

## Department of Energy Proposes Rule Benefiting Coal and Nuclear to FERC

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On September 28, 2017, the US Department of Energy (DOE) submitted a proposed rule to the Federal Energy Regulatory Commission (FERC) that, if implemented, could reshape organized wholesale electricity markets. Citing electric grid reliability and resiliency issues like the 2014 Polar Vortex and recent hurricanes, DOE asked FERC to enact a new compensation system for coal and nuclear power plants—dubbed “fuel-secure resources” by DOE. Coal and nuclear plants have been retiring prematurely and, according to DOE, the retirements are “threatening the resilience of the Nation’s electricity system.”

In order to stem the tide of retirements, DOE submitted to FERC a proposed rule requiring organized wholesale electricity markets run by independent system operators (ISOs) or regional transmission organizations (RTOs) to develop and implement market rules that “accurately price generation resources necessary to maintain the reliability and resiliency” of the bulk power system. The proposed rule would require ISOs and RTOs to provide “a just and reasonable rate” for the purchase of electricity from a fuel-secure resource and “recovery of costs and a return on equity for such resource.” Eligible resources must (i) be located within an ISO or RTO, (ii) be able to provide energy and ancillary services, (iii) have a 90-day fuel supply on site, (iv) be compliant with all environmental laws, and (v) not be subject to cost-of-service rate regulation at the state or local level. Practically, these requirements limit participation to coal and nuclear plants.

Although DOE’s proposal leaves the details open, it appears to contemplate a return to some form of cost-of-service ratemaking for coal and nuclear plants and away from purely market-based compensation.

DOE required FERC to act on the proposal within 60 days of publication in the Federal Register. DOE also urged FERC to issue the rule as an interim final rule that will become effective immediately. DOE submitted its proposal under Section 403 of the Department of Energy Organization Act, which authorizes the Secretary of Energy to propose rules but gives FERC exclusive jurisdiction over such proposals.

Comments on DOE’s proposal are due to FERC by October 23, 2017. Reply comments are due by November 7, 2017.

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