



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-309365

May 1, 2007

The Honorable Jeff Bingaman
Chairman
The Honorable Pete V. Domenici
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy, Federal Energy Regulatory Commission: Mandatory Reliability Standards for the Bulk-Power System*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Energy, Federal Energy Regulatory Commission (the Commission), entitled “Mandatory Reliability Standards for the Bulk-Power System” (Docket No. RM06-16-000). It was published in the *Federal Register* as a final rule on April 4, 2007. 72 Fed. Reg. 16416. The Senate recorded receiving this final rule on April 8, 2007. 153 Cong. Rec. S4378, EC-1403 (daily ed. Apr. 11, 2007). We received this final rule on April 19, 2007.

The final rule requires applicable users, owners, and operators of the Bulk-Power System to comply with a set of mandatory and enforceable Reliability Standards. These Reliability Standards are meant to ensure the reliable operation of the North American Bulk-Power System.

We note that the final rule, as published in the *Federal Register*, has an effective date of June 4, 2007. The Congressional Review Act generally requires that a major rule take effect no earlier than 60 days after the latter of congressional receipt of the rule or publication in the *Federal Register*. 5 U.S.C. § 801(a)(3)(A). Since we received the rule on April 19, 2007, the final rule, as issued, does not have the required 60-day delay in its effective date.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, except for the delay in the effective date, the Commission complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Jonathan First
Office of General Counsel
Federal Energy Regulatory Commission
Department of Energy

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF ENERGY, FEDERAL
ENERGY REGULATORY COMMISSION
ENTITLED
"MANDATORY RELIABILITY STANDARDS FOR THE
BULK-POWER SYSTEM"
(DOCKET NO. RM06-16-000)

(i) Cost-benefit analysis

As part of its Regulatory Flexibility Analysis and Information Collection Statement, the Commission estimated some of the costs and benefits of this rule. The Commission estimates that the reporting and recordkeeping costs of this rule will be \$131,759,160. The benefit of this rule is an increase in the reliability of the Bulk Power System.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission conducted an Initial Regulatory Flexibility Analysis; in the Notice of Proposed Rulemaking, the Commission stated that the proposed rule might have a significant impact on some small entities. 71 Fed. Reg. 64,770, 64,875 (Nov. 3, 2006). In the final rule, in response to numerous comments from small entities, the Commission adopted a different interpretation of bulk electric system than that in the proposed rule. The Commission also conducted a Final Regulatory Flexibility Analysis. The Commission estimates that the final rule will apply to 682 small entities, of which 670 are small municipal utilities and 12 are small investor-owned utilities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to Title II of the Unfunded Mandates Reform Act of 1995. 2 U.S.C. § 658.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures of the Administrative Procedure Act. 5 U.S.C. § 553. On November 3, 2006, the

Commission published a Notice of Proposed Rulemaking in the *Federal Register*. 71 Fed. Reg. 64,770. In response to the notice, the Commission received a number of comments, which the Commission addressed in the final rule. 72 Fed. Reg. 16,416, 16,419-16,593 (Apr. 4, 2007).

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

This final rule contains information collections that require the approval of the Office of Management and Budget (OMB). The proposed information collections will be submitted to OMB for review; OMB has yet to assign control numbers. The estimated total hours for information collection is 1,138,800 for reporting and 113,880 for recordkeeping, for a total of 1,252,680 hours. The total estimated cost of information collection is \$131,759,160.

Statutory authorization for the rule

This final rule was promulgated under the authority of section 215 of the Federal Power Act, as amended by the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005. 16 U.S.C. § 824o.

Executive Order No. 12,866

As this final rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of the order.