	Anytime after Feb. 15, 2006	High
Transmission Operation Services	Potential rulemaking to require unregulated transmitting utilities to provide transmission services	No deadline in statute; left to the Commission's discretion	Low
Transmission Operation Services	Establish rule (or order) for long-term financial transmission rights (FTRs)	Final rule (or order) due no later than August 15, 2006	High
Transmission Rate Reform	Establish rule for incentive-based rate treatments (including PBR) for transmission investments	Final rule due no later than August 15, 2006	High
Amendments to PURPA	Establish rule revising the criteria for new qualifying cogeneration facilities (QFs)	Final rule due no later than February 15, 2006	High
Repeal of PUHCA	Establish rule to exempt from FERC's "books and records" requirements any person who is a QF, EWG or foreign utility	Final rule due no later than November 15, 2005	High
Repeal of PUHCA	Establish rule related to FERC's access to the books and records of holding companies and their affiliates	Final rule due no later than December 15, 2005	Medium
Repeal of PUHCA	Establish rule to exempt holding companies or their affiliates that operate within a single state	Final rule due no later than December 15, 2005	Low
Market Transparency	Establish rules to facilitate price transparency in electricity and natural gas markets	No deadline in statute; left to the Commission's discretion	Medium
Merger Review Reform	Establish rule for expediting the approval of certain type of mergers	No deadline in statute; left to the Commission's discretion	Medium

Provisions in the Domenici-Barton Act That Impact Electricity Markets and Regulation

Title IV – Coal

Title IV authorizes substantial federal subsidies for the “Clean Coal Power Initiative” (CCPI), which specifically targets projects—new advanced coal-fired generators—employing gasification technologies, hybrid gasification and combustion technologies, or advanced coal-based technologies capable of producing a concentrated stream of carbon dioxide (carbon sequestering). The bill authorizes \$1.8 billion for the CCPI to be used between 2006 and 2014.

An additional \$3 billion is authorized to fund the “Clean Air Coal Program” to be expended between 2007 and 2013. The qualifying technologies include any equipment or processes previously supported by a DOE program, advanced combustion equipment and processes that DOE determines will be cost effective for meeting “environmental or energy needs,” including gasification and ultra-super-critical boilers, and hybrid gasification/combustion systems.

The total authorized spending for clean coal projects in the bill is estimated to be \$5.23 billion. This does not include additional funds for fossil fuel research and development authorized in Title IX (“R&D”).

Title VI – Nuclear Matters

Subtitle C in Title VI authorizes the “Next Generation Nuclear Plant Project.” The subtitle authorizes \$1.25 billion for 2006 through 2015 and “such funds as are necessary” for 2016 and 2021 for the research, development, design, construction, and operation of a prototype nuclear power plant based on DOE’s on-going Generation IV Nuclear Energy Systems Initiative. That initiative has identified six reactor designs that qualify as the “next generation” of commercial nuclear plants. The Idaho National Laboratory is the lead agency for administering this project.

An additional \$2 billion is provided as “standby support”—actually a form of loan guarantee—for certain nuclear plant construction delays. Up to \$500 million is provided for the first two reactors and up to \$250 million for the next four reactors.

In addition, Title XIII (“Energy Policy Tax Incentives”) provides a production credit of 1.8 cents per kWh for eight years beginning when the plant is originally placed in service. A national cap of 6,000 MW of new generation is established.

Notwithstanding the skepticism on Wall Street, the sum total of the act’s incentives should encourage several utilities to announce formal plans to construct a new nuclear power plant. Entergy and the Progress Energy have already been mentioned in the press as serious candidates.

Title XII – Electricity

The electricity title has ten subtitles: (1) reliability standards; (2) transmission infrastructure modernization; (3) transmission operation improvements; (4) transmission rate reform; (5) amendments to PURPA (including net and smart metering and demand response); (6) repeal of PUHCA; (7) market transparency, enforcement, and consumer protection; (8) definitions; (9) technical and conforming amendments; and (10) economic dispatch. Title XIII (“Energy Policy Tax Incentives”) also contains electricity-related tax provisions that complement Title XII.

Subtitle A—Reliability Standards

This subtitle authorizes FERC to certify an Electric Reliability Organization (ERO) to enforce mandatory reliability standards subject to FERC oversight. FERC has 180 days to issue a final rule implementing the requirements of this subtitle. After the final rule is issued, any entity may submit an application to FERC for certification as the ERO. The conventional wisdom is that NERC will be that entity. The main benefit to ELCON members of this subtitle is that reliability standards will henceforth be enforced with violations subject to penalties. This should greatly reduce the risk of blackouts such as the 1996 Western Blackouts and the 2003 Northeast Blackout, which resulted, in part, from violations of NERC’s reliability standards.

