

DEPARTMENT OF ENERGY PROPOSES CONTROVERSIAL GRID RESILIENCY PRICING RULE

On September 28, 2017, the U.S. Department of Energy ("DOE") invoked a rarely used authority that allows the DOE to propose a rule under the Federal Power Act. The DOE issued a Notice of Proposed Rulemaking ("NOPR") called the Grid Resiliency Pricing Rule, which requires the Federal Energy Regulatory Commission ("FERC") to modify pricing mechanisms used in Regional Transmission Organization ("RTO") and Independent System Operator ("ISO") wholesale electricity markets.

In the NOPR, the DOE argues that the reliability of the nation's electric grid is being threatened by the significant loss of traditional baseload generation. The stated purpose of the Grid Resiliency Pricing Rule is to preserve these fuel-secure generation resources in order to ensure and maintain the resiliency of the electric grid. If finalized as proposed, the rule would require FERC-approved RTOs and ISOs to amend their rules to provide for a special rate and the recovery of costs for generators that have a 90-day fuel supply and can meet other qualifications. The proposed Grid Resiliency Pricing Rule appears to be intended to prevent market-driven retirements of existing coal and nuclear power plants, which have struggled to remain competitive in the face of cheaper natural gas and new renewable power sources.

This briefing addresses the responses to the NOPR and suggests FERC's next steps.

Key issues

- The DOE proposed a controversial rule, which would require FERC to modify pricing mechanisms in wholesale electricity markets
- The stated purpose of the proposed rule is to ensure resiliency of the electric grid.
- The proposed rule appears to be intended to support coal and nuclear power plants, which the DOE argues are reliable energy sources.
- Supporters of the proposed rule insist that there is an immediate threat of early retirement of nuclear and coal power plants.
- Opponents of the proposed rule insist that if adopted, the rule will be a destructive intervention into the free market, which will increase consumer prices and will not improve the electric grid.

Responses

Following the DOE's issuance of the NOPR, FERC issued a notice seeking comments to the proposed rule from the public. Over 600 organizations and individuals have issued comments in response to the NOPR. Those in favor of the NOPR not surprisingly include coal and nuclear organizations. But the alliances that have been formed against the NOPR are surprising. For example, the petroleum, natural gas, and renewable energy trade organizations submitted a joint opposing comment, and eight bipartisan former FERC commissioners also submitted a joint opposing comment. Additionally, major companies such as Tesla, Inc. and Wal-Mart Stores, Inc. submitted comments against the NOPR.

Below are the major arguments commenters have expressed in support of or in opposition to the NOPR.

IN SUPPORT OF THE PROPOSED RULE

Supporting coal and nuclear power plants ensures price stability and fuel supply certainty.

Consumers expect reliable and stably priced electricity. Commenters argue that nuclear and coal facilities best meet consumers' expectations because coal facilities provide a constant supply of electricity and external weather conditions do not affect their ability to operate. In contrast, wind and solar energies are intermittent sources as they are dependent on the wind and sun, respectively. Commenters argue that coal and nuclear power plants offer an important service of reliability (without volatile prices or fuel supply) to the electric grid that other energy sources lack. This service is particularly important during emergencies, such as the 2014 Polar Vortex, where power plants will have to run despite potential disruptions.

The free market does not account for non-price contributions to the grid and, therefore, the government must step in to avoid the serious threat of early power plant retirement.

Commenters argue that the market does not properly compensate nuclear and coal facilities for their contributions to the electric grid. Markets do not consider non-price factors such as resiliency and long-term stability and instead only financially reward contributions such as low cost and efficiency. These commenters remind FERC that their responsibility includes ensuring that the grid is resilient and diverse. This responsibility includes correcting market failures to properly compensate energy facilities for all essential contributions to the electric grid.

Additionally, commenters claim that renewable energy sources only appear to be less expensive because of non-market forces such as federal tax credits and state renewable portfolio standards. These commenters argue that if the government already interferes into the free market to subsidize renewable energies, then it is the next logical step to subsidize the coal and nuclear sectors for their contributions to the electric grid.

Without market mechanisms for compensation, these facilities face a threat of early retirement. Commenters argue that early retirement would cause potentially

permanent harm to the electric grid. Without market mechanisms for compensation, these facilities face a threat of early retirement. Commenters argue that early retirement would cause potentially permanent harm to the electric grid.

Coal and nuclear power plants provide many jobs and economic stability for entire regions.

