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PUBLIC SERVICE COMMISSION
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MONTGOMERY, ALABAMA 36130

TWINKLE ANDRESS CAVANAUGH, PRESIDENT

JOHN A. GARNER, EXECUTIVE DIRECTOR

JEREMY H. ODEN, ASSOCIATE COMMISSIONER

CHRIS "CHIP" BEEKER, JR., ASSOCIATE COMMISSIONER

**IN RE: CONSIDERATION OF AMENDED PURPA
SECTION 111(d) BY THE INFRASTRUCTURE
INVESTMENT AND JOBS ACT OF 2021**

DOCKET 33276

ORDER INSTITUTING A GENERIC PROCEEDING

BY THE COMMISSION:

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act of 2021, P.L. 117-58. ("IIJA 2021"). IIJA 2021 amends the Public Utility Regulatory Policies Act of 1978 ("PURPA") § 111(d) for state commissions to consider: measures to encourage demand response and electrification of the transportation industry.

The statute requires state commissions to begin consideration of these standards by November 15, 2022. The Section 40104 standard in IIJA 2021 concerns the promotion of cost recovery of demand-response and demand flexibility practices. The Section 40431 standard in IIJA 2021 concerns the promotion of greater electrification of the transportation sector. However, a state regulatory authority is not required to consider and determine whether or not standards set forth in IIJA 2021 are appropriate to be implemented, if prior to November 15, 2021: 1) the state implemented the standard or a comparable one; 2) the state regulatory authority conducted a proceeding to consider implementation of the standard or a comparable one; or 3) the state legislature voted on the implementation of the standard or a comparable one.

The Commission staff has reviewed the statutory language set forth in §40104 and §40431 of the IIJA 2021.¹ Although the Commission has recently considered standards or comparable standards presented by the IIJA 2021 (e.g., Docket Nos. 32953 and 32694, Rate FD-D (Family Dwelling-Demand), Rate BEVT (Business Electric Vehicle), Rate Rider PEV (Plug-In Electric Vehicle), etc.), Commission staff has recommended that the Commission accept public comments on all standards of amended PURPA §111(d) from §§40104 and 40431 of the IIJA 2021.

¹ The complete text of §§40104 and 40431 of IIJA 2021 are attached at Appendix A.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That this Docket be, and is, hereby, established for the purpose of conducting a proceeding to consider the standards set forth in §§40104 and 40431 of the IIJA 2021.

IT IS FURTHER ORDERED BY THE COMMISSION, That the Commission will accept public comments on whether it should adopt the standards set forth in §§40104 and 40431 of the IIJA 2021.

IT IS FURTHER ORDERED BY THE COMMISSION, That comments shall be filed with the Secretary of the Commission under this Docket 33276 no later than November 12, 2022.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premise.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 20th day of September, 2022.

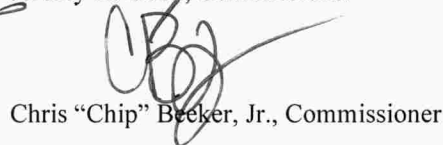
ALABAMA PUBLIC SERVICE COMMISSION



Twinkle Andress Cavanaugh, President

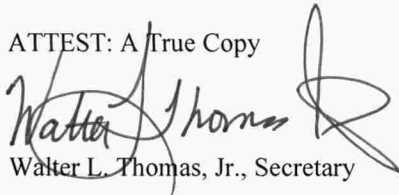


Jeremy H. Oden, Commissioner



Chris "Chip" Breker, Jr., Commissioner

ATTEST: A True Copy



Walter L. Thomas, Jr., Secretary

APPENDIX A

and storing an inventory of easily transported high-voltage recovery transformers and other required equipment.

(2) ASSESSMENT AND REPORT.—

(A) ASSESSMENT.—The Secretary shall carry out an assessment of—

(i) with respect to the inventory of high-voltage recovery transformers, new transformers, and other equipment proposed to be developed and stored under paragraph (1)—

(I) the policies, technical specifications, and logistical and program structures necessary to mitigate the risks associated with the loss of high-voltage recovery transformers;

(II) the technical specifications for high-voltage recovery transformers;

(III) where inventory of high-voltage recovery transformers should be stored;

(IV) the quantity of high-voltage recovery transformers necessary for the inventory;

(V) how the stored inventory of high-voltage recovery transformers would be secured and maintained;

(VI) how the high-voltage recovery transformers may be transported;

(VII) opportunities for developing new flexible advanced transformer designs; and

(VIII) whether new Federal regulations or cost-sharing requirements are necessary to carry out the storage of high-voltage recovery transformers; and

(ii) any efforts carried out by industry as of the date of the assessment—

(I) to share transformers and equipment;

(II) to develop plans for next generation transformers; and

(III) to plan for surge and long-term manufacturing of, and long-term standardization of, transformer designs.