ELCON will be active on three fronts. First, we are already involved with the drafting of the strawman proposal for the rulemaking. Second, we will intervene in the rulemaking proceeding to challenge features in the strawman proposal that we oppose. And, third, we will intervene in the proceeding that certifies the ERO to ensure that consumers are not intended or unintended victims of discrimination in the new organization’s governance structure. ELCON’s role in each proceeding will be to

mitigate utility industry inertia to preserve the status quo, *i.e.*, preserve the lack of transparency in the relationship between NERC, the regional councils, and transmission owners; dilute the value of a “standard” by allowing regional variances; and the lack of balanced stakeholder input in the development of standards.

Subtitle B—Transmission Infrastructure Modernization

The intent of this subtitle is to mandate FERC backstop siting authority for interstate transmission projects in corridors that have been designated as “National Interest Electric Transmission Corridors.” This includes—and not without controversy—the federal exercise of eminent domain. DOE will make the designation of such National Interest corridors in consultation with the affected states and the ERO (*i.e.*, NERC). The language in this subtitle provides the states with all kinds of opportunities to site these transmission facilities without federal preemption and, perhaps, many will. This includes the option to form “Interstate Compacts” for siting multi-state projects. Either way large industrial consumers should benefit because it will likely accelerate some transmission upgrades.

Subtitle B includes other mandates. It designates DOE as the lead agency for siting new transmission facilities on federal lands. FERC is also directed to “encourage, as appropriate, the deployment of advanced transmission technologies.” The bill identifies 18 such technologies and also allows FERC to identify others. Examples of these technologies are high-temperature superconducting cables, flexible AC transmission systems (FACTS), controllable load, and distributed generation.

Finally, the subtitle provides incentives (1.8 cents per kWh) to the owner or operator of a “qualifying advanced power system technology.” An additional 0.7 cents per kWh is also awarded to the owner or operator of a “qualifying security and assured power facility.” “Qualifying advanced power system technologies” must employ advanced fuel cell, turbine, or hybrid power system or power storage system to generate or store electric energy. “Qualifying security and assured power facilities” are advanced power system technologies that are deemed by DOE (in consultation with the Secretary of Homeland Security) to be “in critical need for critical government, industrial, or commercial applications.” For seven years beginning in fiscal year 2006, \$10 million per year is authorized. ELCON members planning new behind-the-meter generation

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Subtitle C—Transmission Operation Improvements

This subtitle brings municipal utilities and rural electric cooperatives under FERC jurisdiction for purposes of providing open access on those entities transmission systems. It also authorizes federal utilities (*e.g.*, TVA and federal power marketing agencies) to join RTOs.

In a complicated section labeled, “Native Load Service Obligation,” a load-serving entity’s allocation of firm transmission rights (or equivalent tradable or financial transmission rights) is preserved based on its native load. In a sense, this language codifies a transmission rights-goes-with-the-load principle and reportedly was negotiated between public power interests, some utilities, IPPs, and the Midwest ISO. The eastern ISO/RTOs are exempt from this requirement. The subtitle also requires FERC to initiate a rulemaking within one year to establish long-term transmission rights in the “organized markets.” This rulemaking complements one of the recommendations in ELCON’s Special Report, “Problems in the Organized Markets.”

Subtitle C ends with three brief sections that highlight the very unsettled nature of industry restructuring in the United States. First, DOE (in consultation with the states) is required to study current economic dispatch procedures and identify possible revisions to those procedures to improve the ability of IPPs to be included in a utility’s economic dispatch. The intent of this study is to demonstrate that in regions, such as the South, where IPPs have difficulty marketing their capacity, there are consumer benefits if utilities were required to dispatch these generators, displacing the utilities’ less efficient generators.

A second section in subtitle C prohibits FERC from requiring any utility in the Pacific Northwest to convert existing firm transmission rights into tradable or financial rights.

The intent of this provision is clearly to prevent FERC from mandating an organized market in the Northwest.

Finally, the concluding section in this subtitle is a “sense of the Congress” resolution directing FERC to “carefully consider” the objections of the New England states to the ISO New England’s proposed LICAP mechanism.

ELCON has traditionally opposed such incentives because it tends to reward mediocre behavior while not addressing the real problem causing the under investment, which is generation market power.