Entire regions of the country depend on the nuclear and coal sectors as a major source of employment. Commenters point out that these facilities are responsible for the income of many families and account for a large percentage of the local tax base. These commenters advocate for the proposed rule to preserve coal and nuclear plants because the retirement of such plants could cause an economic crisis in certain regions

IN OPPOSITION TO THE PROPOSED RULE

The proposed rule should be resource-neutral and goal-specific.

While the NOPR states that its goals are to achieve and maintain reliability and resiliency of our electric grid, the NOPR does not explain how coal and nuclear plants accomplish these goals better than other energy sources. Commenters point to other means that would accomplish the same goals more efficiently than supporting coal or nuclear plants. Additionally, industry participants such as Tesla, Inc. discussed techniques to improve the grid, such as through new energy storage technologies. These comments provide concrete examples of other methods to achieve the same goals of reliability and resiliency.

Commenters also argued that no energy source is perfectly reliable and included examples of natural disasters in which coal power plants were not successful in providing a reliable supply of electricity. These commenters insist that real reliability requires resource diversity and a more resource-neutral solution.

Instead of adopting the NOPR, which favors the coal and nuclear energy sectors, these commenters insist that FERC should take more time to study the energy market and outline specific, resource-neutral goals. A fuel-neutral analysis would uncover alternative ways to achieve resiliency and reliability in the most efficient and successful manner.

The government should not intervene with free markets.

Many commenters criticize the proposed rule as a harmful intervention in a healthy market. They argue that the proposed rule, if adopted, would amount to a "re-regulation" of coal and nuclear plants and ruin the competitive nature of energy markets.

Commenters assert that the proposed rule would harm innovation and investment in renewable energy sources. These commenters claim that the free market fosters creativity in the energy industry. If the proposed rule was adopted, coal and nuclear power plants, which would be subsidized, would not have an incentive to improve their service to the electric grid. Subsidizing coal and nuclear plants could also drive out potentially more innovative, cleaner and efficient (but unsubsidized) energy sources. Instead of "shielding" coal and nuclear energy from the forces of a free market, these commenters insist that an electric grid, without

intervention, seeks the most efficient use of resources to provide the best service to customers. This process maintains the long-term integrity of the grid.

The proposed rule would increase customer prices.

When left alone, the market generally ensures that the most cost-effective energy resources prevail. Instead, the proposed rule ensures that eligible coal-fired and nuclear energy facilities receive compensation regardless of the quality or effectiveness of their resource. Many commenters assert that the cost of compensating such facilities to keep operating will inevitably be passed through to customers. Therefore, these commenters argue that the proposed rule, if adopted, would make electricity more expensive for consumers.

FERC should pursue regional, and not national, approaches.

Some commenters emphasize that different regions of the country face different challenges, depending on their particular grid as well as their local energy resources. Rather than trying to find a solution on the federal level, these commenters propose that FERC should guide each region to create solutions to improve their respective electric grid.

NEXT STEPS

The DOE directed FERC to take action on the rule within 60 days, or impose an interim final rule immediately—with a provision for "later modifications" after a 45-day public comment period. The proposed rule also requires that ISOs and RTOs submit a compliance filing within 15 days of a final rule.

Given the controversial nature of the proposed rule and the expedited review and implementation timeline, it is unlikely that FERC will adopt the NOPR as proposed. Several commenters have also pointed out that there is currently no real resiliency emergency threatening electricity grids.

Ensuring a resilient electricity grid is an important goal, but one that should likely be assessed over a longer period and in a more deliberate manner, given the potentially adverse effect the proposed rule could have on stakeholders and on competitive wholesale electricity markets.

We will keep monitoring the progress of the proposed rule and FERC's decision and send updates as warranted.

For more information and to see the full text of the proposed rule, visit the DOE's website at www.energy.gov.

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Initial Comments to the Grid Resiliency Pricing Rule

A variety of organizations ranging from state agencies, trade groups, environmental organizations, and corporations submitted comments to FERC in response to the DOE's NOPR. The comments submitted reflect surprising alliances among the renewable energy, natural gas, and petroleum sectors, as well as among various industry participants.

Below is a chart showing some of the major organizations and companies that submitted comments and their position with respect to the proposed rule.

