

# FERC & EPA Act 2005



## MEETING MILESTONES



# FERC & EPAct 2005: Meeting Milestones

## Significant Policy Changes

The Energy Policy Act of 2005 (EPAct) is the first major energy law enacted in more than a decade, and makes the most significant changes in Commission authority since the New Deal's Federal Power Act of 1935 and the Natural Gas Act of 1938. In passing EPAct Congress signaled a strong vote of confidence in the Commission. The Commission has taken on new duties and authorities with a sense of purpose, mindful of the public trust they entail. Moreover, the Commission has been dedicated to meeting these obligations within the time allotted by Congress.

EPAct had three principal policy goals in the areas of the statute that relate to the Commission.

The Act:

- (1) affirms a commitment to competition in wholesale power markets as national policy, the third major federal law in the last 30 years to do so;
- (2) strengthens the Commission's regulatory tools, recognizing that effective regulation is necessary to protect the consumer from exploitation and assure fair competition; and
- (3) provides for development of a stronger energy infrastructure.

EPAct granted the Commission significant new responsibilities and significant new authority to discharge these responsibilities by modifying the Federal Power Act, the Natural Gas Act and the Public Utility Regulatory Policies Act of 1978 (PURPA).







## Letter from the Chairman

Last year the President signed into law the first comprehensive energy legislation in more than a dozen years – the Energy Policy Act of 2005 (EPAct). EPAct has significantly changed the Federal Energy Regulatory Commission's role in electricity and natural gas markets.

EPAct specified more than a dozen actions to be taken by the Commission. In the first year since EPAct was signed into law on August 8, 2005, the Commission has promulgated nine final rules, issued three additional notices of proposed rulemaking, authored and submitted seven reports to Congress, and entered into a memorandum of understanding with the Commodity Futures Trading Commission. The Commission has taken these actions in a timely manner – meeting all the challenging deadlines set for the Commission in EPAct.

Implementation of EPAct was and is a huge undertaking. Although the Commission so far has met every deadline Congress set, some of the EPAct requirements have 18-month deadlines and others four years. Further, the Commission must address petitions for rehearing and compliance filings associated with the numerous rulemakings it has promulgated. Clearly, meeting the deadlines thus far is but the beginning of the Commission's real responsibilities under the law.

Throughout, the Commission has been faithful to execute the law in the manner Congress intended and will continue to do so.

Joseph T. Kelliher, Chairman  
Federal Energy Regulatory Commission



## THE ENERGY POLICY ACT OF 2005

### New Responsibilities

EPAct of 2005 introduced significant new responsibilities for the Commission.

Those include:

- overseeing the reliability of the nation's electricity transmission grid,
- implementing new tools, including penalty authority, to prevent market manipulation,
- providing rate incentives to promote electric transmission investment,
- supplementing state transmission siting efforts in national interest electric transmission corridors, and
- reviewing certain holding company mergers and acquisitions involving electric utility facilities, as well as certain public utility acquisitions of generating facilities.

EPAct also specified a number of actions to be taken by the Commission. In fulfilling these requirements during the first year since EPAct was signed into law on August 8, 2005, the Commission has promulgated nine final rules, issued three additional notices of proposed rule-making, authored and submitted seven reports to Congress, and entered into a memorandum of understanding with the Commodity Futures Trading Commission. The Commission has taken these actions in a timely manner –

meeting every deadline set for the Commission in EPAct.

Some of these deadlines were challenging, particularly the task of implementing the repeal of the Public Utility Holding Company Act of 1935 (PUHCA 1935) and promulgating a new rule to implement the Public Utility Holding Company Act of 2005, as well as implementing rules to address the Commission's expanded corporate transaction review authority under the Federal Power Act.



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5Day Chn	P/E	GrIndY
-0.52%	13.84	4.03
+1.63%	18.84	2.70
+0.07%	15.81	4.31
-1.47%	13.62	2.50
+0.41%	17.37	3.41
+0.48%	16.26	4.52
-0.71%	16.39	3.21
	16.15	3.12



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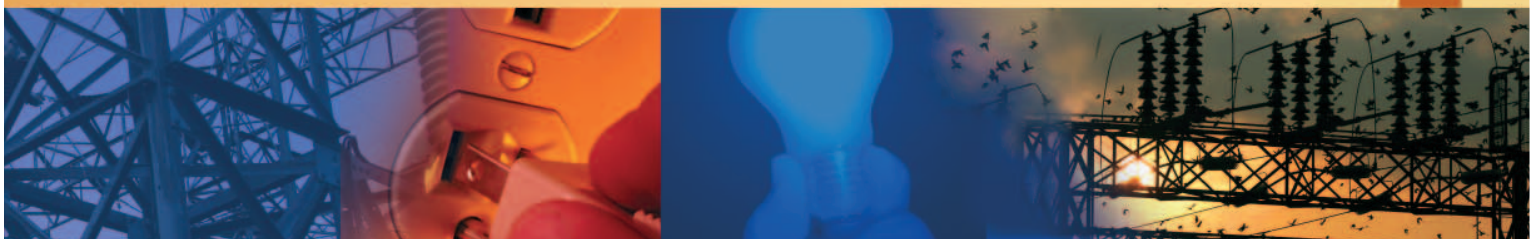
## Market Manipulation

