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FERC Regulatory Update

John McCaffrey

Regulatory Counsel

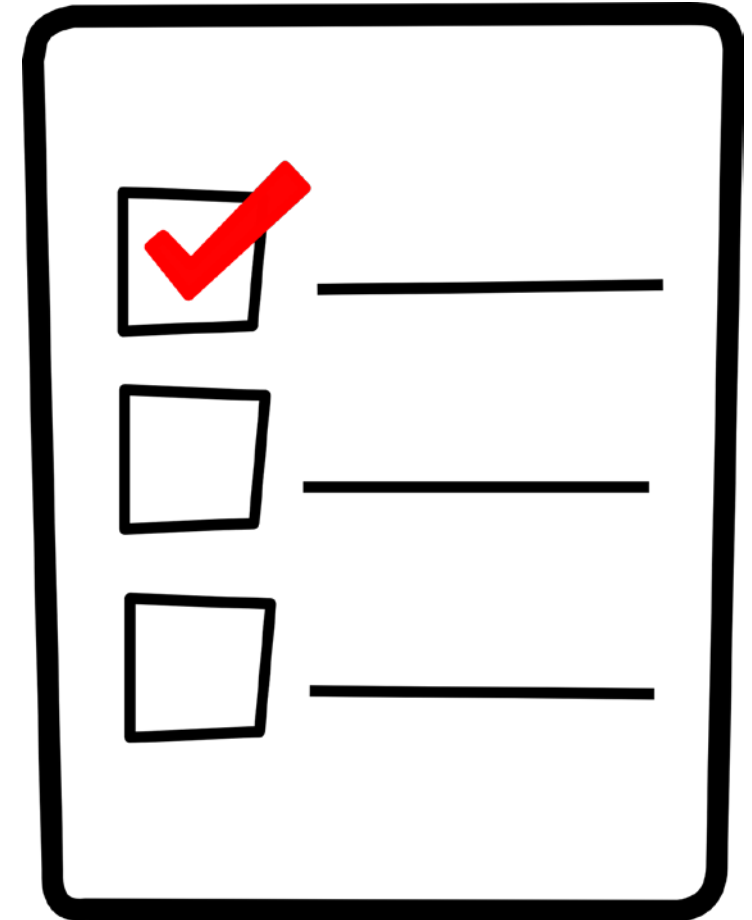
American Public Power Association

October 9, 2018

Charleston, SC

What We'll Cover

- Comings and Goings at FERC
- JEA Petition
- Grid Resilience
- Major RTO/ISO Market Developments
- Transmission Issues
- Response to Tax Cuts & Jobs Act
- A Word About PURPA
- Reliability Matters



Comings and Goings at FERC



Who's on FERC?



LaFleur (D)



McIntyre (R)



Chatterjee (R)



Glick (D)



Powelson (R)

New Commissioner?

- On Oct. 3, President Trump announced his intention to nominate **Bernard L. McNamee** to fifth seat
- For term expiring June 30, 2020
- Currently Executive Director of DOE's Office of Policy



Potential Impact of Changes

- Currently two members from each party – new Commissioner would address potential deadlock
- Natural gas pipeline certificate policy (PL18-1)
 - Consideration of downstream impacts of GHG in gas pipeline certificate proceedings
 - Showing of need for new projects
- Support for “resilient” resources
- Accommodation of state policies in RTO/ISO markets

JEA FERC Petition





JEA FERC Petition – EL18-200

- Filed Sept. 17, 2018
- JEA seeks a ruling that FERC has jurisdiction over the agreement under which MEAG Power will sell power to JEA from Vogtle Units 3 and 4
- JEA does not seek a ruling as to any other agreement
- If JEA legal arguments are accepted by FERC, however, could result in other public power wholesale sales becoming subject to FERC jurisdiction
- Comments due Oct. 17, 2018

Grid Resilience

Staff Report to the Secretary on Electricity Markets and Reliability



August 2017



DOE NOPR

- In Sept. 2017, DOE proposed that eastern RTOs provide full cost recovery for “fuel-secure” resources
 - Cover letter signed by Bernard McNamee
- FERC terminated “DOE NOPR” proceeding on Jan. 8, 2018
- Initiated new investigation into resilience in all FERC-approved RTOs/ISOs (AD18-7)
 - RTO/ISO responses filed March 9th
 - Reply comments filed May 9th
- APPA: No specific action needed at this time



