

## FERC Energy Storage Policy Faces Uncertainty Under Trump

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*Law360, New York (January 27, 2017, 3:48 PM EST)* -- At its last open meeting on Jan. 19, 2017, the Federal Energy Regulatory Commission (FERC) issued a policy statement that serves to reaffirm FERC's efforts to encourage the development of electric storage resources. Of all the publications from FERC so far in calendar year 2017, this policy statement is one of the most important for entities in the electric power sector.

The new policy statement addresses cost recovery for electric storage resources, and clarifies that electric storage resources can provide services at, and concurrently seek to recover their costs through, both cost-based rates and market-based rates.

The statement provides electric storage resource owners and operators greater certainty on cost recovery, and guidance on coordination between the regional transmission organization (RTO)/independent system operator (ISO) and the electric storage resource owner or operator.

FERC issued this policy statement only about two months after holding a technical conference on the utilization of electric storage resources, and issuing a notice of proposed rulemaking to integrate electric storage into organized markets.

In addition, the commission recently proposed changes to its generator interconnection procedures to ensure that they account for the capabilities and unique characteristics of electric storage resources, and that the modeling and study practices account for the operational characteristics of these resources.

These undertakings indicate a renewed focus by FERC to establish processes that encourage the integration of electric storage resources into the market.

In the policy statement, FERC recognizes: (1) the fact that electric storage resources are technically capable of providing both cost-based and market-based rate services, and (2) the need for clarifications to its policy to



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maximize the efficiency and value of storage resources to the system and to consumers.

As the commission notes, these resources can both charge and discharge electricity, can provide multiple services, and can switch from providing one service to another service almost instantaneously.

The policy statement also addresses some of the issues raised during the technical conference and identifies three implementation concerns: (1) protections against the potential for double-recovery of costs from cost-based ratepayers, (2) adverse market impacts, and (3) RTO/ISO independence from market participants.

FERC's policy statement provides guidance on how these concerns may be addressed, adding that entities may address them through stakeholder processes and in filings with FERC.

### **Avoiding Double Recovery of Costs**

In the policy statement, FERC says that crediting any market revenues back to cost-based ratepayers is a potential solution to address concerns of double recovery. The amount of crediting may vary based on how the cost-based rate recovery is structured.

In the alternative, the market-revenue offset can be used to reduce the revenue requirement that is used to develop the cost-based rate. FERC recognizes that there are other ways to prevent the double recovery of costs.

### **Minimizing Adverse Impacts on Wholesale Electric Markets**

Although FERC acknowledges the potential for adverse market impacts, it is not convinced that allowing concurrent recovery through cost-based and market-based rates while providing separate services will adversely impact other market competitors.

The commission's statement explains that such concurrent recovery is not unique to electric storage resources, and that in other circumstances, it has required market revenue crediting to captive wholesale customers to prevent subsidization or potential competitive impact.

### **RTO/ISO Independence**

FERC recognizes the importance of maintaining RTO/ISO independence from market participants, but states that some level of coordination between the RTO/ISO and the electric storage resource owner or operator is necessary for those resources that concurrently provide cost-based and market-based rate services.

According to the policy statement, an electric storage resource should be maintained to enable it to achieve the necessary state of charge when it needs to provide cost-based rate service, but if this need is predictable as to size and time, the resource may be permitted to deviate from the state of charge at other times of the day to provide other market-based rate services.

In addition, FERC states that if there is a need for service compensated through cost-based rates, RTO/ISO dispatch of the electric storage resource to address that need should receive priority over the provision of market-based rate services. The resource could be subject to performance penalties if it fails to perform at these times.

FERC also advises that market-based rate services should be provided under the electric storage resource's control, and not by the RTO/ISO, to ensure independence.

Therefore, even though the RTO/ISO actually optimizes the resources participating in organized wholesale electric markets, the RTO/ISO would rely on offer parameters provided by the electric storage resource owner or operator when the resource is not needed for separate services compensated at cost-based rates.

### **Clarifications to FERC Precedent**

In the statement, FERC clarifies its rulings in two prior orders, Nevada Power and Western Grid, in response to comments that were filed after the technical conference.

The commission says that its statement in Nevada Power that it would not be appropriate to require CAISO to assume "any level of operational control" should not be taken out of context. RTOs and ISOs always exercise some level of operational control over the resources they commit or dispatch in their markets.

FERC states that this is not unreasonable, as long as RTO/ISO independence is not an issue. If the resource is dispatched through the organized wholesale electric market clearing process, the level of RTO/ISO control will be lower. If a resource is operated outside of the organized wholesale electric market clearing process, the RTO's/ISO's control may be greater.

FERC also clarifies that Western Grid should not be read to require entities to forgo market sales, and that there may be other approaches under which an electric storage resource may receive cost-based rate recovery, and if technically capable, provide market-based services.

In Western Grid, the electric storage resources provided voltage support and thermal overload protection to solve transmission reliability problems identified by CAISO, but did not make any sales into CAISO's organized wholesale electric markets.

Instead, Western Grid was responsible for all operating functions and for energizing the resources. It did not retain revenues outside of the transmission access charge, through which the costs of transmission facilities under CAISO's control were recovered.

### **Commissioner LaFleur's Dissent**

FERC Commissioner Cheryl LaFleur dissented from the policy statement, and stated that the approach set forth in the policy statement is "flawed in its conclusions and premature in its timing."

She disagreed with the policy statement's "sweeping conclusions" about the potential impacts of multiple payment streams on pricing in wholesale electric markets. LaFleur voiced concerns on the impact of these arrangements on market competition and the lack of guidance on how FERC will evaluate whether a particular filing avoids adverse market impacts.

She is also concerned that the policy statement could be read to reflect FERC's views on the impact of multiple payment streams on market pricing more generally, and not solely as related to electric storage resources.

LaFleur also disagreed with the the commission's decision to separate the issue of cost recovery from the pending notice of proposed rulemaking on integrating storage into organized markets.

### **Implications**

FERC's policy statement is another reminder that FERC is focused on the development of electric storage. The policy statement follows several other recent actions and issuances undertaken by FERC designed to encourage the development of electric storage resources.

On Jan. 26, 2017, President Trump named Commissioner LaFleur as acting FERC chairwoman. LaFleur was critical of the policy statement, so we may see significant changes to it. However, FERC has generally been supportive of energy storage, and it should continue to be so for the foreseeable future.

As the composition of FERC continues to change, participants in the energy sector should continue to monitor the commission's views toward electric storage resources.

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