



FERC Rejects DOE Proposal, Initiates Fact-Finding on Grid Resilience

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On January 8, 2018, the Federal Energy Regulatory Commission (FERC) issued an order terminating the rulemaking proceeding initiated by the Secretary of Energy under §403(a) of the Department of Energy Organization Act that proposed to develop cost recovery mechanisms for “grid reliability and resiliency resources.” While declining to adopt the Secretary’s proposal, FERC acknowledged the importance of grid resilience and initiated a new proceeding to seek additional information from FERC-jurisdictional Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) to evaluate the resilience of the bulk power system in those regions.

Background

On [September 29, 2017](#), Secretary of Energy Rick Perry, exercising a rarely-used authority under DOE Organization Act §403(a), sent to FERC a [NOPR](#) intended to stem the tide of coal and nuclear generation retirements. The NOPR proposed to require FERC-jurisdictional ISOs and RTOs to develop tariff mechanisms to provide for full cost recovery by generation resources that meet specified criteria, including a 90-day supply of on-site fuel. Secretary Perry established an aggressive 60-day timeframe for FERC action on the NOPR, with the aim of having new compensation mechanisms in place by winter. FERC received over 1,500 comments on the proposal. Upon his arrival at FERC, Chairman McIntyre [requested](#) a 30-day extension of the original December 11 deadline, to allow the newly-seated Commissioners to review the record.

FERC’s Order

In its January 8 [Order](#), supported by all five Commissioners, FERC terminated the docket established to consider the Secretary’s proposal, finding that the proposal did not meet the statutory requirements for action under section 206 of the Federal Power Act. FERC found that neither the NOPR, nor the record developed in the proceeding, supported a finding that tariffs of the affected RTOs and ISOs were unjust and unreasonable. Further, FERC found that the record did not support adoption of the cost-of-service rate mechanism proposed in the NOPR as a just and reasonable, and not unduly discriminatory or preferential, remedy.

FERC, however, recognized that “economic, environmental, and policy drivers” are changing the way that electricity is procured and used, and thus initiated additional steps to explore resilience issues in a new proceeding. FERC’s goals for this new docket are: (1) to develop a common understanding of resilience, (2) to understand how each RTO and ISO assesses resilience, and (3) to use this information to evaluate possible further action on bulk-power system resilience. FERC seeks comments on specific questions in three broad categories from each of the FERC-approved RTOs and ISOs, requesting responses within 60 days of the order. FERC also provides for reply comments from interested parties, due 30 days after the RTO and ISO submissions.

Analysis

Though declining to adopt Secretary Perry’s cost recovery proposal, FERC took action to further review the state of reliability and resilience in the organized markets. FERC is seeking both to create an industry-wide understanding of the range of attributes, characteristics and services included within “resilience,” and to review the existing mechanisms in place to support the resilience of the bulk power system. FERC’s current understanding of the term “resilience,” upon which it seeks comment, is “[t]he ability to withstand and reduce the magnitude and/or duration of disruptive events, which includes the capability to anticipate, absorb, adapt to, and/or rapidly recover from such an event.”

The FERC order changes the focus of the review of resilience from that proposed by the Secretary in several ways. First, FERC is undertaking a broader inquiry to understand, on a region-specific basis, what resilience issues may exist and what changes may be needed. Unlike the DOE NOPR, FERC has made no pre-supposition about what actions, if any, may be appropriate. Further, this fact-finding investigation is a less formal process, and over a longer timeframe, than that proposed by the Secretary.

Second, while the Secretary's proposal covered only the four RTOs and ISOs with capacity markets, FERC's new review of resilience efforts extends to all FERC-jurisdictional RTOs and ISOs, adding the California ISO and the Southwest Power Pool to the discussion.

Third, the Secretary's proposal focused on offering support for coal and nuclear generators with on-site fuel supplies. FERC's new inquiry is not limited to generation resources, but incorporates all aspects of resilience on the bulk power system, including transmission as well as generation resources.

Comments from the RTO/ISO entities are due March 9, 2018 with reply comments from interested entities due on April 9, 2018.

For more information

Van Ness Feldman represents clients on a full range of issues arising out of the organized markets regulated by FERC. If you are interested in additional information regarding the DOE proposal and its implications, please contact [Doug Smith](#), [Justin Moeller](#), [Suzanne Keppeler](#) or any member of the firm's [Electric](#) Practice at (202) 298-1800 in Washington, D.C. or in Seattle at (206) 623-9372.

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