FirstEnergy FPA § 202(c) Request

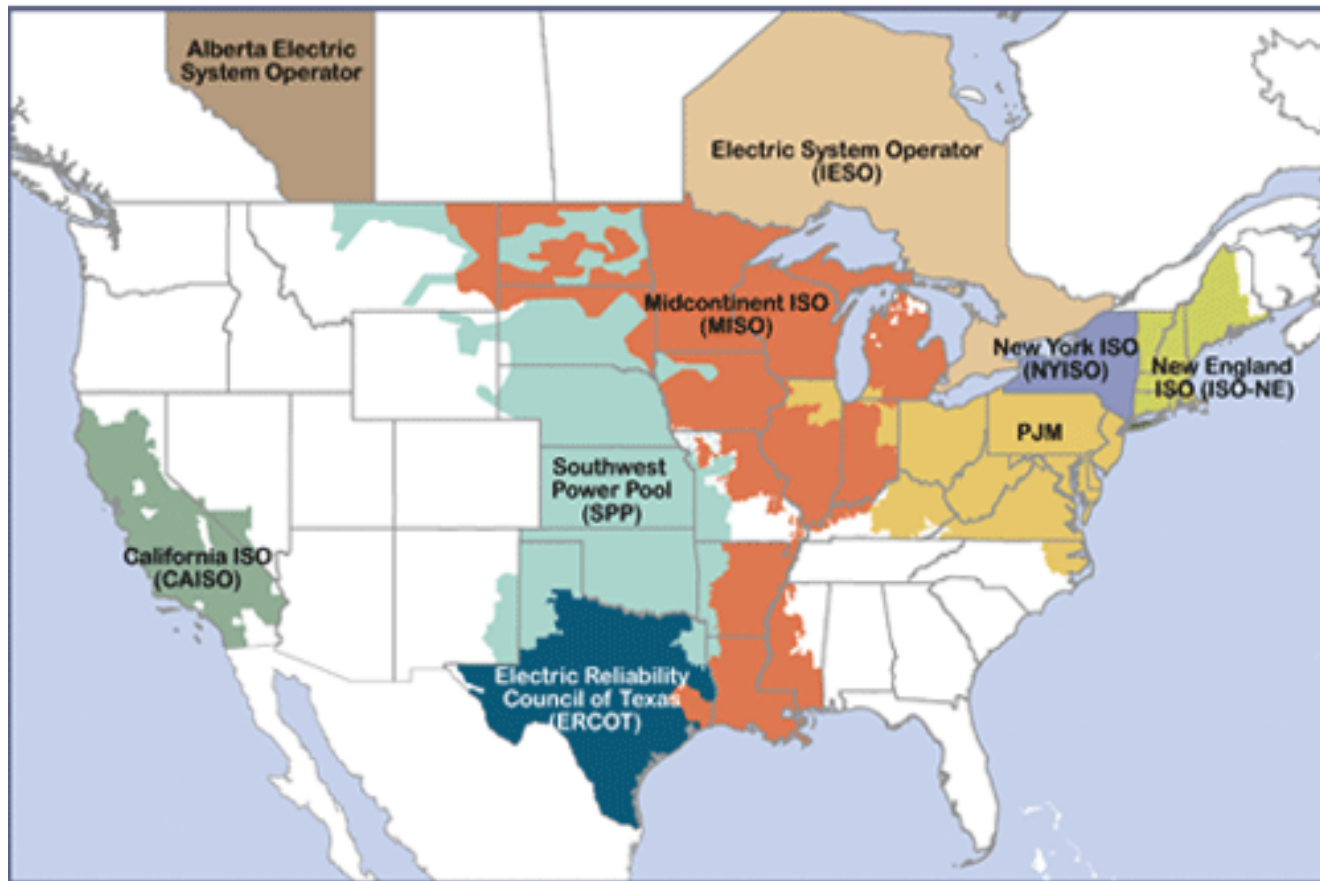
- March 29, 2018 Request by FirstEnergy Solutions for emergency order under FPA § 202(c)
- Asked DOE to require certain merchant nuclear and coal-fired generators in PJM to enter into contracts with PJM
- PJM to pay the plants cost-based rates that provide for full cost recovery
- APPA filed a protest with DOE



Leaked Memo and President Trump Directive

- On May 31, 2018, Bloomberg published an article claiming that the Trump administration was working on a plan to support coal and nuclear plants
 - Article included a link to a leaked memo arguing a case for support under the Defense Production Act and Federal Power Act
- On June 1, 2018, President Trump issued a statement indicating that he had directed Secretary Perry “to prepare immediate steps to stop the loss of” fuel-secure power facilities

