
Policy Perspectives Forum: The Energy Policy Act of 2005

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Purposes of the Presentation

- *Learning how to meet procedural requirements for consideration and determination of whether to adopt the standards.*
- *Deciding if, and under what circumstances, net metering, time-of-use pricing, fuel diversity, generation efficiency and interconnection standards are right for your system.*

What does “shall” mean?

- Requires state regulatory authorities (for the utilities whose rates they regulate) and larger nonregulated electric utilities to **CONSIDER** certain federal standards.
- EAct describes the standards in mandatory – “shall” – language, but EAct must be read together with pre-EAct 2005 PURPA secs. 111-124.

Who Is Covered?

- Electric utilities with annual retail sales greater than 500 million kWh
 - As of two years prior to the year in which the standard is to be considered
 - About 191 co-op systems in 2004
 - DOE should “publish” an annual list
- BUT:
 - States that regulate systems may adopt the federal standards for all regulated utilities regardless of size.
 - Nonregulated electric utilities will be subject to significant political pressure to comply regardless of size.
 - May be a good opportunity in any event to educate consumers and tell the system’s story.
- What happens if status changes (increases to go over the threshold or decreases to drop below)?

✓ ***To Do: Determine if Your system is “covered” or likely to become “covered” in the foreseeable future***

What Does “Consider” Mean?

- If this applies to you, PURPA requires “hearing” process to consider the standard that is:
 - 1) open to the public;
 - 2) notice to participants and opportunity to present direct and rebuttal evidence;
 - 3) written decision, based upon evidence appearing in record of the proceeding; and
 - 4) subject to judicial review

Most successful challenges to administrative action are based on procedural error, not on the substantive decision!

Procedures for Considering the New Standards

- What kind of “hearing?”
 - PURPA is silent but hints of substantial formality
 - Legislative history suggests separate consideration of each standard
- In the past some PUC/PSCs have utilized “paper hearing” proceedings for PURPA compliance
- What procedure is best – utility specific, generic, rulemaking?

✓ ***To Do: Determine the best type of procedure in accord with state law***

Procedural Template For Hearings

- State Commission Hearing
 - Follow APA or Commission P&P Rules
 - System Hearing
 - Determine Initial Position and Testimony
 - “File” with the Board and Provide Notice
 - Rule on Interventions
 - Provide for Discovery
 - Provide for Answer Testimony (and possibly cross-answer and rebuttal testimony)
 - Decide on Standards
 - Determine Whether and How to Provide for Fee Reimbursement
- ✓ ***To Do: Design a comprehensive hearing process including the ultimate issue of reimbursing consumers for participation***

How Do We Decide?

- If rate regulated, the decision is up to the PUC
 - If non-rate regulated and covered, the system must determine whether standard is consistent with purposes (conservation of supply, efficiency of facilities and resources, equitable rates) of PURPA or “otherwise applicable state law.”
 - Determination must be based upon the evidence presented at the hearing.
- ✓ *To Do: Establish an action plan for compliance, legal determinations re: state law, targeting hearing dates*
 - ✓ *To Do: Determine what “otherwise applicable state law” exists*

How Much Time Do We Have?

1 year:

- Begin to consider whether to adopt smart metering, time-based rate schedules, and DG interconnection procedures.

2 years:

- Begin to consider adopting net metering, a plan for fuel diversity, and a plan for enhancing the efficiency of fossil fuel generation
- Determine whether to adopt smart metering, time-based rate schedules, and DG interconnection procedures.

3 years:

