

FERC Regulatory Update

APPA Legal and Regulatory Conference
October 10, 2017

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What we'll be covering . . .

- Commissioner line up
- Energy and capacity market dockets
- DOE NOPR
- “Subsidized” generation in organized markets
- Transmission matters
- Reliability matters
- PURPA

FERC Line Up

FERC Chairman Neil Chatterjee (R)

- Former senior energy advisor to Senate Majority Leader Mitch McConnell
- Previously worked for NRECA
- Term expires 2021



FERC Commissioner Cheryl LaFleur (D)

- Sworn in July 2010
- Second term
- Term expires June 30, 2019



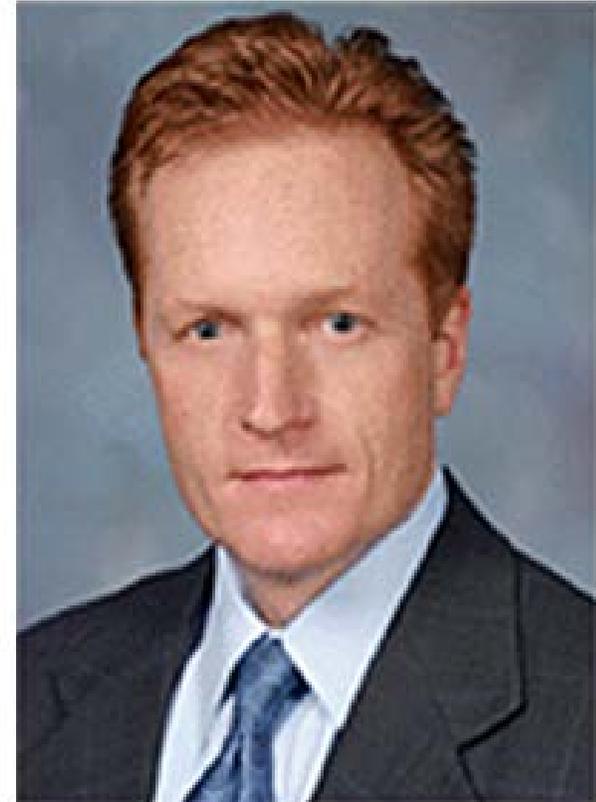
FERC Commissioner: Robert Powelson (R)

- Former PA Commissioner
- Former NARUC President
- Term expires in 2020



FERC Commissioner Nominee: Kevin McIntyre (R)

- Nominated to be Chairman
- Co-lead energy practice at Jones Day
- Nominee for FERC terms expiring in June 2018 and 2023



FERC Commissioner Nominee: Richard Glick (D)

- Minority General Counsel for Senate Energy and Natural Resources Committee
- Previously worked for Iberdrola
- Nominee for FERC term expiring 2022



Clearing the backlog

- FERC lacked a quorum from Feb. 4, 2017 until Aug. 10, 2017
- Certain matters handled by FERC Staff under delegated authority
- Significant backlog of cases
- Numerous notational orders since quorum restored
- First FERC open meeting held on September 20, 2017

Energy and Capacity Markets

FERC NOPR on Electric Storage and Distributed Energy Resources (RM16-23)

- Nov. 2016 – FERC issued Storage and DER Aggregation NOPR proposing to remove barriers to the participation of electric storage resources and DER aggregations in RTO/ISO capacity, energy, and ancillary service markets

APPA Comments on Storage and DER NOPR (RM16-23)

- Generally support FERC's efforts to allow storage and DER to participate in wholesale markets, but urged FERC to:
 - ✓ Focus on how the NOPR would benefit consumers
 - ✓ Respect the limits of its jurisdiction to wholesale and transmission service

FERC Price Formation Rulemakings

- FERC initiated Price Formation effort in summer of 2014 with the broad goal of:
 - ✓ Ensuring prices in RTO-operated markets accurately reflect cost of providing electricity
 - ✓ Providing the correct incentive for resource participation

FERC Price Formation Rulemakings (cont.)

- Rulemakings to date:
 - ✓ Settlement Intervals and Shortage Pricing (RM15-24; Order No. 825)
 - ✓ Offer Caps (RM16-5; Order No. 831)
 - ✓ Fast-Start Pricing (RM17-3; NOPR)
 - ✓ Uplift Costs (RM17-2; NOPR)

FERC Price Formation Rulemakings (cont.)