EPAct gave the Commission the authority to issue rules to bar market manipulation in jurisdictional wholesale power and gas markets, and in jurisdictional transmission and transportation services. For the Commission, this is one of the most important and challenging provisions of the Act. Congress granted this authority out of recognition that wholesale power and gas markets had changed dramatically since the 1930s. While the Commission's legal duty remains the same – protecting the wholesale power and gas customer – it needed additional regulatory tools to discharge this duty.



**The Commission has promulgated nine final rules, issued three additional notices of proposed rulemaking, and authored and submitted seven reports to Congress.**

EPAct gives the Commission civil penalty authority, which the Commission has indicated it will exercise carefully by assuring that its market manipulation rules are clear. That will make it easier for regulated entities to assure compliance, and make it easier for the Commission to identify violations.



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## Electricity Reliability and Infrastructure

EPAct significantly augmented the Commission's electricity authorities. Perhaps the most important of these are the provisions governing reliability of the bulk power system. For the



first time, the Commission was granted authority to oversee mandatory reliability standards governing the nation's electricity grid. The Commission finalized rules on the certification

of an Electric Reliability Organization (ERO) and on procedures for the establishment, approval and enforcement of mandatory electric reliability standards. The Commission has now certified the ERO and issued a preliminary staff assessment of 102 reliability standards filed by the ERO for Commission approval.

EPAct also contained a number of provisions directed at expanding and modernizing the nation's electricity grid. The Commission has issued a rule on electric transmission pricing reforms designed to promote needed investment in energy infrastructure and benefit energy customers. This will bolster power grid reliability and lower costs for delivered power by reducing transmission congestion. In addition, the Commission issued a rule to require transmission organizations with organized electricity markets

to make available to load-serving entities long-term firm transmission rights that satisfy certain guidelines. This will help customers who want to make long term supply arrangements. These customers want to be able to enter into long term transmission service arrangements without being exposed to unhedged congestion cost risk. The final rule goes far to reduce the risk exposure to transmission customers, and is important to development of the grid.

EPAct addressed the difficulties of siting major new transmission facilities. It authorized the Secretary of Energy to designate "national interest electric transmission corridors" where there is major transmission congestion. EPAct allows applicants seeking to build transmission within these corridors to seek construction permits from the Commission under certain conditions. While most transmission projects will continue to be sited by states under state law, EPAct granted the Commission this important supplemental siting authority. FERC has proposed rules on transmission siting that will govern the issuance of construction permits by the Commission for projects that meet the statutory criteria.

Also with respect to transmission, the Commission signed a Memorandum of Understanding with the Department of Energy and





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other federal agencies with authority to issue federal authorizations for electric transmission facilities to establish a coordinated federal review and permitting process that continues strong federal environmental protections.

and institutional purposes. Also pursuant to EPA Act amendments to the Federal Power Act, the Commission eliminated ownership restrictions on qualifying cogeneration and small power production facilities.

**For the first time, the Commission was granted authority to oversee mandatory reliability standards governing the nation's electricity grid.**

In addition to the provisions relating to transmission grid improvements, EPA Act addressed a significant generation issue within the jurisdiction of the Commission. Pursuant to directives in EPA Act, the Commission tightened the thermal efficiency requirements for qualifying cogeneration facilities under PURPA. These rules should limit the potential for abuse under PURPA, curtail sham transactions, and prevent new PURPA "machines." At the same time, the rules support the development of new cogeneration facilities that truly conserve energy, by ensuring that new qualifying cogeneration facilities use thermal output in a productive and beneficial manner, and that the electrical, thermal, chemical or mechanical output of new qualifying cogeneration facilities is used fundamentally for industrial, commercial

and institutional purposes. Also pursuant to EPA Act amendments to the Federal Power Act, the Commission eliminated ownership restrictions on qualifying cogeneration and small power production facilities.



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preliminary permit for three years. Pursuant to section 241 of EPA Act, the Commission has worked with other resource agencies to develop mandatory license conditions that are



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## Natural Gas Infrastructure

Pursuant to EAct, the Commission has acted to encourage more investment in the nation's natural gas infrastructure. In order to promote the expansion of natural gas storage capacity and mitigate natural gas price volatility, the Commission has issued new rules for allowing market-based rates for interstate natural gas storage.



