



# DOE's Grid Resiliency Pricing Rule

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In U.S. regions with competitive electricity markets, the market price of wholesale electricity has fallen in recent years due to decreased demand, and the increased availability of relatively low-priced natural gas as a fuel. The relatively higher cost of operating and maintaining older, less efficient coal and nuclear plants in particular make it difficult for them to compete with lower cost, more efficient natural gas-fired power plants, or with renewable electricity generation with lower operating costs (and in some cases, tax credits and state mandates). These coal and nuclear power plants may be increasingly faced with closure and eventual retirement if they cannot offer their generation at prices that allow them to sell their electricity into the competitive markets. Competitive electricity markets are administered by independent system operators (ISOs) and regional transmission organizations (RTOs), and account for 60% of the electricity supply in the United States. These entities are under the regulatory authority of the Federal Energy Regulatory Commission (FERC).

## The Secretary of Energy's Proposed Rule

Some observers have expressed concerns that the trend of closures of coal and nuclear power plants will impact the fuel diversity and reliability of the electric power industry, while others dispute that there is a need for concern. The U.S. Department of Energy (DOE) undertook an analysis examining electricity markets and reliability, finding that while “[m]arkets recognize and compensate reliability, and must evolve to continue to compensate reliability... more work is needed to address resilience.” In this report, DOE describes a resilient system as one able to “anticipate, absorb, adapt to, and/or rapidly recover from a potentially disruptive event.” Because of the fuel storage requirements of coal plants and the length of the fuel cycle of nuclear power plants they were termed “fuel-secure” generation, which potentially increase the resiliency of the grid. The Secretary of Energy appears to have concluded from the report that certain reliability and resiliency attributes of fuel-secure generation were not being appropriately valued in competitive electricity markets. The Secretary appears to see a trend of premature retirements of fuel-secure coal and nuclear power plants as a situation which may impair the resiliency of the grid, a trend

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that could be reduced by rates which compensate such fuel-secure generation for its resiliency attributes.

On October 10, 2017, the Energy Secretary proposed the Grid Resiliency Pricing Rule (82 *Federal Register* 46940), based on DOE's authority under Section 403 of the Department of Energy Organization Act (P.L. 95-91; DOE Act). In the Notice of Proposed Rulemaking (NOPR), the Energy Secretary directed FERC to use its authority under the Federal Power Act to establish "just and reasonable rates" for wholesale electricity sales. The DOE Secretary directed FERC to take final action on its proposal by December 9, 2017 (within 60 days of the rule's publication in the *Federal Register*) or, alternatively, to issue the rule as an interim final rule immediately, with provision for later modifications after consideration of public comments.

## FERC's Responsibility

Under the DOE's proposal, FERC is to impose rules on ISOs and RTOs to ensure that certain reliability and resilience attributes of coal and nuclear power generation resources are fully valued. FERC issued a request for comments on October 4, 2017 on the NOPR under FERC Docket No. RM18-1-000. The comment deadline is October 23, 2017; reply comments are due before November 7, 2017.

Should FERC follow the procedures under Section 404 of the DOE Act, following the public comment period, FERC may consult with the DOE Secretary, and shall either (1) concur in adoption of the rule; (2) concur in adopting the rule only with recommended changes; or (3) recommend that the rule not be adopted. FERC is to then promptly publish its recommendations with an explanation of the reason for its actions and provide an analysis of major comments, criticisms, and alternatives offered during the comment period. Following FERC's publication of its recommendation, the Secretary has the option of either (1) issuing a final rule as proposed if FERC has concurred in its adoption; (2) issuing an amended final rule conforming in all respects with the changes proposed by FERC; or (3) ordering that the final rule not be issued. This would then constitute the final agency action regarding the proposed rule.

Acting FERC Chairman Neil Chatterjee recently responded to questions on the NOPR, saying that FERC may not issue a final decision on the cost recovery proposal within the 60-day timeline requested by DOE. Other options include extending comments, holding technical conferences, or issuing a new rulemaking order that supersedes the DOE proposal.

## Potential Impacts of the Rule

In its request for comments, FERC posed a number of questions primarily on the need for the reforms requested by the Energy Secretary and how such potential reforms might be implemented. FERC also asked what the potential impact of the rule may be on consumers. Some observers have focused on the potential effect of the rule on electricity prices, while others have questioned the impact of the rule on the integrity of competitive markets.

## Other Administration Actions to Support Coal

The Energy Secretary's proposed Grid Resiliency Pricing Rule appears to be part of the Trump Administration's broader strategy to support coal-fired power generation. The Administrator of the Environmental Protection Agency has also recently proposed a repeal of the Obama Administration's Clean Power Plan (CPP).

The CPP was finalized in 2015, and issued emission guidelines for states to use in developing plans to limit carbon dioxide (CO<sub>2</sub>) emissions from existing power plants. As of 2015, fossil fuels for electric power generation accounted for more than one-third of U.S. CO<sub>2</sub> emissions. Some have speculated that

EPA may seek to replace the CPP with a rule focused on measures such as increasing power plant efficiency by equipment upgrades and heat rate improvements. It is currently unclear whether, or how, a revised plan might also seek to increase nuclear power electricity generation as a way to reduce CO<sub>2</sub> emissions.

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