

Overview

This issue brief provides a summary of the Federal Energy Regulatory Commission (FERC)'s decision on the Department of Energy (DOE)'s Proposed Rule on Grid Reliability and Resilience Pricing. The proposed rule provided cost recovery to coal and nuclear power under the guise of promoting grid resilience with preference for a 90-day supply of on-site fuel. On Jan. 8, 2018, FERC issued an order to terminate the rulemaking proceeding and established a new proceeding to gather additional information on resilience. FERC's decision was a 5-0 unanimous agreement, with concurring opinions by Commissioners Cheryl LaFleur, Neil Chatterjee and Richard Glick. The independent agency's ruling aligns with the [comments](#) submitted by ACORE on Oct. 2, 2017.

Background

On Sept. 28, 2017, for the first time in over 30 years, DOE issued a Notice of Proposed Rulemaking (NOPR) pursuant to Section 403(a) of the Department of Energy Organization Act directing FERC to consider and take final action on the Proposed Rule on Grid Reliability and Resilience Pricing. The NOPR was issued on the heels of Energy Secretary Rick Perry's grid reliability study released in August 2017. The NOPR outlined what DOE perceived to be reliability and resiliency issues on the grid, citing the reliability study even as its findings provide little support for this position. Pursuant to the Federal Power Act, FERC was then charged to decide whether to adopt the proposed rule.

The NOPR called for power plants with 90-day fuel supplies to be compensated for their full market value, on the theory that these sites provide important benefits to the grid during "an emergency, extreme weather conditions, or a natural or man-made disaster." The proposed rule would have ultimately provided out-of-market payments for coal and nuclear plants, with projected costs of \$800 million to \$3.8 billion.

FERC Opinion Summary

On Jan. 8, 2018, FERC found that the NOPR failed to meet the legal requirements of Section 206 of the Federal Power Act and terminated the proposed rulemaking. The decision also initiated a new proceeding in Docket No. AD18-7-000, to gather additional information from regional transmission organizations (RTOs) and independent system operators (ISOs) on resilience. The Commissioners' opinion was highly informed by the evolution of wholesale electricity markets and the agency's historical role in supporting such markets.

Defining Resilience

In its decision, the Commission explained that it has historically taken actions to ensure the resilience of bulk power systems, despite having not used the term "resilience." The Commission pointed out its approval of capacity market reforms in the ISO New England and PJM markets, which

were “designed to bolster performance from capacity resources and to help address fuel supply issues during periods of system stress.” In order to frame future proceedings on resilience, the Commission set forth a proposed definition of resilience as: “The 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.”

Using this definition of resilience, the Commission concluded that, despite terminating this rulemaking, resilience remains an important issue that should continue to be analyzed and addressed.

Federal Power Act Threshold Assessment

Under the Federal Power Act, any order requiring RTOs/ISOs to implement tariff changes must demonstrate that (1) current tariffs are unjust, unreasonable, unduly discriminatory or preferential and (2) the remedy proposed is just, reasonable, and not unduly discriminatory or preferential. The Commission concluded that DOE’s proposed rulemaking did not meet either of these thresholds.

The current tariffs are just and reasonable: The Commission found that the proposed rule or proceeding record did not demonstrate that the current tariffs are unjust or unreasonable. While some Commissioners did point to future resource retirements, the Commission did not find that these retirements would threaten the RTOs’ or ISOs’ abilities to “keep the lights on” in times of fuel disruption or extreme weather. In his concurring opinion, Commissioner Richard Glick stated that the NOPR was a “multi-billion-dollar bailout targeted at coal and nuclear generating facilities” made even though DOE’s own grid study found that changes in the generation mix do not pose a significant or immediate threat to the resilience of the electric grid.

The proposed remedy would be unduly discriminatory or preferential: The Commission found that DOE’s proposed rule would not be just and reasonable and would be unduly discriminatory or preferential. The Commission determined that the DOE NOPR would allow all eligible resources to receive a cost-of-service rate without demonstrating need or justifying the additional cost to the system, and therefore was not just or reasonable. The Commission rejected the 90-day on-site fuel requirement, finding it unduly discriminatory and preferential because it would favor fuel specific generators, without any evidence that other sources would not also be able to improve grid resilience.