Comments In Support of the NOPR	Justification
Nuclear Energy Institute	Nuclear energy offers essential services to the electricity grid, such as stable prices and a reliable fuel supply, for which the market does not compensate. Without proper compensation, plants will permanently close and the grid will lose this reliable, efficient, and clean energy.
FirstEnergy Service Company	The grid must ensure that stable and resilient electric facilities receive proper compensation to safeguard their continual operation. In addition to comments, FirstEnergy submitted sample pro forma tariff provisions and a proposed Standard Form Resiliency Agreement to be signed by regional transmission grids that could be adopted by FERC in a final rule.
Murray Energy Corporation	FERC must act expeditiously to approve the proposed rule or otherwise threaten the livelihoods of thousands of people who rely on these coal and nuclear facilities.
Basin Electric Power Cooperative	Nuclear gas and renewable energy are volatile and intermittent. Thus, the market must intervene to compensate coal and nuclear facilities for providing an essential service to the electricity grid: stable and reliable energy.
North American Coal	Coal is extremely reliable and only more expensive than renewable energy because of government subsidies.
Pennsylvania Coal Alliance	FERC must save coal-fired power plants to preserve jobs and the Pennsylvania economy.
Ohio Coal Association	Premature closures of coal-fired power plants have decreased the strength of the coal industry. The proposed rule is necessary to preserve coal and electricity generation.
Tri-State Generation and Transmission Association	Power plants will only be able to provide reliable and stable energy if they receive proper compensation. Otherwise, the threat of premature retirement will jeopardize the electric grid.
Cleveland Branch of the NAACP	FERC must preserve power plants to ensure jobs and promote economic stability.

Comments in Opposition to the NOPR	Justification
Joint Industry Comments by: -American Biogas Council -American Council on Renewable Energy -American Forest & Paper Association -American Petroleum Institute -American Wind Energy Association -Electric Power Supply Association -Independent Petroleum Association of America -Interstate Natural Gas Association of America -Natural Gas Supply Association -NextEra Energy Resources -Solar Energy Industries Association	The NOPR does not offer sufficient evidence that the retirement of coal and nuclear plants threatens reliability or resiliency of the electric grid. Therefore, the proposed rule would not be effective in any way improving the grid. Even further, market distortions would increase risks and prices in the energy market.
Eight Bipartisan Former FERC Commissioners	Preserving the free market would create the best electricity grid. If there is a problem with resiliency, FERC should propose solutions to individual regional grids rather than interfere with the market on a federal level, which can affect reliability and raise consumer prices.
Independent Power Producers of Ohio, Pennsylvania and West Virginia	There is no reliability or resiliency emergency. Instead, the NOPR's interference in the free market would in fact harm reliability by chasing away the innovation and investment that maintains the long-term integrity of the grid.
Dynegy, Inc.	As a power producer with 35% coal-fueled facilities, Dynegy, Inc. would benefit from the proposed rule. Nevertheless, Dynegy concluded that a rule would substantially harm competitive energy markets and thereby hurt consumers.
NRG Energy	As a power company with coal facilities, NRG Energy would benefit from the proposed rule. Nevertheless, they argued a belief that the market must remain competitive to deliver the best service for consumers.
ExxonMobil Power and Gas Services Inc.	The proposed rule would increase costs for consumers, discriminate against reliable and cheap natural gas, and destroy the competitive market.
Wal-Mart Stores, Inc.	The proposed rule would undercut the competitive nature of the energy market and transfer higher prices to consumers. When utility consumers have to pay more for electricity, businesses have to pass on those increased prices to

	customers. Thus, this proposed rule would injure the larger economy.
Sierra Club	The proposed rule would distort energy markets and force customers to pay billions of dollars each year to "prop up aging and polluting power plants."
Natural Gas Supply Association	Natural gas is just as reliable as coal and nuclear energy. All energy resources should compete in a "fuel-neutral manner" rather than policy makers artificially creating the market.
Geothermal Energy Association	Instead of passing a rule that favors coal and nuclear energy, FERC should take more time to study the energy market and integrate all sectors into a diverse and reliable electricity grid.
Tesla, Inc.	Different energy storage means can accomplish the same goals of reliability and resiliency. The NOPR should identify the specific services the grid requires, such as improving resiliency, and allow market competition to determine the most efficient method to achieve those services.

Other	Justification
North American Electric Reliability Corporation ("NERC")	NERC is the FERC-authorized electric reliability organization for the US. In its neutral comment, NERC states that the bulk power system in the country "is reliable and resilient" and that in its assessments, it "has not identified an immediate or near-term emergency" related to early retirements of traditional coal and nuclear plants.

CONTACTS



David Evans
Partner

T +1 202 912 5062
E david.evans
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 31 West 52nd Street, New York, NY 10019-6131, USA

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