- APPA commented in all rulemaking proceedings, with the goal of ensuring that:
 - ✓ Prices aren't simply raised without a resulting benefit to consumers,
 - ✓ Load-side interests are protected
 - ✓ There is no increased market power potential

DOE NOPR (RM18-1)

- DOE sent proposed final rule to FERC on Sept. 29, 2017 providing for full recovery of costs for certain “fuel-secure” generation resources
 - ✓ These resources are “indispensable for the reliability and resiliency of our electric grid”
- DOE acted under seldom-used section 403 of the DOE Organization Act (42 USC § 7173)
 - ✓ Under section 403, FERC has exclusive jurisdiction over proposed rule; DOE can set time limits for action
- FERC invited comments by Oct. 23; reply comments by Nov. 7

FERC Tech Conference on State Policies in Wholesale Markets (AD17-11)

- Tech conference examined options to “accommodate” state policies and/or “achieve” them by pricing them in the market
- FERC jurisdiction does not supplant states’ policymaking roles so FERC should “accommodate” state actions

FERC Tech Conference on State Policies in Wholesale Markets (cont.)

- FERC could issue guidance to Eastern RTOs to accommodate state actions
- APPA continues to support a move away from mandatory capacity markets as an optimal and less complex solution

APPA Comments in State Policies in Wholesale Markets (AD17-11)

- The tortuous history of capacity markets and discussions at the technical conference continue to demonstrate the benefits of APPA's long-standing proposal to transition from mandatory capacity markets to a voluntary residual market, with a greater reliance on bilateral procurement and the ability to self-supply

PJM MOPR Saga

- Under the original capacity market rules, self-supply was guaranteed to clear PJM capacity market auctions without being impeded by the Minimum Offer Price Rule (MOPR)
- Blanket exemption undone by FERC in 2011
- In May 2013, FERC approved a negotiated limited self-supply exemption and competitive entry exemption
- Merchant generators appeal FERC orders

DC Circuit PJM MOPR Opinion

- Vacated and remanded the limited self-supply exemption (and other capacity market rules) back to FERC
- No guarantee even this limited self-supply exemption will remain, which creates uncertainty for future resource planning for public power
- *NRG v. FERC*, Case No. 15-1452

PJM's “Capacity Performance” Proposal

- Response to poor generator performance during the January 2014 polar vortex – aimed at increasing reliability expectations of capacity resources with a Capacity Performance product
- Intended to result in larger capacity payments for the most reliable resources (including bonus payments for overperforming participants) and higher penalties for non-performers (non-performance charges)

PJM's “Capacity Performance”

- Approved by FERC 4-1 on June 9, 2015 with a strong dissent by then-Chairman Bay
- Rehearing denied on May 10, 2016 with another strong Bay dissent
- APPA appealed to DC Circuit

Excerpts from Bay's May 10, 2016 Dissent

- “the market design itself is flawed”
- compensation for capacity resources “is so generous, and the penalties for non-performance are so weak, that resources can profit even if they are unable to perform when they are most needed, thereby undercutting the very purpose of the program”
- “. . . the majority fails to adequately consider the design of the market, the costs of capacity performance, or the balance of those costs against the potential benefits. As a result, we do not know whether consumers pay a just and reasonable rate for capacity, and we do not know whether they will receive the service they are purchasing. Such an outcome cannot be the product of reasoned decision making. For all those reasons, I respectfully dissent.”

APPA Appeals Capacity Performance Orders

- APPA joined with several other Petitioners on three challenges to the FERC orders:
 - ✓ FERC failed to adequately consider the high costs of Capacity Performance as compared to uncertain benefits
 - ✓ FERC's orders violated the Federal Power Act ("FPA") by approving the Capacity Performance revisions submitted under FPA Section 205 which then rendered portions of the PJM Tariff and Operating Agreement unjust and unreasonable under FPA Section 206
 - ✓ The default offer cap approved by FERC was higher than resources' actual costs which rendered it ineffective in mitigating against the exercise of seller market power, and would harm reliability

DC Circuit Capacity Performance Opinion

- June 20, 2017 – DC Circuit repeatedly defers to FERC in denying petitions for review of FERC orders, which approved PJM's Capacity Performance
- *Advanced Energy Management Alliance v. FERC*, Case No. 16-1234

