

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

Grid Reliability and Resilience Pricing

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Docket No. RM18-1-000

**COMMENTS OF THE NATIONAL ASSOCIATION OF  
REGULATORY UTILITY COMMISSIONERS**

Pursuant to the Notice of Proposed Rulemaking (“NOPR”) published by the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) on October 10, 2017 as amended, the National Association of Regulatory Utility Commissioners (“NARUC”) submits these comments.<sup>1</sup> In this NOPR, the Secretary of Energy is proposing a rule for final action by FERC that would require certain Independent System Operators and Regional Transmission Organizations (“ISOs/RTOs”) to establish tariffs such that power generating facilities with particular attributes would be subject to cost of service regulation by FERC.

**I. COMMUNICATIONS**

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<sup>1</sup> Grid Resiliency Pricing Rule, 82 Fed. Reg. 46,940 (Oct. 10, 2017); Grid Reliability and Resilience Pricing, 82 Fed. Reg. 48,013 (Oct. 16, 2017).

## II. COMMENTS

NARUC appreciates the opportunity to submit these brief comments. We regret that, due to the short comment period, we are unable to address all of the questions that FERC's Director of the Office of Energy Policy and Innovation posed on October 4, 2017.<sup>2</sup>

### A. Any Change Considered by FERC Should Preserve State Jurisdiction over Generation

FERC should, when considering the DOE's proposal, give full deference to the States' longstanding authority over electric generation facilities and the manner in which such authority has been exercised by each State to choose for itself the appropriate form of rate regulation and generation resources.

The States have long exercised jurisdiction over generation facilities, which the Federal Power Act expressly preserved.<sup>3</sup> For purposes of determining electric generation pricing and assuring resource adequacy, some States have chosen to rely on generation resources subject to wholesale market forces, while other States have chosen cost-of-service regulation. The DOE's proposal could affect the States' ability to choose between these two regulatory paradigms by extending cost-of-service compensation for certain generation services that are currently compensated through prices determined by market pricing.

Additionally, for States that have decided to restructure and rely on markets, the DOE's proposal would provide for the federal government – rather than the States – to decide the type

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<sup>2</sup> *Request for Information re section 403 of the Department of Energy Organization Act's proposed rule for final action by the Federal Energy Regulatory Commission*, RM18-1-000 (Oct. 4, 2017).

<sup>3</sup> 16 U.S.C. § 824(b)(1) (“The Commission . . . shall not have jurisdiction, except as specifically provided in this subchapter and subchapter III of this chapter . . . over facilities used for the generation of electric energy”). *See also Hughes v. Talen Energy Marketing*, 136 S.Ct. 1288, 1292 (2016).

of regulation appropriate for such States' generation. This is a decision that, absent emergency conditions, should continue to be made by each State for itself. If any restructured States conclude that wholesale markets no longer provide adequate generation resources or pricing, such States can address this concern, for example, by pursuing re-regulation or, in the alternative, promoting potential market solutions.<sup>4</sup>

NARUC appreciates the attention DOE's proposal has put on the important issues of resiliency, reliability and fuel security. The States welcome the opportunity to continue the dialogue with due haste so that we can achieve consensus as to the scope and severity of any problems, and then move quickly toward effective solutions.

#### **B. The Changing Fuel Mix Warrants Continuing Study**

NARUC agrees that during this period of dynamic change in energy industry, ensuring a secure supply of reasonably-priced electricity is vital, and that fuel diversity can help achieve this goal.<sup>5</sup> NARUC further agrees that policymakers and regulators must remain alert to the potential future risk of relying on any single resource or a limited number of resources. NARUC supports efforts to understand the reliability implications of changes in the fuel mix so that any risks identified can be addressed in the appropriate manner.<sup>6</sup>

However, NARUC is concerned that the Department of Energy's ("DOE's") proposal could be viewed as a significant change in policy; more time is needed to evaluate the rule's potential implications on wholesale markets and rates, and retail rates, than the current comment

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<sup>4</sup> For example, ongoing stakeholder discussions in PJM include an evaluation of energy price formation and the interplay between State policies and capacity markets.

