Client Alert

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Key Energy Regulators Speak – Energy Storage is Happening

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This November 2013, new and improved Federal Energy Regulatory Commission (FERC) regulations adopted in Order No. 784, *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies,* will go into effect. FERC adopted these rule changes with the intent of fostering opportunities for energy storage technologies such as compressed air energy storage, regenerative fuel cells, batteries, superconducting magnetic energy storage, flywheels and thermal energy storage systems to participate in electricity markets and supply ancillary services to wholesale electric market participants and electric transmission providers. In California, the California Public Utilities Commission (CPUC) issued a proposed decision earlier this month to adopt new energy storage procurement requirements for the state's three largest investor-owned utilities, as well as retail electric suppliers and community choice aggregators.

FERC

The FERC rule changes stem from initiatives that FERC has undertaken to consider potential barriers that its policies might be creating to energy storage's participation in markets for ancillary services, and to respond to calls from buyers and sellers to facilitate opportunities for energy storage to supply needed services by providing greater transparency and certainty. FERC also wanted to address issues related to accounting for, and reporting of sales from, energy storage devices that, if left unresolved, could impair the ability of these resources to participate in markets for ancillary services and other services subject to FERC's jurisdiction.

FERC's new reporting requirements "reflect changes that are occurring in the electric industry due to the availability of new energy storage technologies that are being used in the provision of large-scale utility operations. These technologies are providing services that were typically provided by traditional single-purpose production, transmission and distribution resources." As FERC has observed, "storage devices do not fit neatly into a traditional category of assets, be it transmission, generation, or distribution, given their ability to perform multiple functions." [1] FERC also acknowledged that the use of energy storage in utility-scale operations may only be in an early stage of development, but Order No. 784 is firm that there should be no delay in promulgating these accounting and reporting regulations for utilities owning, operating or purchasing energy storage. The new FERC accounting and reporting rules should help utilities and storage providers by enhancing certainty and transparency, both with respect to identifying costs of energy storage and supporting recovery energy storage costs with cost-based rates.

[1] Notice of Inquiry, Third Party Provision of Ancillary Services; Accounting and Reporting Requirements, 135 FERC ¶ 61,240 (2011) at ¶. 25; *See Western Grid Development, LLC*, 130 FERC ¶ 61,056, *reh'g denied*, 133 FERC ¶ 61,029 (2010) (*Western Grid*).

Under the new rules, FERC-regulated public utilities will be required to account for "energy storage assets," defined as property that is interconnected to the electrical grid and is designed to receive electrical energy, to store such electrical energy as another energy form, **and to** convert such energy back to electricity and deliver such electricity for sale, or to use such energy to provide reliability or economic benefits to the grid. An "energy storage asset" may be compressed air energy storage, regenerative fuel cells, batteries, superconducting magnetic energy storage, flywheels, thermal energy storage systems and hydrogen storage, or any combination thereof, or any other technologies as FERC may determine. Hydroelectric pumped storage fits the definition of "energy storage asset," but FERC determined that its existing accounting and reporting requirements are sufficiently transparent and specific with respect to pumped storage.

FERC also provided assurance to state utility regulators, in response to comments by the CPUC, that its adoption of these accounting and reporting rules for FERC-regulated public utilities did not preempt or affect any jurisdiction that a state authority may have under applicable state and federal law or limit the authority of a state commission in accordance with state and federal law. The CPUC comments highlighted that the majority of energy storage assets that would be covered by these accounting rules are likely to be financed pursuant to state jurisdictional procurement authority.

FERC-regulated public utilities will be required to include in their regular FERC reports energy storage assets and services of 10,000 KW or greater. That is the current threshold for assets and services that public utilities must include in their reports to FERC. Some commenters urged FERC to set the threshold for reporting and accounting on energy storage assets or services at 20,000 kW. FERC declined to adopt the higher threshold for energy storage, concluding that to do so would be unduly discriminatory compared to conventional utility assets, and that compliance with the lower reporting and accounting threshold should not be a burden for the reporting public utilities.

Encouraging energy storage as a resource that may enhance power system operations, increase efficiency and reduce costs is of significant interest to FERC. More rules and policies may emerge in future FERC proceedings. For example, FERC has expressly cited the emergence of electric storage technologies as a policy driver for discussion in its forthcoming conferences that will examine how current centralized electric capacity market rules and structures in the Northeast and Mid-Atlantic regions are supporting the procurement and retention of resources necessary to meet future reliability and operational needs. In addition, FERC is currently considering energy storage in connection with proposed changes to its rules that govern the interconnection of small electric generating facilities (i.e., less than 20,000 kW) and the Standard Small Generator Interconnection Agreement (SGIA) that transmission providers must offer to small generators for interconnection with FERC-jurisdictional facilities. One of the issues FERC asked commenters to consider was "[w]hether storage devices could fall within the definition of Small Generating Facility" in the interconnection rules and the SGIA. Currently, the SGIA and the interconnection rules for small generators define a Small Generating Facility as a "device that produces[s] electricity…." Energy storage companies have urged FERC in their comments to make its small generator interconnection procedures and the SGIA explicitly available to energy storage, whether the energy storage technology "produces" electricity or receives, stores and delivers electricity back to the grid.

The Final Rule becomes effective on November 27, 2013 and can be found here: http://www.gpo.gov/fdsys/pkg/FR-2013-07-30/pdf/2013-17746.pdf.

CPUC

On September 3, 2013, the CPUC issued a Proposed Decision to adopt energy storage procurement requirements for the state's three largest investor-owned utilities, retail electric suppliers and its community aggregator. The CPUC is currently scheduled to vote on the proposal at its October 3, 2013 business meeting. If the CPUC adopts the energy storage procurement proposal, the state's investor-owned utilities would begin procuring energy storage assets or services in 2014.

The Proposed Decision can be found here: California Public Utilities Commission, Proposed Decision of Commissioner Peterman Adopting Energy Storage Procurement Framework and Design Program (2013), http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M076/K387/76387254.PDF.

Please do not hesitate to contact us about any of the FERC or CPUC matters discussed in this client alert or if you would like further information about FERC or state regulatory policies, proposals or rules that may affect opportunities for energy storage in electricity markets.

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