(B) PROTECTION OF INFORMATION.—Information that is provided to, generated by, or collected by the Secretary under subparagraph (A) shall be considered to be critical electric infrastructure information under section 215A of the Federal Power Act (16 U.S.C. 824o-1).

(C) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to Congress a report describing the results of the assessment carried out under subparagraph (A).

SEC. 40104. UTILITY DEMAND RESPONSE.

(a) CONSIDERATION OF DEMAND-RESPONSE STANDARD.—

(1) IN GENERAL.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

“(20) DEMAND-RESPONSE PRACTICES.—

“(A) IN GENERAL.—Each electric utility shall promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial consumers

to reduce electricity consumption during periods of unusually high demand.

“(B) RATE RECOVERY.—

“(i) IN GENERAL.—Each State regulatory authority shall consider establishing rate mechanisms allowing an electric utility with respect to which the State regulatory authority has ratemaking authority to timely recover the costs of promoting demand-response and demand flexibility practices in accordance with subparagraph (A).

“(ii) NONREGULATED ELECTRIC UTILITIES.—A nonregulated electric utility may establish rate mechanisms for the timely recovery of the costs of promoting demand-response and demand flexibility practices in accordance with subparagraph (A).”.

(2) COMPLIANCE.—

(A) TIME LIMITATIONS.—Section 112(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b)) is amended by adding at the end the following:

“(7)(A) Not later than 1 year after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which the State has ratemaking authority) and each nonregulated electric utility shall commence consideration under section 111, or set a hearing date for consideration, with respect to the standard established by paragraph (20) of section 111(d).”

Deadline.

“(B) Not later than 2 years after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which the State has ratemaking authority), and each nonregulated electric utility shall complete the consideration and make the determination under section 111 with respect to the standard established by paragraph (20) of section 111(d).”.

Deadline.

(B) FAILURE TO COMPLY.—

(i) IN GENERAL.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended—

(I) by striking “such paragraph (14)” and all that follows through “paragraphs (16)” and inserting “such paragraph (14). In the case of the standard established by paragraph (15) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of that paragraph (15). In the case of the standards established by paragraphs (16)”;

(II) by adding at the end the following: “In the case of the standard established by paragraph (20) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of that paragraph (20).”.

(ii) TECHNICAL CORRECTION.—Paragraph (2) of section 1254(b) of the Energy Policy Act of 2005 (Public Law 109-58; 119 Stat. 971) is repealed and the amendment made by that paragraph (as in effect on the day before the date of enactment of this Act) is void,

16 USC 2622 and note.

and section 112(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(d)) shall be in effect as if that amendment had not been enacted.

(C) PRIOR STATE ACTIONS.—

(i) IN GENERAL.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following:

“(g) PRIOR STATE ACTIONS.—Subsections (b) and (c) shall not apply to the standard established by paragraph (20) of section 111(d) in the case of any electric utility in a State if, before the date of enactment of this subsection—

“(1) the State has implemented for the electric utility the standard (or a comparable standard);

“(2) the State regulatory authority for the State or the relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard (or a comparable standard) for the electric utility; or

“(3) the State legislature has voted on the implementation of the standard (or a comparable standard) for the electric utility.”.

(ii) CROSS-REFERENCE.—Section 124 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2634) is amended—

(I) by striking “this subsection” each place it appears and inserting “this section”; and

(II) by adding at the end the following: “In the case of the standard established by paragraph (20) of section 111(d), the reference contained in this section to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of that paragraph (20).”.

(b) OPTIONAL FEATURES OF STATE ENERGY CONSERVATION PLANS.—Section 362(d) of the Energy Policy and Conservation Act (42 U.S.C. 6322(d)) is amended—

(1) in paragraph (16), by striking “and” at the end;

(2) by redesignating paragraph (17) as paragraph (18);

and

(3) by inserting after paragraph (16) the following:

“(17) programs that promote the installation and use of demand-response technology and demand-response practices; and”.