Major RTO/ISO Market Developments





Storage and Distributed Energy Resources

- FERC Order No. 841 on electric storage – Feb. 15, 2018
 - APPA has requested rehearing on jurisdictional issues related to storage connected at distribution-level or behind-the-meter
 - Compliance filing deadline: Dec. 3, 2018
- FERC deferred action on non-storage aggregated DERs and initiated new docket (RM18-9)
 - Technical conference on DERs held April 10-11, 2018
 - Comments filed June 26, 2018
- A key issue for public power is state and local authority over retail, generation, and local-distribution matters
 - Rate, metering, operational, and safety issues

Capacity/Resource Adequacy – A Busy Year

- **California ISO**

- CAISO resource adequacy construct challenged in FERC complaint filed by merchant generator; mandatory centralized capacity construct requested (EL18-177)

- **ISO New England**

- FERC approves ISO-NE “CASPR” proposal to accommodate state policies

- **Midcontinent ISO**

- FERC reaffirms reasonableness of MISO voluntary resource adequacy framework; rejects merchant generator arguments for mandatory capacity construct (ER18-462)

Capacity/Resource Adequacy – A Busy Year

- **PJM Interconnection**

- FERC rejects capacity construct rules on remand from *NRG*
- Later rejects PJM proposals to accommodate state policies
- FERC finds existing PJM rules unjust and unreasonable and orders a paper hearing to consider a replacement
 - APPA jointly requested rehearing with American Municipal Power, Inc. and Public Power Association of New Jersey
- APPA actively participating in paper hearing (EL18-178)

- **Southwest Power Pool**

- FERC approves resource adequacy framework

Fuel Security in ISO New England

- ISO-NE issues fuel security analysis in Jan. 2018
- Proposed waiver to allow ISO-NE to enter into cost-of-service contract with Mystic Generation Station units on the basis of “fuel security” (ER18-1509)
- FERC denied the waiver on July 2, 2018 but directed ISO-NE to make further filings
 - Proposed tariff provisions providing for cost-of-service contracts for fuel security (filed in ER18-2364)
 - By July 2019, file permanent Tariff revisions reflecting improvements to market design to better address regional fuel security concerns.

ZECs Upheld by 7th and 2nd Circuits

- Zero Emission Credit programs in Illinois and New York upheld by U.S. Courts of Appeals for the 7th Circuit and the 2nd Circuit
- Decisions issued two weeks apart in September 2018
- Both courts found ZEC programs were not preempted under the Federal Power Act, focusing largely on *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288 (2016)
- Seventh Circuit found Illinois program did not violate dormant Commerce Clause; 2nd Circuit did not reach the issue

Transmission Issues





Rising Transmission Costs - Developments

- FERC responding to arguments for more transparent and effective transmission planning process for “local” projects in PJM and CAISO
 - Greater scrutiny of Supplemental Projects required in PJM
 - FERC finds that Order No. 890 generally does not apply to “asset management” activities by CAISO Participating Transmission Owners
- Numerous pending complaints challenging equity returns in cost-based transmission rates
 - APPA led “customer coalition” in preparing response to EEI White Paper on FERC ROE method
- Still awaiting action (if any) from FERC’s June 2016 technical conference on competitive transmission development and other issues (AD16-18)
- FTR/CRR issues; Green Hat default in PJM

Response to TCJA



FERC Response to 2017 Tax Law Changes

- Stated it would not act to modify electric transmission formula rates that will automatically incorporate the income tax expense reduction
- Issued show cause orders to 48 public utilities with stated transmission rates or formula rates with a fixed 35 percent income tax allowance
- Issued a NOI requesting comment on the impact of the TCJA on FERC-jurisdictional rates, focusing in particular on the treatment of accumulated deferred income taxes and bonus depreciation
 - APPA filed joint comments with American Municipal Power, Inc.
- In Order No. 849, FERC required natural gas pipelines to make informational filings (Form 501-G) regarding TCJA impact and outlined further procedures