Subtitle D—Transmission Rate Reform

This very brief subtitle may have significant future rate impacts on ELCON members. FERC is directed to initiate a rulemaking with one year to establish incentive-based rate treatments for new transmission investments, including the application of performance-based rates (PBR). ELCON has traditionally opposed such incentives because it tends to reward mediocre behavior while not addressing the real problem causing the under investment, which is generation market power. FERC is likely to use this rulemaking to simply codify recent decisions in rate case proceedings that allow rates of return of 13.5% or so and other perks. ELCON should intervene in the rulemaking and advocate a final rule that includes—at a minimum—a refund requirement if it is subsequently determined that the “incentives” did not induce any material consumer benefits.

Finally, subtitle D concludes with a provision that says that FERC “may approve” participant funding for allocating the costs of new transmission upgrades. This is substantially watered-down language compared to the highly prescriptive language strongly advocated by several southeastern utilities, their state regulators and Congressional delegation.

Title XIII of the bill (“Energy Policy Tax Incentives”), in section 1305, extends through 2007 a tax rule that allows utilities to sell their transmission assets to a FERC-approved independent transmission company to spread the gains on such sales over eight tax years. Section 1308 allows new transmission facilities (69 kV and above) to be

depreciated over 15 years. Under existing tax law such facilities are depreciated over 20 years. Section 1311 allows a five-year carry back of any net operating losses of up to 20% of new transmission investments.

Subtitle E—Amendments to PURPA

This subtitle contains several very important provisions that should be noticed by all ELCON members. In addition to the expected prospective repeal of PURPA’s mandatory QF purchase obligation contingent on the establishment of competitive wholesale and retail markets, it includes strong mandates on net metering and smart metering (including demand response) that should significantly change retail rate designs throughout the United States.

Net Metering & Smart Metering

Net metering is service to an electric consumer under which electric energy generated by the consumer from an “eligible on-site generating facility” and delivered to the local distribution facilities may be used to offset electric energy purchased by the consumer from the local utility during an applicable billing period. Like earlier PURPA ratemaking standards—that triggered the founding of ELCON in 1976—states and non-regulated utilities (public power utilities) are given a certain period of time to consider implementing net metering by rulemaking. In this case, every state commission and non-regulated utility is required to make a final determination within three years. States are not required to implement net metering, but they must formally adjudicate the matter, or demonstrate that they have already considered the issue and has either implemented or rejected it. The section on net metering also requires separate rulemakings intended to promote fuel diversity and fossil fuel generation efficiency. If net metering is approved in a state, the affected utilities will be required to implement some form of real-time pricing to make this work. Thus, the benefits of net metering will likely spill over to consumers who do not directly engage in net metering.

Within 18 months, all state regulatory authorities are also required to consider the implementation of “time-based metering and communications” services, *i.e.*, utilities are required to offer time-based rates on demand and to install time-based meters as necessary to meet such demand. The relevant subsections read:

Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual

customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

...

Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.

The section provides several examples of "time-based rate schedules" that includes hourly day-ahead type pricing and "credits" for load reductions during peak demands. Retail service providers in states with direct access are required to provide their customers with the same services as offered by the regulated electric utilities. The subtitle also directs DOE to aggressively advocate "demand response," including providing technical support to the States.

This combination of net metering (which promotes real-time pricing and interval metering) and smart metering (which promotes time-based retail rates and interval metering) should greatly expand "demand response" opportunities for consumers of all sizes both in the unbundled organized markets and in bundled states.

Termination of Mandatory PURPA Purchase and Sale Requirements

As expected the act prospectively repeals PURPA's mandatory purchase and sale requirements provided that certain qualifications are met. The language is the Carper-Collins Amendment that ELCON and other industrial associations supported.

FERC is required to issue a final rule within 180 days implementing the new standards for qualifying facilities (QFs), including the regulations the Commission will use to determine if the QF has nondiscriminatory access to a competitive wholesale market that provides "meaningful" opportunities to sell power and acquire backup services at just and reasonable rates.

Subtitle E also tweaks the PURPA rules by explicitly prohibiting so-called "PURPA machines"—cogeneration facilities that maximize sales by employing a token (or

phony) thermal host—and eliminates the 50% ownership limitations in the definitions of qualifying small power production facility and qualifying cogeneration facility.

The rulemaking will be extremely important for ELCON and ELCON members who own and operate cogeneration facilities because utilities and their consultants will seek to portray all regional markets as sufficiently competitive to trigger total repeal. There is no other national trade group that aggressively defends the interests of cogenerators with PURPA contracts and, at the same time, has a skeptical view of the state of wholesale competition.