<sup>5</sup> As recently as February of 2016, NARUC passed a resolution supporting continued funding of clean coal research, carbon capture, and the use of captured carbon for enhanced oil recovery.

<sup>6</sup> This could include requiring firm gas service for power plants, additional gas pipelines, and/or additional gas storage facilities.

and decision timeline can reasonably accommodate. Based on our analysis of DOE's rationale for recommending that FERC take action within 60 days, additional time to evaluate this complex issue appears available.

For example, the timeline for action recommended by DOE relies in large part on the Polar Vortex in the winter of 2014. But, any analysis evaluating a potential regulatory response in 2017 to the Polar Vortex should include consideration of the many actions of which FERC is aware that have occurred since 2014 to make electric generation more secure in the energy markets. For example, PJM has improved coordination between natural gas pipelines and the PJM markets, including through compliance with FERC's Order No. 809,<sup>7</sup> and has established a new capacity performance product for the purpose of improving generation performance.<sup>8</sup> In other words, PJM, after assessing the events of the Polar Vortex, has responded in significant ways, as approved by FERC. This response was in addition to PJM's continued approval of transmission infrastructure necessary to maintain reliability under stressed system conditions, including to address generation retirements.<sup>9</sup>

Similarly, ISO-NE has taken numerous steps to increase reliability while improving market efficiency. ISO-NE has improved communications with the natural gas industry<sup>10</sup> and

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<sup>7</sup> *Coordination of Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 151 FERC ¶ 61,049, Final Rule (Apr. 16, 2015); *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,209, Order Accepting Proposed Tariff Records (Nov. 19, 2015).

<sup>8</sup> *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, Order on Proposed Tariff Revisions (June 9, 2015). While the DOE's proposal recognizes this response by PJM, PJM remains one of the regions to which the proposal would apply. See Grid Resiliency Pricing Rule, 82 Fed. Reg. at 46,944.

<sup>9</sup> Additionally, in PJM and other RTOs/ISOs mechanisms exist to identify reliability concerns under various stressed system conditions and to ensure generators that are required to run for reliability are compensated for their costs. In PJM, for example, the RTO/ISO studies the reliability impact of a unit's proposed retirement; if the plant's retirement poses a threat to reliability, it becomes a "reliability-must-run" unit (with its costs recovered via uplift charges) until the threat is mitigated through new generation and/or transmission.

<sup>10</sup> ISO-NE formed the Electric-Gas Operations Committee in 2004 to promote greater reliability through improved communications and coordination, while working to prevent future

has made changes to the energy market to improve coordination between the electric and natural gas markets. These changes include shifting the day-ahead energy market timeline to better align with the natural gas markets, and increasing energy market offer flexibility to reflect changing fuel costs. ISO-NE has also implemented “pay for performance” (“PFP”) enhancements to the capacity market that closely link capacity payments to performance. PFP is a fuel-neutral, market-based approach designed to address reliability challenges. PFP provides incentives for resources to make investments to improve resource performance and system reliability, such as securing fuel arrangements, making capital improvements, and ensuring adequate maintenance and staffing.<sup>11</sup> PFP will go into effect on June 1, 2018.

Finally, regarding the 2014 Polar Vortex, NARUC notes that some coal plants were unable to operate fully due to frozen fuel and equipment issues. Under the DOE’s proposal, would covered power plants face revenue disallowances if they similarly failed to perform?

In support of its recommendation for urgent action by FERC, DOE also cites electric outages caused by four other storms during the last five years – Superstorm Sandy and Hurricanes Harvey, Irma, and Maria.<sup>12</sup> While it is important to consider how additional fuel diversity might have precluded the difficult lengthy outages that were caused by these storms and hurricanes, NARUC notes that the reliability impacts on the mainland US from these four storms were due largely, if not entirely, to damaged distribution and transmission equipment. In addition, three of the four storms were limited to areas that would not be impacted by DOE’s rule

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energy emergencies. For more information, see ISO-NE’s Electric/Gas Operations Committee webpage available at <https://www.iso-ne.com/committees/industry-collaborations/electric-gas-operations>.

<sup>11</sup> For more information, see ISO-NE’s FCM Performance Incentives Key Project webpage available at <https://www.iso-ne.com/committees/key-projects/fcm-performance-incentives>.