A Word About PURPA

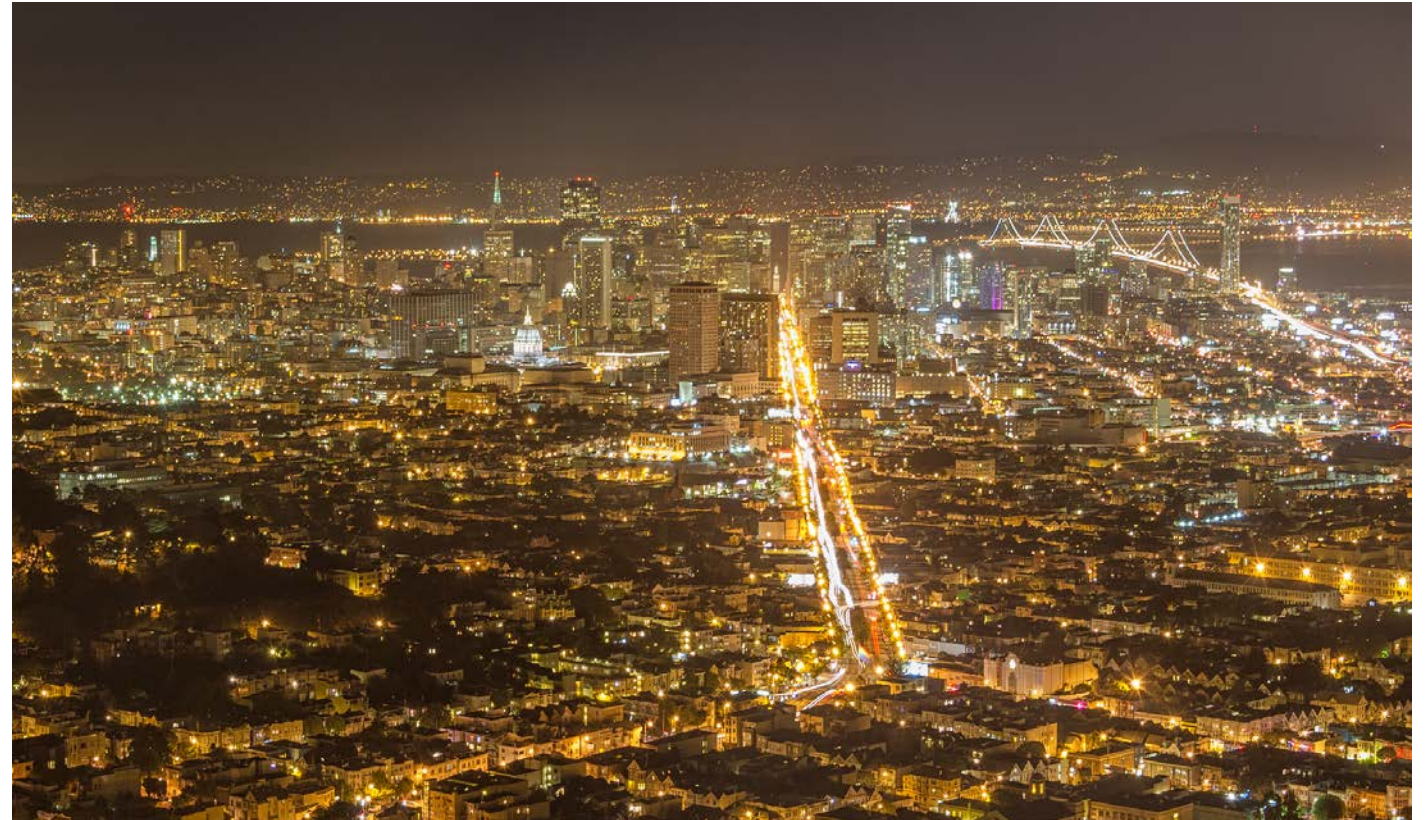




FERC “Re-energizes” PURPA Review

- FERC June 29, 2016 technical conference and request for comment on PURPA issues (AD16-16)
 - Issues included (1) FERC implementation of mandatory purchase obligation in modern electricity markets; (2) calculation of avoided costs; (3) FERC’s “one-mile rule;” and (4) minimum standards for PURPA-purchase contracts
- At the May 17, 2018 FERC meeting, Chairman McIntyre announced he would be directing Staff to “re-energize” review of PURPA policies
 - No details on format, scope, and timing
 - Will build on the record already developed

Electric Reliability





NERC Supply Chain Reliability Standards

- January 2018 NOPR proposing supply chain cyber security standards (RM17-13)
 - FERC proposed modifications to address high- and medium-impact Electronic Access Control and Monitoring Systems (EACMS) Physical Access Controls (PACs) and Protected Cyber Assets (PCAs)
- APPA filed joint comments with LPPC, TAPS, NRECA, and ELCON
- APPA and NRECA prepared joint white paper in response to NERC Board of Trustee request addressing best practices in supply chain risk management for small public power utilities



FERC Action on NERC Reliability Standards

- FERC Order No. 848 directs NERC to develop revised CIPS standards for cyber incident reporting (July 2018)
 - Require reporting of incidents that compromise, or attempt to compromise, a responsible entity's Electronic Security Perimeter (ESP) or EACMS
- FERC Order No. 847 approves revised CIP standards regarding coordination of fault protection systems (June 2018)



