

Northeast Public Power Association Legislative Update



September 2017

New DOE Study Calls on FERC to Address Price Formation

On Aug. 23, the Department of Energy (DOE) released its long-awaited report on the status of the U.S. grid, focusing on wholesale markets and regulatory stressors on reliability. Many congressional Democrats had expressed concerns that the study would unfairly target wind and solar policies as responsible for coal and nuclear's declining market share. Instead, the final report focuses on cheap natural gas supplies as the major driver causing coal and nuclear retirements.

Unlike the previous Administration's Quadrennial Energy Review, which sought significant outside input, the report ordered by Secretary Perry in April was intended to be an internal document summarizing the Department's views and providing concrete recommendations. However, the report is now open for public comment.

The report highlights the important of baseload generation, defined by the ability to run continuously with little exposure to fuel supply chain issues, and considers ways to define "premature" retirement of these resources. It addresses questions of whether wholesale markets are keeping pace with the changing marketplace, saying the markets are functioning as designed but may be inadequate to meet future challenges. The report acknowledges that the market structure fails to value attributes desirable for public policy reasons, and calls for "further efforts [at FERC to] quickly reflect the urgent need for clear definitions of reliability- and resilience-enhancing attributes and ... quickly establish the market means to value or the regulatory means to provide them."

The report says the markets are valuing reliability but not resilience. The report uses the definition developed by the National Infrastructure Advisory Council developed and that is in use by NERC, which focuses on the grid's ability to reduce the magnitude of disruptive events. DOE's conception of the term appears to include themes of fuel assurance, hardening against severe weather and other hazards, and exposure to fuel cost spikes.

In general, the report takes a balanced view of the overlapping causes of plant retirement. The report provides a thorough and impartial review of the history of market development, with some evidence of sympathy to generators compared to state policymakers in the discussion of current events.

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Quorum Restored at FERC

FERC regained a reporting quorum after new commissioner Robert Powelson took his oath of office on Aug. 10. Neil Chatterjee, the other new FERC commissioner, was sworn in on Aug. 8. These new appointments will fill two of the five seats at the Commission and join acting Chairwoman Cheryl LaFleur to finally restore a quorum for FERC after six months of vacancies. Senate Energy and Natural Resources Committee Chairman Lisa Murkowski (R-AK) has said that she will hold a hearing to consider nominees for the two remaining vacancies on Sept. 7. If confirmed, Kevin McIntyre will serve as the Chairman of FERC; Neil Chatterjee was named Acting Chair pending that confirmation. FERC announced its first meeting for Sept. 20, but it is not yet clear how FERC will approach the backlog of work it amassed during the interregnum.

Trump Issues Executive Order on Infrastructure

On Aug. 15, President Trump issued an Executive order intended to expedite the development of infrastructure by streamlining federal environmental and permitting reviews. The order limits federal environmental reviews to just two years and puts a single federal agency in charge of each review and permitting process. The Council on Environmental Quality (CEQ) and the Office of Management and Budget are instructed to develop a “framework” for assigning lead agencies to projects based upon existing CEQ guidance and the multi-agency “Red Book” published in 2015 for synchronizing federal environmental reviews. While President Trump’s order intends to increase private investment in infrastructure, there was no mention of the \$1 trillion infrastructure plan he had previously promised.

Clean Power Plan Pause Extended, New Source Rule Paused Indefinitely

On Aug. 8, the D.C. Circuit Court of Appeals extended the pause in litigation over the Clean Power Plan for 60 days, calling for the Environmental Protection Agency (EPA) to submit reports on its progress in replacing the rule every 90 days (the first report is due Oct. 27). Two judges wrote a concurring opinion reinforcing EPA’s “statutory duty” to regulate greenhouse gases under the Clean Air Act and pursuant to the Endangerment Finding. On Aug. 10, the same court decided to hold litigation over the Obama Administration’s new source performance standards in abeyance indefinitely.