Western Market Developments

- Possible Western regional system operator
- A growing number of utilities, including public power, have agreed to join or are contemplating joining the CAISO EIM
- Mountain West Transmission Group

“Subsidized” Generation

Challenges at FERC

- Complaint seeking expansion of PJM MOPR to include **existing** resources supported by state-approved payments (EL16-49)
 - ✓ Initial complaint cited developments in Ohio; amended in Jan. 2017 to focus on Illinois ZECs for nuclear plants
- APPA part of coalition opposing complaint
 - ✓ Inconsistent with conceptual purpose of MOPR
 - ✓ Granting relief would interfere with bilateral contracting and implementation of state policies
 - ✓ Self supply exemption must be preserved

Challenges at FERC (cont.)

- Pending NYISO compliance filing regarding application of buyer-side mitigation to certain resources (EL13-62)
 - ✓ Citing New York PSC ZEC program, EPSA urging FERC to adopt IPPNY screening/offer floor proposal
- PJM IMM complaint challenging MOPR competitive entry exemption for genco based on affiliation with vertically-integrated utility (EL17-82)
- Opposition to FirstEnergy's proposed transfer of Pleasants Power Station in WV (EC17-88)

Court Challenges to State Programs

- Recent decisions by federal district courts in Illinois and NY dismissed supplier complaints challenging ZECs
 - ✓ No private right of action for FPA preemption claims
 - ✓ Assuming jurisdiction, ZEC programs neither field nor conflict preempted; ZECs not “tethered” to the wholesale market under of *Hughes* – payments are for emission-free attributes
 - ✓ No cause of action under Dormant Commerce Clause
 - ✓ Appeals pending
- June ruling by 2nd Circuit rejected challenge to Connecticut RPS solicitation

Transmission Matters

Transmission: FERC Tech Conference

- Awaiting outcome (if any) of FERC's June 2016 technical conference on competitive transmission development and other issues (AD16-18)
- Issues include: (1) cost containment proposals; (2) competitive development and transmission incentives; (3) interregional coordination; (4) status of regional planning and development; (5) calculation of allowed ROE for non-incumbent transmission developers

Transmission Tech Conference: APPA View

- APPA and NRECA filed joint post-technical conference comments. Some key points:
 - ✓ Support FERC's efforts to bring benefits of competition to transmission development process
 - ✓ In evaluating bids with cost containment commitments, must account for all caveats/offsets; FPA § 205 filings necessary
 - ✓ Developers should bear risk of participating in competitive solicitation; strictly limit cost recovery for projects not selected
 - ✓ Retain FERC's current case-by-case evaluation of incentives
 - ✓ Premature to conclude interregional development is lacking

Transmission Tech Conference Issues

- Technical conference issues continue to arise in individual FERC proceedings. Examples:
 - ✓ Request by DesertLink, LLC for rebuttable presumption that ratemaking terms proposed in competitive transmission development processes are just and reasonable (ER17-135)
 - APPA filed comments in opposition to DesertLink proposals
 - ✓ Stakeholder participation in Order 890/1000 planning process
 - FERC show-cause order in PJM (EL16-71)
 - Complaint by Cal. PUC and municipal parties against PG&E (EL17-45)

Transmission: Generator Interconnection

- FERC's December 2016 proposed rule on generator interconnection agreements and procedures (RM17-18)
 - ✓ Reforms principally aimed at enhancing predictability and certainty in interconnection process by providing more timely and accurate information
 - ✓ Also propose reforms intended to enhance interconnection process by making use of underutilized existing interconnections, providing interconnection service earlier, or accommodating changes in the development process

Interconnection NOPR – APPA Position

- Generally supportive, but concern over proposals that could compromise reliability or shift interconnection risk/costs to Transmission Provider
- Opposed to a cost cap on necessary system upgrades
- Security concerns with proposed OASIS posting requirements
- Support greater standardization of coordination with Affected Systems, including cost responsibility
- No objection to allowing interconnection service below generating facility's capacity, provided conditions adopted to protect reliability and ensure appropriate cost allocation
- Object to proposal to provide for use/transfer of “surplus” interconnection service
- Opposed to expansion of interconnection customer option to build