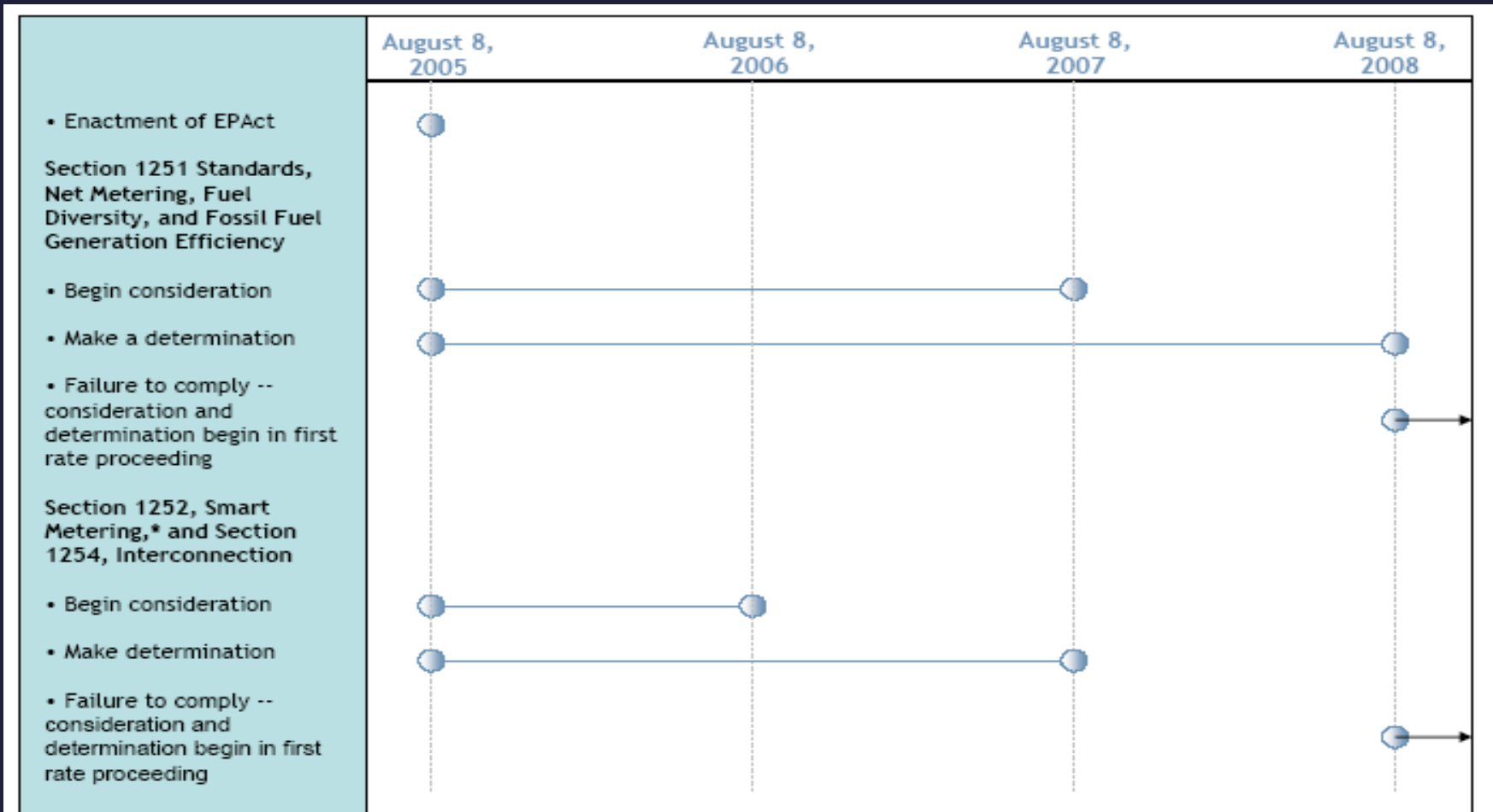
- Determine whether to adopt net metering, a plan for fuel diversity, and a plan for enhancing the efficiency of its fossil fuel generation.

BUT

- States and systems may HAVE to consider these issues sooner if a consumer or DOE raises the issue in a rate-related proceeding.

✓ ***To Do: Determine those items under your system's control and those for which you will need support, such as your G&T or power supplier, and plan timelines accordingly***

Table for Time Frames



What if I'm Getting Pressure Now?

- Inform members and others that the system:
 - Is aware of the new provision
 - Understands what it requires
 - Has already begun to conduct research on the Federal standards
 - Will schedule public proceedings well within the statutory deadlines
 - Intends to ensure that all interested individuals have a full and fair opportunity to participate
 - Intends to adopt whatever policies make the most sense for the local community in light of the system's continuing efforts to provide its members with safe, reliable, high quality electric service at the lowest reasonable cost.
- ✓ ***To Do: Begin the communications campaign SOONER rather than later***

What If We Just Did This?

- You do not have to go through the process with respect to the Federal standards on net metering, fuel diversity, fossil fuel efficiency, or interconnection, if, before the date of enactment:
 - your State implemented the Federal standard (or a comparable standard) for your system;
 - your State regulatory authority (if your system is rate regulated) or your system has conducted a proceeding to consider implementation of the Federal standard (or a comparable standard); or
 - your State legislature voted on the implementation of the Federal standard (or a comparable standard).
- For smart metering/demand response, the prior consideration must have been within the past 3 years.
- The challenge is to determine what is “comparable.”

