



FERC Schedules Technical Conference on the Interaction Between State Energy Policies and FERC-Regulated Wholesale Electricity Markets in Eastern RTOs/ISOs

Mar 10, 2017

Reading Time : **3 min**

By: Scott Daniel Johnson, Shawn Whites (Paralegal)

In a notice announcing the conference, Commission staff states that the primary goals of the conference are to foster discussion of potential regional solutions to reconcile competitive wholesale market frameworks with states' increasing interest in supporting particular generation resources or resource attributes and enhance Commission staff's understanding of the "potential for sustainable wholesale market designs that both preserve the benefits of regional markets and respect state policies." While the technical conference itself likely will not have any immediate effect on resolving tensions between state policies and FERC-regulated wholesale markets, it could be an incubator for new ideas or compromises on changes to market designs or state policy approaches that could reduce those tensions going forward.

As we reported [earlier](#), ISO-NE and NYISO stakeholders are already assessing whether changes to their wholesale electricity markets are necessary to better align them with state and regional de-carbonization goals, with carbon pricing serving as one potential approach. Similar PJM stakeholder discussions are also under way, including through PJM's Grid 20/20 initiative. Moreover, numerous litigated proceedings at FERC (including complaints and tariff filings) have raised issues regarding the impact of state policy initiatives on wholesale market prices and competition. These stakeholder forums and FERC proceedings all seek to address the increasingly common state efforts to implement energy policies that opponents believe interfere with FERC's exclusive jurisdiction over regional wholesale electricity markets. Such state policies prioritize specific types of generation resources or resource attributes (e.g., through so-called "out of market" or "around market" subsidies, credits or other incentives) in

an effort to preserve in-state jobs or meet environmental mandates or clean energy targets. This, opponents argue, can cause price suppression and unfairly diminish the competitiveness of other resources in the market—a concern that led PJM to devise an alternative to its Minimum Offer Price Rule, which we detailed [here](#).

The technical conference is a further signal of the strong desire of Acting Chair Cheryl LaFleur and Commissioner Colette Honorable to find ways to ensure that wholesale market designs can work in tandem with state policy goals. But Commission staff’s notice, and the separate [statement of Commissioner Honorable](#) issued alongside it, recognize that this is no easy task. Commission staff notes that, because wholesale electricity markets are designed to “select resources based on principles of operational and economic efficiency without specific regard to resource type,” state-supported generation leaves open the question as to how the markets can both select resources consistent with state policies and also preserve the principles of resource neutrality, reliability and cost-competitiveness. Staff states that this task is especially important in states that have also restructured their retail electricity markets (i.e., the majority of states in the ISO-NE, NYISO and PJM regions) in which particular classes of resources could reasonably participate in both markets.

The technical conference will also no doubt wade into the ever-increasing debate regarding federal and state jurisdictional boundaries, and whether state policies aimed at subsidizing generation that participates in wholesale electricity markets violate constitutional limits. Complaints filed in federal district courts challenging subsidies for nuclear generators enacted in Illinois and New York, and the Supreme Court’s [invalidation](#) last year of a Maryland subsidy program (and refusal to hear challenges to a lower court decision invalidating a similar New Jersey subsidy program), all address such issues. Additional state efforts will likely lead to more challenges.

¹ Specifically, ISO New England, Inc. (ISO-NE); New York Independent System Operator, Inc. (NYISO); and PJM Interconnection, L.L.C. (PJM).

Categories

Energy Regulation, Markets & Enforcement

Transmission

Lobbying & Public Policy

North America

© 2025 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and other associated entities under which the Akin Gump network operates worldwide, please see our Legal Notices page.