

## Answer to ORDER ADOPTING LEGAL MEMORANDUM

TO; THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

In the Matter of the Complaint Against Westar Energy by Daniel Smalley.

Daniel F. Smalley Response to Kansas Corporation Commission Order Adopting Legal Memorandum

ORIGINAL COMPLAINT;

Docket No. 18-WSEE-209-COM

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before the Commissioners: Shari Feist Albrecht, Chair Jay Scott Emler Dwight D. Keen

In the Matter of the Complaint Against Westar Energy by Daniel Smalley.

Docket No. 18-WSEE-209-COM

ORDER ADOPTING LEGAL MEMORANDUM

In this Memorandum you the KCC state that Westar's program for replacing the electric meters with an AMI meter (commonly referred to as "Smart Meters"), is a mandatory program.

In an article from The Hutchinson News By John Green and Ashley Booker / The Hutchinson News

Posted Mar 26, 2016 at 12:01 AM

Updated Mar 26, 2016 at 5:58 PM

Westar's Penzig said. "There is not an opt-out," she said. "This is a required equipment upgrade to modern technology. It's mandatory."

Not getting the meter means no electricity.

I have not found anywhere in statute or law or any other rules or regulations where this is stated. You have not provided any statute, law, rules, or regulations proving this assertion. See Below;

Energy Policy Act of 2005

According to the Energy Act of 2005 the AMI Smart meters were to be offered to the customers after education through classes provided by Westar about the so-called Smart Meters. And only then were these meters to be installed after the customers requested them. The evidence indicates the subject utility acted maliciously and or unlawfully in their deployment of AMI meters. See Below;

It appears that no matter what evidence is provided to the KCC you refuse to open your eyes to the facts of the possibility of fire risk due to the Smart Meters. Please review the following links to articles concerning Smart Meter Fires; It is apparent that no matter what evidence is given it ends up being subjective and it comes down to beliefs, some study you choose is evidence to you but some study I choose is not. You want law cited of which when evidence is supplied there is no law. I must assume that no law or regulation will be made unless someone dies in a fire that is indisputably caused by a smart meter.

**PGE replacing 70,000 electricity meters because of fire risk;** <http://s.oregonlive.com/ggAspUI>

**Lawsuits claim faulty PG&E Smart Meters started house fires;** <https://abc30.com/2657513/> via @abc30

**I am entitled to the rights afforded to me under the Declaration of Independence and the Constitution. LIFE, Liberty and the Pursuit of Happiness. Life is the condition I am trying to protect since I BELIEVE these meters are dangerous.**

**I am also afforded these rights under my religious convictions otherwise know as GOD Given and or natural Rights.**

**The 4<sup>th</sup> amendment applies to the DATA that is stolen by Westar through these so called smart meters.**

**The Fourth Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." My DATA means my DATA, not Westar's to be sold to third parties.**

- **As to the health effects; The WORLD HEALTH ORGANIZATION, (WHO) has classified Electromagnetic Frequencies and the Radiation that the Smart Meters emit are a Class 2B Carcinogen. [Radiofrequency electromagnetic fields](#), such as, but not limited to, those associated with [wireless phones](#)<sup>[1]</sup>**

**The long term effects are yet to be known. Much like cigarettes in their beginning, the warning signs were ignored. But I forgot there is no law or statute or regulation attached to this.**

**What is a Class 2b carcinogen? The International Agency for Research on Cancer (IARC) classifies Electro Magnetic Radiation as Group 2B as "*possibly carcinogenic to humans*". *Cancer Causing!***

**Westar has admitted that customers bills have gone up. Several locations in California have banned the meters.**

#### **Article 1. - POWERS OF STATE CORPORATION COMMISSION**

**66-101b. Electric public utilities; efficient and sufficient service; just and reasonable rates. Every electric public utility governed by this act shall be required to furnish reasonably efficient and**

**sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such electric public utility, to establish just and reasonable rates, charges and exactions and to make just and reasonable rules, classifications and regulations. Every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge or exaction is prohibited and is unlawful and void. The commission shall have the power, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, to require all electric public utilities governed by this act to establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such electric public utilities.**