✓ ***To Do: Determine if Your System, regulator or legislature has taken action that “grandfathers” your system from further consideration***

What If We Don't Comply?

- Some discretion relative to timing for a State Commission or a non-regulated utility to adjust schedule to accommodate other schedules
- If not accomplished in the designated cycle, must do so in the first rate proceeding for the utility after the compliance window
- No penalties designated, but an aggrieved party could go to court and seek relief

✓ ***To Do: Develop a “risk management” plan in the event of noncompliance***

What Is the Role of the G&T or Statewide Association?

- G&Ts have no affirmative obligation
- G&T Members will need to rely on G&T support and evidence.
 - Is the G&T an key participant?
 - G&Ts provide evidence of standards issues through Board Policies and in their Integrated Resource Plans/Least-Cost Plans
- Does the Statewide Association intervene, particularly in Commission proceedings to support the Membership?
- Statewide Associations and G&Ts may want to provide common legal analyses, procedural guides, testimony and education materials for the Members.

✓ ***To Do: Determine the Statewide and G&T roles and develop common resources***

What are the new Standards?

- Net metering--1251
- Smart metering and real time pricing--1252
- Fuel diversity--1251
- Fossil generation efficiency--1251 and
- DG Interconnection--1254

These Standards are designed to promote conservation of energy supplied by electric utilities, optimization of the efficiency of use of facilities and resources, and equitable rates to electric consumers.

Decisional Template

- Am I Grandfathered, as long as such action “substantially conformed” to Title I requirements?
- How do different approaches advance the PURPA Standards?
 - Conservation of energy supplied
 - Optimization of efficiency of use of facilities and resources
 - Equitable rates to electric consumers
- If any of the purposes can be achieved without negatively impacting the others, a finding can be made that the purposes of PURPA are carried out.
- Meant to supplement otherwise applicable state law.

Net Metering – 1251

“Each electric utility shall make available upon request net metering service to any electric utility consumer that the electric utility serves. For purposes of this paragraph, the term ‘net metering service’ means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.”

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Smart Metering and Real Time Pricing – 1252

“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.”

Decisional Template

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Fuel diversity – 1251

“Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.”

Decisional Template

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- How do different approaches advance the PURPA Standards?
 - Conservation of energy supplied
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 - Equitable rates to electric consumers
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Fossil Generation Efficiency – 1251

“Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil generation.”

Decisional Template

- Am I Grandfathered, as long as such action “substantially conformed” to Title I requirements?
- How do different approaches advance the PURPA Standards?
 - Conservation of energy supplied
 - Optimization of efficiency of use of facilities and resources
 - Equitable rates to electric consumers
- If any of the purposes can be achieved without negatively impacting the others, a finding can be made that the purposes of PURPA are carried out.
- Meant to supplement otherwise applicable state law.

DG Interconnection – 1254

“Each electric utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term ‘interconnection service’ means service to an electric consumer under which an on-site generating facility on the consumer’s premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.”

Decisional Template

- Am I Grandfathered, as long as such action “substantially conformed” to Title I requirements?
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Outline for Education Templates

- What the standards are
- What the purpose is
- How they fit for the system system
- How they may fit in the future
- Alternatives to accomplish the same purpose
- Cost considerations
- State law consideration
- How consumers will benefit

✓ To Do: Engage with the Statewide and G&T communications arms to develop communication materials

To Do:

- ✓ *Evaluate the Standards and Their Impact on Your System, Whether “Covered” or “Not”*
- ✓ *Determine if Your System is “covered” or likely to become “covered” in the foreseeable future*
- ✓ *Conduct studies, develop testimony and justify substantive recommendations*
- ✓ *Establish an action plan for compliance, legal determinations re: state law, targeting hearing dates*
- ✓ *Determine those items under your system’s control and those for which you will need support, such as your G&T or power supplier, and plan timelines accordingly*
- ✓ *Begin the communications campaign SOONER rather than later*

To Do, con't.:

- ✓ *Determine if Your System, regulator or legislature has taken action that “grandfathers” your system from further consideration*
- ✓ *Develop a “risk management” plan in the event of noncompliance*
- ✓ *Develop a comparable plan to those of “covered” systems, but utilize more informal approaches*
- ✓ *Determine if the Statewide will play a role in Commission-based proceedings*
- ✓ *Determine evidence that will be needed from the G&T that are fulfilled through the requirements contract*
- ✓ *Engage with the Statewide and G&T communications arms to develop communication materials*