To decrease the time needed for creating a complete application for new Liquefied Natural Gas (LNG) terminals, the Commission adopted a rule requiring potential developers to initiate pre-filing procedures at least six months prior to filing a formal application with the Commission. The Commission has proposed rules to implement provisions that grant authority to coordinate the processing of federal and state authorizations required under federal law for natural gas projects, as well as maintain a consolidated record of decisions for judicial review.

## Mergers and Acquisitions

Pursuant to EAct, the Commission implemented the repeal of PUHCA 1935 and the provisions of a new PUHCA 2005. PUHCA 2005 permits Commission access to books and records of holding companies and their members if necessary for determining jurisdictional rates. The Commission implemented PUHCA rules governing accounting, record retention and reporting, including certain blanket waivers and exemptions, within the deadlines in EAct.

Along with the repeal of PUHCA 1935, EAct expanded the Commission's corporate review authority to include authority over certain holding company mergers and acquisitions, as well as certain public utility acquisitions of generating facilities. It also imposed statutory deadlines for acting on mergers and other jurisdictional corporate transactions. The Commission implemented these new provisions of EAct by providing blanket authorizations for certain transactions while ensuring that captive utility customers are protected. The Commission acted quickly, so that new rules would be in effect before the effective dates of the new corporate review authority and PUHCA 2005, and the repeal of PUHCA 1935, all of which became effective on February 8, 2006.





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## Studies and Reports

The Commission has issued seven reports as mandated by EPAAct. In December 2005, the Commission issued a report on its investigation of the California electricity crisis, detailing the actions the Commission has taken and the timetable for future action to resolve outstanding refund claims from

... the Commission has acted to encourage more investment in the nation's natural gas infrastructure.

this time period. Also in December, the Commission submitted to Congress a report on whether any PUHCA technical and conforming changes were needed as a result of the repeal of the 1935 Act. In February 2006, the Commission together with the Department of Energy issued a report on the steps which must be taken to establish a system to make available to all transmission owners and regional transmission organizations in the Eastern and Western interconnections real-time information on the functional status of all transmission lines within the interconnections. Also in February, the Commission issued its initial report on the progress made in licensing and constructing the Alaska natural gas pipeline; and a subsequent progress report was issued in July 2006, as required by EPAAct.

Meeting EPAAct deadlines of August 8, 2006, the Commission issued two additional reports. First is a report assessing, by region, demand response resources and the use of advanced metering resources. The second is a report detailing the recommendations of regional joint boards to study the issue of security-constrained economic dispatch for the various market regions, what constitutes security-constrained economic dispatch and how it affects or enhances the reliability and affordability of electric service.



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## Future Responsibilities of the Commission

Other EPCRA requirements that the Commission will be implementing in the future:

- Approve or remand more than 100 separate proposed electric reliability standards, act on proposed and regional delegation agreements, and oversee the effective enforcement of approved mandatory reliability standards.
- Issue a final rule setting up procedures for the Commission to exercise its siting authority for transmission applications in national interest transmission corridors.
- Issue a final rule on termination of the mandatory purchase obligation under section 210 of PURPA.
- Issue a final rule on coordinating the processing of interstate natural gas infrastructure proposals among federal and state authorities and to maintain a consolidated record of decisions for judicial review.
- Enter into a Memorandum of Understanding with the Secretary of Defense to ensure coordination of LNG facilities that may affect an active military installation.
- Work jointly with other resource agencies to designate corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on federal land in the 11 contiguous Western states, perform environmental reviews for such designations and incorporate the designated corridors into the relevant agency land use and resource management plans.
- Along with the Department of Energy, study and submit a report to Congress on the benefits of cogeneration and small power production.
- Determine the appropriate exercise of authority under new Federal Power Act and Natural Gas Act transparency provisions.
- Along with the Departments of Justice, Energy, Agriculture and the Federal Trade Commission, submit a report to Congress on competition within the wholesale and retail markets for electric energy in the United States.





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## In Conclusion

EPAct has significantly changed the Commission's role in electricity and natural gas markets, and has added to the Commission's historical functions. Throughout it all, the Commission has been faithful to execute the law in the manner Congress intended and will continue to do so.

Implementation of EPAct was and is a huge undertaking. Although, the Commission so far has met every deadline Congress set, some of the EPAct requirements have 18-month deadlines and others four years, so clearly the Commission's work is not done. Also, the Commission must address petitions for rehearing and compliance filings associated with the numerous rulemakings it has promulgated.

More information is available at [www.ferc.gov](http://www.ferc.gov).



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