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Subtitle F—Repeal of PUHCA

The repeal of PUHCA is big. The Public Utility Holding Company Act and the Federal Power Act were part of the same New Deal legislation, and together these acts established the manner in which the investor-owned utilities were structured and operate. Yet efforts to repeal PUHCA (including challenge in the courts) began immediately after it was passed in 1935. Between 1938 (the year the Supreme Court upheld the law) and 1955, the number of utility holding companies declined from 214 to 25. During that period, registered holding companies divested 839 subsidiaries. It took EEI and its members 70 years to eliminate this barrier to unfettered expansion—ELCON fought it at least 25 years.

According to EEI, there were 77 completed electric utility mergers between 1994 and 2002 involving 305 separate operating companies. There are now less than 170 electric (or combination) operating companies—less than a hundred are significant. This is still a far cry from the “Fifty in Five” that Wall Street pundit Ed Tirello (Berenson & Co.) predicted in 1987. Tirello missed that call—fifty IOUs in 5 years—but one of his more recent forecasts suggests that 8 to 10 regional companies might be a desirable end state. He, of course, was a long-standing advocate of PUHCA repeal.

It is hard to predict what will happen to the electric industry without PUHCA. Many domestic utilities were burned with foreign acquisitions and some are still struggling to recover. Foreign utilities such as the giant German utility, E.On, are leery of state regulators in the US and will be very cautious about any future acquisitions here, especially since Scottish Power announced its sale of PacifiCorp to Warren Buffet's MidAmerican Energy Holdings. Other domestic utilities like Southern, FPL Group, and Entergy are flush with cash and credit (and generally accommodating local regulators) and can now reach beyond their borders with one another for new opportunities "to grow."

Much depends on what states do, and particularly whether states will adopt ring-fencing—regulatory mechanisms that isolate a state-jurisdictional utility's credit risk from the risk of affiliates and the parent company. This potentially mitigates some of the problems that led to PUHCA's enactment in 1935. States also are inclined to extract their "pound of flesh" in any proposed merger by insisting that savings resulting from any merger or acquisition are shared with ratepayers. For example, such a requirement killed recent attempts by the Texas Pacific Group to acquire Portland General Electric Company.

During the House-Senate conference, the *quid pro quo* for the repeal of PUHCA was a requirement for reasonable access by federal and state regulators to the relevant books and records of a holding company or its affiliates. This was done, and FERC has access to "such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates." [Emphasis added] The States were also granted comparable access to the books and records of the holding company. The FERC's existing police authority over inter-affiliate transactions and cost recovery was reaffirmed to protect against cross-subsidization. The SEC is also required to transfer books and records to FERC related to the authorities given to FERC in this subtitle. In Subtitle G, FERC's existing merger review authorities are reaffirmed (with some revisions; see "Merger Review Reform" below). This, too, was part of the deal that allowed the repeal of PUHCA.

The implementation of the repeal requires three FERC rulemakings. The first, within 90 days of enactment, requires the Commission to issue a final rule to exempt the "books

and records” requirement for QFs, Exempt Wholesale Generators (EWGs), and foreign utilities. This conforms to the exemptions authorized in PURPA for QFs and in the Energy Policy Act of 1992 for EWGs and foreign utilities. ELCON should probably intervene in this proceeding to counter potential attempts by EEI and its members to harm the interests of QFs.

The second rulemaking, to be completed within four months of enactment, requires the Commission to issue a final rule establishing the regulations for the books and records obligations. In this rulemaking, FERC is prohibited from reinstating provisions in PUHCA as conditions to approvals of other actions taken by a utility or utility holding company.

The third rulemaking, again to be completed within four months of enactment, requires FERC to issue a rule exempting from its new rules on books and records, any company in a holding company system whose public utility operations are confined to a single state and any other class of transactions that FERC finds not relevant to the “jurisdictional rates of a public utility.” This preserves the “exempt” holding company status of holding company affiliates that operate exclusively within a single state.

The official repeal of PUHCA takes place 6 months after enactment.

Subtitle G—Market Transparency, Enforcement, and Consumer Protection

In this subtitle, FERC is given new (or reaffirmed) authorities in three areas: (1) electricity market transparency rules, (2) market manipulation, and (3) merger review.