**To resolve this issue, I ask that there be an opt out at no cost to the customer. Since the cost of the AMI infrastructure has been offset by federal grant money to the tune of fifty percent and Westar has already gotten rate increases for the cost as well.**

This matter comes before the State Corporation Commission of the State of Kansas ("Commission"). Having examined the record in this matter, and being duly advised in the premises, the Commission makes the following findings and conclusions:

#### I. BACKGROUND

1. On November 16, 2018, Daniel Smalley ("Complainant") filed a Formal Complaint against Westar Energy, Inc., ("Westar") with the Commission.<sup>1</sup> The Formal Complaint, among other things, alleges Westar's mandatory program that replaces electric meters with an AMI meter (commonly referred to as "Smart Meters") at Complainant's residence will be a fire hazard and cause an increase to Complainant's electric bill. <sup>2</sup>
2. On August 15, 2018, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.<sup>3</sup>
3. While making no recommendation regarding the validity or truthfulness of the Complainant's claims, Litigation Staff determined the Complainant has not satisfied the procedural requirements of the Commission's rules of practice and procedure.<sup>4</sup> Litigation Staff specifically identified key deficiencies. The Formal Complaint does not cite to any provision

<sup>1</sup> See Complaint against Westar Energy by Daniel Smalley (Nov. 16, 2018) (Formal Complaint). <sup>2</sup> Id. at 2. <sup>3</sup> Legal Staff's Memorandum (August 15, 2018) (Legal Memorandum). <sup>4</sup> Id. at 2.

of law, tariff, regulation, Commission order or statute.<sup>5</sup> Furthermore, in recent history, the Commission has consolidated several complaints similar to this one into Docket No. 15 WSEE-211-COM ("15-211 Docket"), this docket deals puts to rest the alleged issues with Westar's AMI meters.<sup>6</sup>

4. The Commission's April, 5 2018 Order in the 15-211 Docket evaluated claims pertaining to Westar and Kansas City Power & Light Company's use of AMI meters. The Commission determined there was no evidence indicating the subject utilities acted maliciously or unlawfully in their deployment of AMI meters.<sup>7</sup> Additionally, the Commission determined the evidence presented by the parties did not support claims concerning health risks, cybersecurity risks or fire hazards posed by AMI meters. <sup>8</sup> The Commission determined there was insufficient evidence to demonstrate AMI meters are dangerous to the public and concluded the Formal Complaints should be dismissed for failure to state a claim upon which relief can be granted. <sup>9</sup>

5. Litigation Staff recommends the Commission find this Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. <sup>10</sup> Litigation Staff also recommends the Commission grant the Complainant thirty (30) days to correct the procedural deficiencies identified therein. Litigation Staff further recommends that if the Complainant fails to amend its Formal Complaint within thirty (30) days the Formal Complaint should be dismissed without prejudice.

<sup>6</sup> Order on Smart Meter Complaints, Docket No. 15-WSEE-211-COM, et al., pp. 11-12 (Apr. 5, 2018) (15-211 Order). <sup>7</sup> Id. at pp. 11-12. <sup>8</sup> Id. at pp. 13-14. <sup>9</sup> Id. at pp. 10, 17. <sup>10</sup> Legal Staff Memorandum at 3.

2

## II. FINDINGS AND CONCLUSIONS

6. Upon review of Litigation Staff's Legal Memorandum, the Commission is satisfied jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 et seq. <sup>11</sup> The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.<sup>12</sup>

7. The Commission finds the Formal Complaint does not satisfy the Commission's procedural requirement pertaining to Formal Complaints. Specifically, the Formal Complaint

does not indicate what, if any, law tariff, regulation, Commission order or statute Westar has or is violating. Furthermore, based on the Order from Docket 15-211, the Formal Complaint does not state a claim upon which relief can be granted.

8. The Commission finds it has jurisdiction to consider developing an opt-out program related to an electric public utility's use of AMI meters. The Commission has opened a general investigation into the feasibility and intricacies of such a program and has assigned the matter to Docket No. 19-GIME-012-GIE. The Commission encourages Complainant to follow further Commission action in this separate proceeding.