(c) FEDERAL ENERGY MANAGEMENT PROGRAM.—Section 543(i) of the National Energy Conservation Policy Act (42 U.S.C. 8253(i)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking “and” at the end;

(B) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(C) to reduce energy consumption during periods of unusually high electricity or natural gas demand.”; and

(2) in paragraph (3)(A)—

(A) in clause (v), by striking “and” at the end;

(B) in clause (vi), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(vii) promote the installation of demand-response technology and the use of demand-response practices in Federal buildings.”.

(d) COMPONENTS OF ZERO-NET-ENERGY COMMERCIAL BUILDINGS INITIATIVE.—Section 422(d)(3) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17082(d)) is amended by inserting “(including demand-response technologies, practices, and policies)” after “policies”.

SEC. 40105. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

(a) DESIGNATION OF NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDORS.—Section 216(a) of the Federal Power Act (16 U.S.C. 824p(a)) is amended—

(1) in paragraph (1)—

(A) by inserting “and Indian Tribes” after “affected States”; and

(B) by inserting “capacity constraints and” before “congestion”;

(2) in paragraph (2)—

(A) by striking “After” and inserting “Not less frequently than once every 3 years, the Secretary, after”; and

(B) by striking “affected States” and all that follows through the period at the end and inserting the following: “affected States and Indian Tribes), shall issue a report, based on the study under paragraph (1) or other information relating to electric transmission capacity constraints and congestion, which may designate as a national interest electric transmission corridor any geographic area that—

“(i) is experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers; or

“(ii) is expected to experience such energy transmission capacity constraints or congestion.”;

(3) in paragraph (3)—

(A) by striking “The Secretary shall conduct the study and issue the report in consultation” and inserting “Not less frequently than once every 3 years, the Secretary, in conducting the study under paragraph (1) and issuing the report under paragraph (2), shall consult”; and

(4) in paragraph (4)—

(A) in subparagraph (C), by inserting “or energy security” after “independence”;

(B) in subparagraph (D), by striking “and” at the end;

(C) in subparagraph (E), by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

“(F) the designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid;

“(G) the designation—

“(i) maximizes existing rights-of-way; and

“(ii) avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites; and

- (C) to compare the costs of policy options, including current policies, regarding valid and verifiable reductions and removals of carbon; and
- (3)(A) a potential process to measure carbon dioxide emissions intensity per unit of output production for a range of—
 - (i) energy sources;
 - (ii) sectors; and
 - (iii) geographic regions; and
- (B) a corresponding process to provide an empirical framework for reporting the status and costs of carbon dioxide reduction relative to specified goals.

SEC. 40419. HARMONIZATION OF EFFORTS AND DATA.

Not later than 1 year after the date of enactment of this Act, the Administrator shall establish a system to harmonize, to the maximum extent practicable and consistent with data integrity—

Deadline.
Determinations.
42 USC 18777.

- (1) the data collection efforts of the Administrator, including any data collection required under this subtitle, with the data collection efforts of—
 - (A) the Environmental Protection Agency, as the Administrator determines to be appropriate;
 - (B) other relevant Federal agencies, as the Administrator determines to be appropriate; and
 - (C) State or regional energy credit registries, as the Administrator determines to be appropriate;
- (2) the data collected under this subtitle, including the operating data on electricity generation collected under section 40412(a), with data collected by the entities described in subparagraphs (A) through (C) of paragraph (1), including any measurements of greenhouse gas and other pollutant emissions collected by the Environmental Protection Agency, as the Administrator determines to be appropriate; and
- (3) the efforts of the Administrator to identify and report relevant impacts, opportunities, and patterns with respect to energy use, including the identification of community-level economic and environmental impacts required under section 40413(b)(1)(C), with the efforts of the Environmental Protection Agency and other relevant Federal agencies, as determined by the Administrator, to identify similar impacts, opportunities, and patterns.

Subtitle C—Miscellaneous

SEC. 40431. CONSIDERATION OF MEASURES TO PROMOTE GREATER ELECTRIFICATION OF THE TRANSPORTATION SECTOR.

