Governors' Wind & Solar Energy Coalition

2200 Wilson Boulevard, Suite 102-22
Arlington, Virginia 22201-3324
Phone 402 651-2948
www.GovernorsWindEnergyCoalition.org

July 18, 2018

To: Governor Bullock and Governor Carney

From: Larry Pearce

Subject: ***Briefing Memo and Draft Letter on FERC's Capacity Market Decision (PJM Interconnection and Calpine Corporation, et al.)***

Last month, the Federal Energy Regulatory Commission ruled in a 3-2 decision that its current rules don't protect energy generators in capacity markets against "unreasonable price distortions and cost shifts" from state policies that are keeping older, uneconomic power plants in operation or subsidizing new energy technologies that aren't yet competitive. FERC's decision reveals that the recently appointed commissioners' acceptance of state energy programs may be over.

Since the substance and tone of the majority opinion threatens state energy initiatives, especially those state initiatives needed for the development of the nation's offshore wind industry, the governors should consider commenting on the commission's decision. Comments on the ruling are due by August 30. A draft letter to the commissioners is attached.

Background

In a sweeping order, a majority of FERC commissioners ruled that the entire PJM capacity market is "unjust and unreasonable" because of the impact of state policies. The commissioners scheduled a "paper hearing" to design an alternative.

PJM Interconnection, the nation's largest wholesale electricity market, runs a capacity market in 13 states. PJM proposed that FERC should "mitigate" state energy programs in its capacity market to ensure that prices are high enough to protect market integrity, since investors may be less likely to invest when states subsidize some energy generators and not others.

FERC rejected the proposal, saying that current rules didn't protect competition in the capacity market against "unreasonable price distortions and cost shifts" from state policies that are keeping older, uneconomic plants in operation or subsidizing new power technologies that aren't yet competitive. The majority's direction is clear: force subsidized resources, such as renewables and nuclear generators, to compete without the subsidies, or leave the capacity markets altogether.

Coal and nuclear plants have become increasingly reliant on capacity market prices in recent years. Their high operating costs make it harder for them to compete in daily electricity markets saturated with natural gas and growing amounts of renewables, which have no fuel costs and are backed by federal subsidies or state renewable energy standards.

Today, the problem is that the capacity markets alone are not enough to keep some coal and nuclear plants open, and states have started to intervene in order to prevent nuclear facilities from retiring. Illinois and New Jersey both passed legislation providing large bailouts of nuclear facilities.

In response, regional transmission organizations, driven mainly by owners of non-renewable generation, have begun to impose broad minimum bidding requirements that either remove or make it nearly impossible for state-supported resources to also sell their wholesale electricity.

Renewable resources had been exempt from these minimum bidding requirements. However, regional transmission organizations and FERC recently decided that those exemptions should end. So, state renewable energy policies in regions with capacity markets are now at risk. This precedent could be extended to any other region for any other electricity service, severely hampering state-supported renewable resources from participating in wholesale markets everywhere.

Exactly how FERC will rule in this technically complex case remains unclear. State renewable portfolio standards require utilities to acquire certain amounts of renewable energy but generally do not provide actual subsidies. New Jersey and Maryland are exceptions, since both states offer incentives for offshore wind development — policies needed by the states' developing offshore wind industry. Other coastal states will likely adopt similar policies or legislation.

Next Steps

This is a complex case, but FERC will ultimately address a fundamental policy question: what role will state renewable and clean energy policies play in the nation's electricity capacity markets? FERC's decision that state policies should be mitigated is what the governors and other parties can challenge on rehearing. If FERC does not change its position, the decision will wind up in the federal court of appeals. If FERC does not change its position now, months if not years of policy uncertainty will be added to the states' planning efforts

The governors' guidance is important in this case as FERC balances the economic interaction between state clean energy policies and federal wholesale energy markets. The governors' words will be a cautionary message to regional transmission organizations and congressional oversight committees about the risks associated with this bad policy.

Attached is a draft letter to FERC urging the commissioners to adopt policies that "enhance" state policies, not undermine them. If you approve this draft, we should share it with other member governors and ask if the wish to join the letter. Coastal governors may be especially interested in joining the letter.

cc: Adam Schafer
Tom Kaiserski
Jordan Seemans
Albert Shields