11 Specifically, the Commission is granted broad authority to review formal complaints. See K.S.A. 66-101e ("Upon a complaint in writing made against any electric public utility governed by this act that any of the rates or rules and regulations of such electric public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such electric public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such electric public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary."); see also K.S.A. 66-1,205(a). 12 See K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204,207.

3

9. Litigation Staffs Memorandum dated August 15, 2018, attached hereto as Attachment "A" is hereby adopted by the Commission and incorporated by reference into this Order.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Complainant shall have thirty (30) days from the date of this Order to file an amended Formal Complaint addressing the procedural deficiencies identified above. If the Complainant does not amend its Formal Complaint within thirty (30) days, the Formal Complaint shall be dismissed without prejudice.

(B) Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.

(C) The Commission retains jurisdiction over the subject matter and the parties for the

purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commission; Keen, Commissioner

Dated: -----

LynnM. Retz Secretary to the Commission

REV/CAB

4

10/25/2018

CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027

STATE OF KANSAS

GOVERNOR JEFF COLYER, M.D. SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

TO:

MEMORANDUM LEGAL DIVISION

Chair Shari Feist Albrecht Commissioner Jay Scott Emler Commissioner Dwight D. Keen

FROM: Cole Andrew Bailey, Litigation Counsel Robert Elliott Vincent, Senior Litigation Counsel

DATE: October 18, 2018

SUBJECT: 18-WSEE-209-COM

PHONE: 785-271-3100 FAX: 785-271-3354 <http://kcc.ks.gov/>

In the Matter of the Complaint Against Westar Energy by Daniel Smalley

**EXECUTIVE SUMMARY:** Daniel Smalley ("Complainant") filed a Formal Complaint against Westar Energy, Inc. ("Westar").<sup>1</sup> The Formal Complaint does not satisfy the State Corporation Commission of the State of Kansas' ("Commission's") rules of practice and procedure. Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant an opportunity to amend its Formal Complaint. In the alternative, Legal Staff notes the opening of a general investigation that may be of interest to the Complainant and encourages Complainant to follow any developments in the general investigation.

**BACKGROUND & ANALYSIS:** Over the last 3.5 years, the Commission and Commission Staff have investigated nine Formal Complaint dockets regarding the required use of Advanced Metering Infrastructure Digital Electric Meters (AMI meters). Because the Formal Complaints raised similar issues, the Commission consolidated the nine Formal Complaints into one docket. On April 5, 2018, the Commission issued an Order in the consolidated docket (which is referred to in this Memorandum as Docket No. 15-WSEE-211-COM (15-211 Docket)).

The Commission's April, 5, 2018 Order in the 15-211 Docket evaluated claims pertaining to Westar and Kansas City Power & Light Company's use of Smart Meters (also referred to as "AMI meters"). The Commission determined there is no evidence indicating the subject utilities acted maliciously or unlawfully in their deployment of AMI meters.<sup>2</sup>

<sup>1</sup> See Fonnal Complaint Against Westar Energy by Daniel Smalley (Nov. 16, 2017) (Formal Complaint). <sup>2</sup> Order on Smart Meter Complaints, Docket No. 15-WSEE-211-Com, et al., pp 11-12 (Apr. 5, 2018)(15211 Order).

1

Additionally, the Commission determined the evidence presented did not support claims concerning health risks, cybersecurity risks or fire hazards posed by AMI meters. <sup>3</sup> Ultimately, the Commission determined there was insufficient evidence to demonstrate AMI technology is dangerous to the public generally.<sup>4</sup> Accordingly, the Commission found and concluded the Formal Complaints should be dismissed for failure to state a claim upon which relief can be granted. <sup>5</sup>

Legal Staff has reviewed the Formal Complaint in the light of the Commission's conclusions regarding the deployment of AMI meters. Like previous formal complaints, the Complainant asserts AMI meters present health concerns and privacy risks.<sup>6</sup> Additionally, the Formal Complaint alleges the AMI meter may cause "unexplained high bills". <sup>7</sup>

K.A.R. 82-1-220(b) requires Formal Complaints to satisfy three procedural requirements:

(1) Fully and completely advise each Respondent and the Commission as to the provisions of law or the regulations or orders of the Commission that have been or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omission;

(2) set forth concisely and in plain language the facts claimed by the Complainant to constitute the violations; and

(3) state the relief sought by the Complainant.