(a) IN GENERAL.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) (as amended by section 40104(a)(1)) is amended by adding at the end the following:

“(21) ELECTRIC VEHICLE CHARGING PROGRAMS.—Each State shall consider measures to promote greater electrification of the transportation sector, including the establishment of rates that—

- “(A) promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure;

“(B) improve the customer experience associated with electric vehicle charging, including by reducing charging times for light-, medium-, and heavy-duty vehicles;

“(C) accelerate third-party investment in electric vehicle charging for light-, medium-, and heavy-duty vehicles; and

“(D) appropriately recover the marginal costs of delivering electricity to electric vehicles and electric vehicle charging infrastructure.”.

(b) COMPLIANCE.—

(1) TIME LIMITATION.—Section 112(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b)) (as amended by section 40104(a)(2)(A)) is amended by adding at the end the following:

Deadlines.

“(8)(A) Not later than 1 year after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which the State has ratemaking authority) and each nonregulated utility shall commence consideration under section 111, or set a hearing date for consideration, with respect to the standard established by paragraph (21) of section 111(d).

“(B) Not later than 2 years after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which the State has ratemaking authority), and each nonregulated electric utility shall complete the consideration and make the determination under section 111 with respect to the standard established by paragraph (21) of section 111(d).”.

(2) FAILURE TO COMPLY.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) (as amended by section 40104(a)(2)(B)(i)) is amended by adding at the end the following: “In the case of the standard established by paragraph (21) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of that paragraph (21).”.

(3) PRIOR STATE ACTIONS.—

(A) IN GENERAL.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) (as amended by section 40104(a)(2)(C)(i)) is amended by adding at the end the following:

“(h) OTHER PRIOR STATE ACTIONS.—Subsections (b) and (c) shall not apply to the standard established by paragraph (21) of section 111(d) in the case of any electric utility in a State if, before the date of enactment of this subsection—

“(1) the State has implemented for the electric utility the standard (or a comparable standard);

“(2) the State regulatory authority for the State or the relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard (or a comparable standard) for the electric utility; or

“(3) the State legislature has voted on the implementation of the standard (or a comparable standard) for the electric utility during the 3-year period ending on that date of enactment.”.

Time period.

(B) CROSS-REFERENCE.—Section 124 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2634)

(as amended by section 40104(a)(2)(C)(ii)(II)) is amended by adding at the end the following: “In the case of the standard established by paragraph (21) of section 111(d), the reference contained in this section to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of that paragraph (21).”.

SEC. 40432. OFFICE OF PUBLIC PARTICIPATION.

Section 319 of the Federal Power Act (16 U.S.C. 825q–1) is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (A), by striking the third sentence;

and

(B) in subparagraph (B)—

(i) by striking the third sentence and inserting the following: “The Director shall be compensated at a rate of pay not greater than the maximum rate of pay prescribed for a senior executive in the Senior Executive Service under section 5382 of title 5, United States Code.”; and

(ii) by striking the first sentence; and

(2) in subsection (b), by striking paragraph (4).

SEC. 40433. DIGITAL CLIMATE SOLUTIONS REPORT.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with appropriate Federal agencies and relevant stakeholders, shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that assesses using digital tools and platforms as climate solutions, including—

- (1) artificial intelligence and machine learning;
- (2) blockchain technologies and distributed ledgers;
- (3) crowdsourcing platforms;
- (4) the Internet of Things;
- (5) distributed computing for the grid; and
- (6) software and systems.

Consultation.
Assessments.

(b) **CONTENTS.**—The report required under subsection (a) shall include—

(1) as practicable, a full inventory and assessment of digital climate solutions;

(2) an analysis of how the private sector can utilize the digital tools and platforms included in the inventory under paragraph (1) to accelerate digital climate solutions; and

Analysis.

(3) a summary of opportunities to enhance the standardization of voluntary and regulatory climate disclosure protocols, including enabling the data to be disseminated through an application programming interface that is accessible to the public.

Summary.

SEC. 40434. STUDY AND REPORT BY THE SECRETARY OF ENERGY ON JOB LOSS AND IMPACTS ON CONSUMER ENERGY COSTS DUE TO THE REVOCATION OF THE PERMIT FOR THE KEystone XL PIPELINE.

(a) **DEFINITION OF EXECUTIVE ORDER.**—In this section, the term “Executive Order” means Executive Order 13990 (86 Fed. Reg. 7037; relating to protecting public health and the environment and restoring science to tackle the climate crisis).