Initiation of a New Proceeding

Recognizing that resilience is an important issue, the Commission initiated Docket No. RM18-1-000. The goal of the new proceeding is to “(1) develop a common understanding among the Commission, industry, and others of what resilience of the bulk power system means and requires; (2) to understand how each RTO and ISO assesses resilience in its geographic footprint; and (3) to use this information to evaluate whether additional Commission action regarding resilience is appropriate[.]” The Commission gave each RTO and ISO 60 days (until March 9, 2018) to submit information regarding resilience. After the 60-day period, other interested entities will have 30 days (until April 8, 2018) to submit additional comments.

The Commission pointed out that the resilience needs of a grid will vary based on region, geography, climate, weather patterns, etc., and RTOs/ISOs are best situated to assess these unique local factors. The Commission also recognized that while on-site fuel may be one aspect of resilience, there are many other conditions that can create a resilient grid. The Commission provided examples of

actions that may address grid resilience, such as market design, transmission planning, mandatory reliability standards, emergency action plan development, inventory management and routine system maintenance. The Commission provided a lengthy list of questions seeking RTO/ISO comments on how they assess threats to resilience and how they mitigate those threats.

Concurrences

Below is a summary of the main points raised in the concurring opinions of Commissioners LaFleur, Chatterjee and Glick:

Commissioner LaFleur

Commissioner LaFleur wrote a concurring opinion to expand on the larger context surrounding resilience and how the Commission should approach the issue going forward. She framed her comments in the context of the Commission's historical support for competitive wholesale markets and the technological advancements they helped accelerate in the late 20th and early 21st centuries. Commissioner LaFleur explained that resource turnover is a natural consequence of markets and the reduced prices that have resulted from growth in natural gas, wind, solar, storage and demand-side technologies.

Commissioner LaFleur agreed with Commissioner Glick's concurring opinion, the DOE grid reliability study, several analyses by the North American Electric Reliability Corporation, and others, that not only has the transformation of the resource mix to-date been accomplished without compromising reliability, but it has strengthened the resilience of many power systems. She also affirmed that the DOE NOPR did not embrace the role of new technologies in resilience and "sought to freeze yesterday's resources in place indefinitely, rather than adapting resilience to the resource that the market is selecting today or toward which it is trending in the future." The Commissioner urged the Commission to "focus its efforts not on slowing the transition from the past but on easing the transition to the future."

Commissioner Chatterjee

Commissioner Chatterjee's concurrence applauded the efforts of Secretary Perry to start a national conversation on resilience and urged the Commission to be vigilant on the issue, which he characterized as "urgent." He expressed his support for interim measures to avoid near-term bulk power resilience challenges that could result from the ongoing change in the nation's electricity resource mix. Commissioner Chatterjee highlighted that neither current RTO/ISO tariffs nor the NERC Reliability Standards require RTOs/ISOs to assess fuel supply or other significant resilience risks.

Commissioner Glick

Commissioner Glick's opinion was strongly critical of the veiled DOE attempt to prop up fuel-specific generators without sufficient evidence for the need to do so. He pointed out that coal and nuclear generators have not been shown to be more resilient than other sources, citing examples in which those generators failed to function during extreme weather events because the fuel supplies froze, flooded or were otherwise unavailable. Commissioner Glick also noted that transmission issues, rather than generation issues, have historically been the principal cause of virtually all significant disruptions and should be closely analyzed moving forward.

Conclusion

FERC's rejection of the DOE's proposal to subsidize uneconomical coal and nuclear plants demonstrated the independent agency's continued commitment to open and competitive wholesale markets. There is ample evidence that increased renewable generation and grid flexibility enhance grid resilience. FERC has made a wise decision to gather information from those best situated to analyze grid resilience, and to then make a fact-based determination if there is a market deficiency, and, if so, correct it in a just and reasonable way. ACORE looks forward to closely tracking this new FERC process, and participating with members and allies.