A review of the Formal Complaint indicates the Complainant has not satisfied these procedural requirements. The Complainant does not cite to any provision of law, tariff, regulation, Commission order or statute, and thus does not satisfy procedural requirement (1). The Complainant does provide a brief overview of the facts leading up to the filing of the Formal Complaint, satisfying procedural requirement (2).<sup>8</sup>

The burden of establishing evidence to support a Formal Complaint rests with the Complainant. The basis for establishing jurisdiction to rule on a Formal Complaint is the responsibility of the Complainant. Accordingly, by not referencing any specific law, tariff, regulation, Commission order or statute violated by Westar, it is not possible to determine if the factual statement is sufficient to meet procedural requirement (2). It is possible the claims asserted by the Complainant are beyond the Commission's jurisdiction.

<sup>3</sup> 15-211 Order, pp. 13-14. <sup>4</sup> See id. <sup>5</sup> See id. at pp. 10, 17. <sup>6</sup> See Formal Complaint, p. 2. <sup>7</sup> Id. a Id.

The Complainant requests the Commission allow him to be exempt from the AMI meter program. Accordingly, the Complainant has stated relief sought in accordance with procedural requirement (3).

No recommendation regarding the validity or truthfulness of the Complainant's claim(s) is made, nor should they in any way be assumed or concluded with the filing of this memorandum. The only recommendations made within this memorandum are the Commission should find: the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220, and a determination of prima facie is not yet possible. K.A.R. 82-1-220(c) allows a Complainant to amend its Formal Complaint if it fails to meet the procedural requirements or allege sufficient facts for a prima facie determination.

Complainant's concerns may be alleviated if it was no longer required to take electric service metered with an AMI meter. In the 15-211 Docket, the Commission directed Staff to open a general investigation into the feasibility of opt-out programs for electric public utilities utilizing AMI meters. Specifically, the Commission directed Commission Staff to investigate the viability of a program that would allow a customer of an electric public utility to request a meter that is not an AMI type meter. This investigation has been assigned to Docket No. 19-GIME-012-GIE. Staff cannot predict what Commission action, if any will result from this investigation. Still, Staff encourages Complainant to follow any developments in the general investigation pertaining to Westar' s use of AMI meters.

RECOMMENDATION: Legal Staff recommends the Commission find the Formal Complaint does not satisfy the procedural requirements of the Commission's rules of practice and procedure. Likewise, Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant thirty (30) days from such denial to amend its Formal Complaint. Finally, if the Complainant fails to correct the procedural deficiencies discussed herein Legal Staff recommends the Formal Complaint be dismissed without prejudice and the docket be closed.

#### CERTIFICATE OF SERVICE

18-WSEE-209-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

first class mail and electronic service on \_\_\_\_\_

COLE BAILEY, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD  
TOPEKA, KS 66604 Fax: 785-271-3354 c. bailey@kcc. ks. gov

DANIEL F. SMALLEY PO BOX 175 3677 FRONT STREET GRANTVILLE, KS 66429

CATHRYN J. DINGES, CORPORATE COUNSEL WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889  
TOPEKA, KS 66601-0889 Fax: 785-575-8136 cathy.dinges@westarenergy.com

ROBERT VINCENT, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD  
RD TOPEKA, KS 66604 Fax: 785-271-3354 r. vincent@kcc. ks. gov

ISi DeeAnn Shupe DeeAnn Shupe

10

KANSAS CORPORATION COMMISSION OFFICE OF PUBLIC AFFAIRS & CONSUMER PROTECTION FORMAL  
COMPLAINT

Formal Complaint June 2017

Note: Formal Complaints filed with the KCC become a public record and may be posted on the KCC's website. Any information you provide in the complaint or other documents related to the complaint, including, but not limited to, your name, address, city, state, zip code, telephone number, email address, and the facts of your case may be available online for public viewing.

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

IN THE MATTER OF THE COMPLAINT AGAINST

Westar Energy (Respondent, name of utility company)

by

Daniel F. Smalley (Complainant, your name)

Please provide complainant (your) contact information:

Full Name (s): Daniel F. Smalley

For Commission use only

DOCKET NO.