FERC Action on NERC Reliability Standards

- FERC Order No. 843 approves revised CIP standards clarifying electronic access control requirements and protection of transient electronic devices for low impact BES Cyber Systems (April 2018)
- FERC NOPR proposing to approve NERC's proposed reliability standards for geomagnetic disturbances (GMDs) (May 2018)



References

References

- **Grid Resilience**

- *Grid Reliability and Resilience Pricing*, 162 FERC ¶ 61,012 (Jan. 8, 2018) (terminating DOE NOPR)
- Bloomberg, “Trump Orders Action to Stem Coal, Nuclear Plant Shutdowns” – <https://www.bloomberg.com/news/articles/2018-06-01/trump-said-to-grant-lifeline-to-money-losing-coal-power-plants-jhv94ghl>
- Statement from the Press Secretary on Fuel-Secure Power Facilities - <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-fuel-secure-power-facilities/>



References

- **Storage and DERs**

- *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (Feb. 15, 2017), 83 Fed. Reg. 9580 (March 6, 2018)

- **RTO/ISO Resource Adequacy**

- *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 (Dec. 8, 2017) (rejecting approved PJM resource adequacy construct on remand from *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017))
- *PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (June 29, 2018) (rejecting PJM proposals, granting complaint in part, and ordering paper hearing)
- *ISO New England Inc.*, 162 FERC ¶ 61,205 (March 9, 2018) (approving ISO-NE's Competitive Auctions with Sponsored Policy Resources ("CASPR") proposal)
- *Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,176 (Feb. 28, 2018) (reaffirming MISO resource adequacy construct)
- *Southwest Power Pool*, 164 FERC ¶ 61,092 (Aug. 7, 2018) (approving SPP proposal)

References

- **Fuel Security in ISO-NE**

- ISO-NE Operational Fuel Security Analysis - https://www.iso-ne.com/static-assets/documents/2018/01/20180117_operational_fuel_security_analysis.pdf
- *ISO New England Inc.*, 164 FERC ¶ 61,003 (July 2, 2018) (denying requested waiver regarding Mystic plant)

- **ZECs Upheld**

- *Electric Power Supply Ass'n v. Star*, No. 17-2433 (7th Cir. Sept. 13, 2018); *Coalition for Competitive Energy v. Zibelman*, No. 17-2654 (2nd Cir. Sept. 27, 2018)

References

- **Rising Transmission Costs**

- *Monongahela Power Co.*, 162 FERC ¶ 61,129 (Feb. 15, 2018), *reh'g denied*, 164 FERC 61,217 (Sept. 26, 2018) (requiring changes to planning process for Supplemental Projects in PJM)
- *Cal. Pub. Utils. Comm'n v. Pacific Gas & Elec. Co.*, 164 FERC ¶ 61,161 (Aug. 31, 2018) and *Southern Cal. Edison Co.*, 164 FERC ¶ 61,160 (Aug. 31, 2018) (generally rejecting arguments that certain transmission maintenance and planning activities must comply with Order No. 890)

References

- **Response to Tax Cuts and Jobs Act**
 - *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223 (March 15, 2018), 83 Fed. Reg. 12,371 (March 21, 2018)
 - *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031 (July 18, 2018), 83 Fed. Reg. 36,672 (July 30, 2018)

References

• Reliability

- *Supply Chain Risk Management Reliability Standards*, 162 FERC ¶ 61,044 (Jan. 18, 2018), 83 Fed. Reg. 3433 (Jan. 25, 2018)
- *Cyber Security Incident Reporting Reliability Standards*, Order No. 848, 164 FERC ¶ 61,033 (July 19, 2018), 83 Fed. Reg. 36,727 (July 31, 2018)
- *Coordination of Protection Systems for Performance During Faults and Specific Training for Personnel Reliability Standards*, Order No. 847, 163 FERC ¶ 61,184 (June 7, 2018), 83 Fed. Reg. 27,505 (June 13, 2018)
- *Revised Critical Infrastructure Protection Reliability Standard CIP-003-7 – Cyber Security – Security Management Controls*, 163 FERC ¶ 61,032 (April 19, 2018), 83 Fed. Reg. 17,913 (April 25, 2018)
- *Geomagnetic Disturbance Reliability Standard*, 163 FERC ¶ 61,126 (May 17, 2018), 83 Fed. Reg. 23,854 (May 23, 2018)



Questions

John McCaffrey

jmccaffrey@publicpower.org

202.467.2952