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Reading the Tea Leaves [1]

Deck:
Clues from DOE report

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After months of speculation, the Department of Energy released its highly anticipated *Department of Energy Staff Report on Electric Markets and Reliability*. Many of the responses to the DOE report have been predictable.

From traditional coal and nuclear operators, the DOE report received a polite golf clap, though they probably hoped there would have been more there. Environmental advocates have panned it as, at best, meaningless; and at worst, a document rife with proof that the Trump administration is out to gut the clean energy industry.

For much of the generalist Washington press corps, the report was a chance to write one of those DC-centric speculation and horserace articles about whether renewables would be blamed for coal's demise, and naming the report's winners and losers.

But those of us steeped in the inner workings of the regulatory world view it as a data-heavy report that plays it down the middle. More important, we know that much of the real action in electric markets and reliability happens in the more cloistered hallways of the Federal Energy Regulatory Commission.

Put in that light, the importance of the DOE report, as much as anything, is to understand how some of the issues raised might find their way into the work of FERC.

A useful frame of reference is to consider how past DOE thought leadership in areas such as demand response and renewable energy has, over time, slowly worked its way into the ebb and flow of proceedings at FERC. Never was there a dictate from DOE for FERC to do X or Y, but rather, suggestions by DOE sowed ideas that eventually become a mature public policy crop harvested at FERC.

With that backdrop, my colleagues and I conducted a deeper review of the DOE report with an eye toward the report's recommendations for FERC, as well as the FERC initiatives already underway that connect to the recommendations. Here are some items that stand out:

Price Formation and Mitigation of Negative Pricing

There are a number of initiatives at FERC on price formation already underway. In terms of electric policy, this is about as wonky as it gets; wonky but important. A subset of the issue is related to a focus on the pernicious impact of negative prices designed to capture production-based tax subsidies.

This area of focus also captures potential FERC action to consider state policies and their impact on wholesale markets and price formation. FERC has no shortage of tools to address these matters. For instance, there are pending Notices of Proposed Rulemaking that could be utilized or opened for further comment; FERC could convene technical conferences; it could issue Notices of Intent, or exercise soft power to compel greater attention through the Regional Transmission Operator stakeholder processes. And don't forget, FERC has its ultimate tool: filing a Section 206 action to force the issue.

Essential Reliability Services

DOE suggests properly valuing Essential Reliability Services or ERS, generally ancillary services like voltage and frequency support and reactive power that keep the grid operating. The North American Electric Reliability Corporation has an ERS Taskforce that feeds into FERC rulemakings. To bring the issues to a head, FERC again could use its go-to tools: NOPRs, NOIs, and technical conferences.

Resilience

DOE recommends that FERC, NERC, and RTO/ISOs look at, define, and possibly compensate generators for resilience, and specifically asks if plants are being properly compensated for on-site fuel sources. While the DOE report seems to be looking for an opportunity to compensate dispatchable resources, defining resilience and shaping standards or compensation for that attribute is going to be a major undertaking, requiring a fair amount of spade work from FERC to more fully develop the record.

Infrastructure Development

The DOE report encourages expedited infrastructure development. In the context of FERC, this item is constrained by jurisdiction and the National Environmental Policy Act. Nonetheless, FERC will have an opportunity to issue a report responding to President Trump's Regulatory Review Executive Orders addressing material burdens to energy development. In addition, this action item helps FERC leadership place a greater emphasis on the importance of infrastructure where FERC has its greatest oversight: namely, interstate gas pipelines and hydroelectric facilities.

Gas and Electric Interdependence

The DOE report emphasizes gas-electric interdependence issues, which have been a priority at FERC since 2012, via several proceedings. Increasingly, we view this set of ongoing undertakings as being incorporated into many of the Commission's recent and pending matters, and less of a niche or stand-alone issue.

The Takeaway

In all, the DOE report gives FERC leadership plenty to consider, and FERC has no shortage of tools at its disposal should it decide to act. For stakeholders, the takeaway is something that many of us in the regulatory world have long recognized. While DOE has a powerful spotlight which it can use to shine attention on key issues, the most effective way to implement meaningful change of this technical sort is through direct involvement, intervention, and interaction at FERC. v

This the first in a series of regular columns my colleagues and I at ***Wilkinson Barker Knauer LLP*** *will be authoring on the pages of* Public Utilities Fortnightly*. With a bench of former utility regulators and other regional and national energy thought leaders, our goal is to provide insights and observations about the energy regulatory sector, with a special eye toward the federal government and the Federal Energy Regulatory Commission. Your thoughts and feedback are welcome at* *tclark@wbklaw.com* *[3].*