Address: 1234 J St., Topeka, KS 66606-1234

Daytime Phone: 785-246-0639

E-mail Address (optional): dsmalley@olc.com

“Energy Policy Act of 2005”.

SEC. 1252. SMART METERING. (a) 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: “(14) TIME-BASED METERING AND COMMUNICATIONS.—(A) Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer

H.R.6—371 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. “(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others— “(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility’s cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall; “(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy

consumption; “(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility’s cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and “(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility’s planned capacity obligations. “(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively. “(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph. “(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of the electric utility. “(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than 18 months after the date of enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).”.

H.R.6—372 (b) STATE INVESTIGATION OF DEMAND RESPONSE AND TIMEBASED METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended as follows: (1) By inserting in subsection (b) after the phrase “the standard for time-of-day rates established by section 111(d)(3)” the following: “and the standard for time-based metering and communications established by section 111(d)(14)”. (2) By inserting in subsection (b) after the phrase “are likely to exceed the metering” the following: “and communications”. (3) By adding at the end the following: “(i) TIME-BASED METERING AND COMMUNICATIONS.—In making a determination with respect to the standard established by section 111(d)(14), the investigation requirement of section 111(d)(14)(F) shall be as follows: 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.”. (c) FEDERAL ASSISTANCE ON DEMAND RESPONSE.—Section 132(a) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by striking “and” at the end of paragraph (3), striking the period at the end of paragraph (4) and inserting “; and”, and by adding the following at the end thereof: “(5) technologies, techniques, and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.”. (d) FEDERAL GUIDANCE.—Section 132 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642) is amended by adding the following at the end thereof: “(d) DEMAND RESPONSE.—The Secretary shall be responsible for— “(1) educating consumers on the availability, advantages, and benefits of advanced metering and communications technologies, including the funding of demonstration or pilot projects; “(2) working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs; and “(3) not later than 180 days after the date of enactment of the Energy Policy Act of 2005, providing Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2007.”. (e) DEMAND RESPONSE AND REGIONAL COORDINATION.— (1) IN GENERAL.—It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public. (2) TECHNICAL ASSISTANCE.—The Secretary shall provide technical

assistance to States and regional organizations formed by two or more States to assist them in— (A) identifying the areas with the greatest demand response potential;

H.R.6—373 (B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response; (C) developing plans and programs to use demand response to respond to peak demand or emergency needs; and (D) identifying specific measures consumers can take to participate in these demand response programs. (3) REPORT.—Not later than 1 year after the date of enactment of the Energy Policy Act of 2005, the Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews— (A) saturation and penetration rate of advanced meters and communications technologies, devices and systems; (B) existing demand response programs and time-based rate programs; (C) the annual resource contribution of demand resources; (D) the potential for demand response as a quantifiable, reliable resource for regional planning purposes; (E) steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party; and (F) regulatory barriers to improve customer participation in demand response, peak reduction and critical period pricing programs. (f) FEDERAL ENCOURAGEMENT OF DEMAND RESPONSE DEVICES.—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated, and unnecessary barriers to demand response participation in energy, capacity and ancillary service markets shall be eliminated. It is further the policy of the United States that the benefits of such demand response that accrue to those not deploying such technology and devices, but who are part of the same regional electricity entity, shall be recognized. (g) 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: “(4)(A) Not later than 1 year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to the standard established by paragraph (14) of section 111(d). “(B) Not later than 2 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority),

H.R.6—374 and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to the standard established by paragraph (14) of section 111(d).” (h) FAILURE TO COMPLY.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding at the end the following: “In the case of the standard established by paragraph (14) 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 such paragraph (14).” (i) PRIOR STATE ACTIONS REGARDING SMART METERING STANDARDS.— (1) 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: “(e) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standard established by paragraph (14) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection— “(1) the State has implemented for such utility the

standard concerned (or a comparable standard); “(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility within the previous 3 years; or “(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility within the previous 3 years.”. (2) CROSS REFERENCE.—Section 124 of such Act (16 U.S.C. 2634) is amended by adding the following at the end thereof: “In the case of the standard established by paragraph (14) 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 such paragraph (14).”.