Transmission: Some Other Matters of Note

- Proposed refund condition on non-public utilities in SPP and MISO (EL16-91 and EL16-99)
 - ✓ APPA comments argued that generic tariff modification inappropriate and unjustified
- ROE complaints
 - ✓ Litigation ongoing at FERC regarding base ROE in ISO-NE and other regions
 - ✓ DC Circuit in April 2017 vacated and remanded FERC ruling reducing ISO-NE base ROE from 11.14% to 10.57%, finding FERC had not made proper findings under FPA § 206

Transmission: Some Other Matters of Note

- Pending FERC action on remand regarding WestConnect planning and cost allocation
 - ✓ 5th Circuit's *El Paso Electric* decision found FERC had not justified approval of proposal allowing non-jurisdictional utilities to opt out of participation in binding cost allocation
- Disputes regarding intra-zonal transmission cost allocation for new SPP members
 - ✓ Feb. 23, 2017 Initial Decision in ER16-204 addressing allocation of costs in connection with Tri-State's placement in NPPD pricing zone
- Pending appeal of PJM ARR/FTR allocation approach (DC Cir. No. 17-1101)

Reliability

Reliability Matters

- NERC's proposed reliability standards on supply chain cybersecurity risk management (RM17-13)
 - ✓ Submitted in compliance with FERC Order No. 829
 - ✓ APPA White Paper in response to NERC Board resolution
- NERC's proposed reliability standard CIP-003-7 addressing low-impact BES Cyber Systems (RM17-11)
 - ✓ Submitted in compliance with FERC Order No. 822

Reliability Matters

- FERC actions in reliability dockets at its Sept. 20, 2017 meeting:
 - ✓ Approved revised reliability standards on Balancing Authority Control (BAL-005-1) and Facility Interconnection Requirements (FAC-001-3) (Order No. 836)
 - ✓ Approved revised reliability standard on Remedial Action Schemes (PRC-012-2) (Order No. 837)
 - ✓ Issued NOPR proposing revised standards addressing Event Reporting (EOP-004-4), System Restoration from Blackstart Resources (EOP-005-3), System Restoration Coordination (EOP-006-3) and Loss of Control Center Functionality (EOP-008-2)

Reliability Matters

- Primary Frequency Response NOPR issued Nov. 17, 2016 (RM16-6) - Proposes to modify LGIA and SGIA to require primary frequency response capability
 - ✓ APPA filed supportive comments; emphasized rule should not apply to existing generators and cost should be borne by generators
 - ✓ Re-constituted FERC requested supplemental comments regarding applicability of rule to electric storage resources (due Oct. 10th)

Reliability Matters

- FERC NOI on Cyber Systems in Control Centers (RM16-18) terminated on Oct. 2, 2017
 - ✓ FERC had requested comment on requiring (1) separation between the Internet from BES Cyber Systems in Control Centers performing TO functions; and (2) application “whitelisting”
 - ✓ APPA/LPPC/TAPS asked FERC not to direct CIP changes at this time
- NERC’s proposed changes to its Compliance and Enforcement Program (CMEP) (RR15-2-005)
 - ✓ APPA supported proposal to allow certain moderate risk violations without aggravating circumstances to be considered for treatment as compliance exceptions; APPA opposed proposal to discontinue posting of self-logged compliance exceptions

PURPA

PURPA

- FERC June 29, 2016 technical conference (AD16-16)
 - ✓ Issues included (1) FERC implementation of mandatory purchase obligation in modern electricity markets; (2) calculation of avoided costs
 - ✓ Post-conference notice solicited comments on (1) FERC's "one-mile rule;" and (2) minimum standards for PURPA-purchase contracts
- FERC Sept. 7, 2017 order on East Ken. Power Coop. application to terminate PURPA obligation
 - ✓ FERC granted application over objections
 - ✓ But two QF obligations arose while FERC lacked quorum

PURPA

- FERC Sept. 7, 2017 *Beaver Creek* order granting applications for QF certification
 - ✓ Application challenged as inconsistent with FERC's "one-mile rule"
 - ✓ Beaver Creek argued that appropriate application of one-mile rule to wind facilities is to apply distance calculation to the weighted geographic center of the turbine array
 - ✓ FERC did not reach the one-mile rule issue in granting application
- FERC dismissed as premature petition by Maryland coops challenging MD community solar regulations as inconsistent with PURPA (EL16-107)

PURPA

- *Portland General Electric* DC Circuit ruling in April 2017
 - ✓ Court concluded it lacked jurisdiction to hear appeal filed by PGE, as FPA judicial review provisions were inapplicable to FERC order that merely **interpreted** PURPA
 - ✓ Court also denied QF's petition challenging FERC ruling that PGE was not violating FERC anti-discrimination and standards of conduct requirements because QF was not a PGE transmission customer

Questions?