Electricity Market Transparency Rules

FERC is authorized to establish by rule, and without any time limitation, procedures to facilitate price transparency in markets for the sale and transmission of electricity in interstate commerce. [Note: Title III, Subtitle B (“Natural Gas”) gives FERC the same authorities in regard to natural gas price transparency.] The Commission may establish an electronic bulletin board (EBB) or other such electronic system if it determines that existing private-sector price publications are not adequately providing price discovery and market transparency.

Within 180 days of enactment, FERC shall conclude a memorandum of understanding (MOU) with the Commodity Futures Trading Commission (CFTC) relating to

information sharing to minimize duplication of effort and provisions regarding treatment of proprietary trading information. The section also prohibits the filing of false pricing information with the intent to manipulate market prices.

The fact that the statutory language mandating this rulemaking is not prescriptive and has no time restraints is a good thing. Earlier versions of this section would have mandated a government-operated EBB and restricted FERC's flexibility in implementing the law.

Market Manipulation

This section prohibits “any manipulative or deceptive device or contrivance” in contravention of the FERC's rules and regulations affecting wholesale electricity markets. [Note: Title III, Subtitle B (“Natural Gas”) establishes the same prohibition in natural gas markets.] To enforce this prohibition, the criminal and civil penalties in the Federal Power Act (FPA) are substantially increased.

In addition, the refund effective date in FPA Section 206—the power act's main rate-setting authority—has been changed from “60 days after the filing of such complaint” to “the date of filing of such complaint.” This provision was long sought by FERC to address the dilemma it faced after the California debacle. The Federal Trade Commission (FTC) is also authorized to issue rules protecting consumer privacy and prohibiting “cramming” and “slamming.”

Merger Review Reform

This section generally reaffirms FERC's existing merger authority with the additional authority to review acquisitions of generators. The acquisition or disposition must be at least \$10 million to trigger FERC's review. FERC must find that the proposed merger, acquisition or disposition is in the “public interest” (as under current law) and will not result in cross-subsidization of a non-utility affiliate or encumbrance of utility assets.

The Commission is directed to adopt a rule (no deadline is given) for expediting approvals of certain classes of mergers or transactions. The changes in merger authority apply prospectively only to mergers filed after the date of enactment of the legislation.

Subtitle J—Economic Dispatch

This concluding subtitle in Title XII is somewhat provoking. It requires FERC to convene “joint boards” on a regional basis to study the issue of security constrained economic dispatch for the various market regions. FERC is required to designate the appropriate regions to be covered by each such joint board. FERC is required to ask each State to nominate a representative for the appropriate board. A FERC commissioner will also chair and participate in each board.

Section 209 of the Federal Power Act authorizes the creation of “joint boards” for the purpose of coordinating policies between the FERC and affected States. However the functions of any joint board are limited to matters that are FERC jurisdictional. Joint boards are rarely established.

LMP is a form of security constrained economic dispatch. Obviously the intent of this subtitle—it was sort of stuck at the end of a long title—is to force regions of the country that have rejected RTOs and LMP to reconsider such actions.

The sole function of the joint boards mandated in this subtitle is to consider issues relevant to what constitutes security constrained economic dispatch and how such a mode of operating the electric grid affects or enhances reliability and “affordability of service” to consumers.

Within one year of enactment, FERC must report to Congress on any recommendations of the joint boards including any consensus recommendations for statutory or regulatory reform.

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Miscellaneous

Electric Energy Market Competition Task Force—Section 1815 in Title XVIII (“Studies”) establishes an interagency task force to be known as the Electric Energy

Market Competition Task Force, consisting of five members. One member shall be an employee of the Department of Justice appointed by the Attorney General, one member shall be a FERC employee appointed by the FERC Chair, the third member is an employee of the Federal Trade Commission appointed by the FTC Chair, the fourth member is a DOE employee appointed by the DOE Secretary, and the fifth member is a RUS employee appointed by the Agriculture Secretary.

The task force will conduct a study and analysis of competition within the wholesale and retail markets for electric energy in the US. The task force is required to submit a report of its findings no later than one year after enactment of the bill. Sixty days before submitting the report to Congress, the draft report must be published in the Federal Register to provide for public comment on the draft report.

Transmission System Monitoring—Section 1939 requires DOE and FERC to study and report to Congress on the steps which must be taken to establish a system to make available to all transmission system owners and RTOs within the Eastern and Western Interconnections real-time information on the functional status of all transmission lines within each interconnection. The report shall include steps that FERC or Congress must take to require implementation of such a system. This provision was probably triggered by the August 2003 Blackout in which the lack of access to such real-time information was identified as a contributing factor to the scope of the blackout.