<sup>12</sup> Grid Resiliency Pricing Rule, 82 Fed. Reg. at 46,945.

as proposed because these areas either do not have an organized wholesale market or they have one that is not subject to the proposed rule.

Further information from the North American Electric Reliability Corporation (“NERC”) could possibly provide an adequate foundation for the proposed rule. In addition to short-term assessments of summer and winter resource adequacy, NERC conducts annual reliability assessments identifying current and emerging threats to the reliability of the bulk electric system (“BES”). These include identification of emerging issues related to physical and cyber security events; identification of changes to the essential reliability services performed by the BES, such as voltage and frequency; analyses of impacts from single point failures, such as the well collapse in the Aliso Canyon gas storage facility and other region-specific challenges; and grid operations analyses. Also, NERC conducts topic-specific assessments that provide a deeper analysis and better understanding of events – both regional and interconnection-wide – that might impact BES operations. Many of the recent assessments have focused on the evolution of the resource mix on the electric grid and its impact on BES operations. NARUC supports more study of fuel diversity, and encourages DOE to leverage the expertise at NERC to fully consider whether the possible lack of fuel diversity is putting electricity supplies at risk.

### **C. The Proposal’s Impact on the Wholesale Markets, Including in Regulated States, Should Be Carefully Evaluated**

The DOE’s proposal defines an “eligible grid reliability and resiliency resource” as a resource that: is located in an ISO/RTO with both a capacity and an energy market; is able to provide voltage support, frequency services, operating reserves<sup>13</sup> and reactive power; has a

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<sup>13</sup> NARUC intuits from DOE’s “Discussion of the Proposed Rule” that DOE intends the rule to apply to both coal and nuclear plants that meet the proposed rule’s operational and geographic criteria. NERC should be asked to verify that nuclear plants are able to provide operating reserves.

90-day fuel supply; and is not already subject to cost of service regulation. When combined with its limited geographic scope, the definition seems to have been crafted with a specific result in mind: the retention of specific power plants. But many questions remain. In addition to the many questions raised by FERC Staff, others include: How would increased fuel diversity contribute to resiliency, and at what cost; where do resiliency and reliability overlap; and how should cyber-security risks factor into our planning and investment priorities? NARUC would welcome the opportunity to explore these issues and options for addressing them that would not disrupt the wholesale markets, as we fear DOE's current proposal would. If there is a need for additional "resilience" in States that have chosen to participate in the ISOs/RTOs, NARUC would support fully exploring market mechanisms to address that need.<sup>14</sup>

While the DOE's rule proposal seems narrowly targeted and on the surface impacts relatively few States, it nonetheless is of concern to States outside of the targeted ISO/RTO areas. Even States that have chosen to retain vertically-integrated utilities with cost-of-service regulation could be impacted by the proposal because of its potential to raise the wholesale cost of power.

While the DOE's proposal is novel, the bedrock tenets of electric regulation against which the proposal must be considered are not. Small customers and large businesses alike will continue to demand reasonably-priced electricity supplies, consistent with the requirements of the Federal Power Act. As such, policymakers should encourage investments expected to provide the greatest benefit for customers at the lowest reasonable cost. NARUC is unconvinced that this proposal, without modification, achieves those goals or is in customers' best interests.

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<sup>14</sup> For example, some believe that greater focus on price formation in the electricity and ancillary services markets offers the potential of increased resilience via power generators that are compensated for providing secure fuel supplies.

When possible, NARUC prefers gradual changes to the current markets, rather than rushed or extreme changes. Because the DOE's proposal could be viewed as a significant reversal of FERC policy encouraging market pricing for electricity during the past several decades, NARUC believes such a significant policy change requires more time to evaluate for potential implications on wholesale markets and rates and retail rates than the current comment and decision timeline can reasonably accommodate. NARUC would welcome a thorough vetting of "resiliency," and a dialogue among its members, NERC, the ISOs/RTOs, DOE and FERC as to what kinds of resiliency, and at what cost, should be pursued.

### **III. CONCLUSION**

NARUC respectfully requests that FERC consider the above comments in this proceeding.

Respectfully submitted,

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