References

References

- **Electric Storage and Distributed Energy Resources NOPR**
 - *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016)
- **Price Formation Rulemakings**
 - *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 825, 155 FERC ¶ 61,276 (June 16, 2016)
 - *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 157 FERC ¶ 61,115 (Nov. 17, 2016)
 - *Fast-Start Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 157 FERC ¶ 61,213 (Dec. 15, 2016)
 - *Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 158 FERC ¶ 61,047 (Jan. 19, 2017)

References

- **MOPR DC Circuit Appeal**
 - *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. July 7, 2017), *reh'g denied*, No. 15-1452 (Sept. 20, 2017)
- **PJM Capacity Performance Approval and Appeal**
 - *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015), *order on reh'g and compliance*, 155 FERC ¶ 61,157 (2016)
 - *Advanced Energy Management Alliance v. FERC*, 860 F.3d 656 (D.C. Cir. June 20, 2017)
- **Court Challenges to State Subsidies**
 - *Allco Fin. Ltd. v. Klee*, 861 F.3d 82 (2nd Cir. 2017)
 - *Coalition for Competitive Electricity v. Zibelman*, No. 16-CV-8164 (S.D.N.Y., July 25, 2017), *review pending*, No. 17-2654 (2nd Cir.)
 - *Village of Old Mill Creek v. Star*, Nos. 17-CV-1163 and -1164 (N.D. Ill, July 14, 2017), *appeal pending sub. nom, Electric Power Supply Ass'n v. Star*, No. 17-2445 (7th Cir.)

References

- **Transmission Matters**

- *Monongahela Power Co.*, 156 FERC ¶ 61,134 (Aug. 26, 2016) (order to show cause in EL16-71)
- *Reform of Generator Interconnection Procedures and Agreements*, 157 FERC ¶ 61,212 (Dec. 15, 2016)
- *Midcontinent Independent System Operator, Inc.*, 156 FERC ¶ 61,061 (July 21, 2016) (instituting FPA § 206 investigation regarding refund condition for non-public utilities)
- *Southwest Power Pool, Inc.*, 156 FERC ¶ 61,059 (July 21, 2016) (instituting FPA § 206 investigation regarding refund condition for non-public utilities)
- *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) (vacating FERC ruling on ISO-NE base ROE)
- *El Paso Elec. Co. v. FERC*, 832 F.3d 495 (5th Cir. 2016) (remanding FERC orders on WestConnect Order No. 1000 compliance filing)
- *New Jersey Bd. of Pub. Utils. v. FERC*, No. 17-1101 (D.C. Cir.) (PJM ARR/FTR appeal)

References

- **Reliability Matters**

- *Revised Critical Infrastructure Protection Reliability Standards*, Order No. 829, 156 FERC ¶ 61,050 (2016)
- *Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Reliability Standards*, Order No. 836, 160 FERC ¶ 61,070 (Sept. 20, 2017)
- *Remedial Action Schemes Reliability Standard*, Order No. 837, 160 FERC ¶ 61,071 (Sept. 20, 2017)
- *Emergency Preparedness and Operations Reliability Standards*, 160 FERC ¶ 61,072 (Sept. 20, 2017)
- *Essential Reliability Services and the Evolving Bulk-Power System – Primary Frequency Response*, 157 FERC ¶ 61,122 (Nov. 17, 2016), *notice requesting supplemental comments*, 160 FERC ¶ 61,011 (Aug. 18, 2017)
- *Cyber Systems in Control Centers*, 161 FERC ¶ 61,003 (Oct. 2, 2017)

References

- **PURPA**

- *East Kentucky Power Cooperative*, 160 FERC ¶ 61,053 (Sept. 7, 2017)
- *Beaver Creek Wind II, LLC*, 160 FERC ¶ 61,052 (Sept. 7, 2017)
- *Southern Maryland Electric Cooperative, Inc.*, 157 FERC ¶ 61,118 (Nov. 17, 2016) (dismissing petition for declaratory order)
- *Portland General Elec. Co. v. FERC*, 854 F.3d 692 (D.C. Cir. 2017), *reh'g denied*, No. 15-1237 (June 23, 2017).