

solutions must be region-specific, while providing substantial deference to regional choices;

- The 60-day time frame proposed in the NOPR for decision by the Commission is unrealistic, and fails to provide a basis for meaningful discussion of the issues implicated by the proposal. LPPC does not support the view that the issues the NOPR proposes to address must be decided by this winter, or the implicit corollary that the proposed rule would provide a necessary remedy in the same time frame.

LPPC supports the comments filed contemporaneously by the American Public Power Association (“APPA”), to which LPPC members belong. LPPC agrees with APPA that FERC has the authority to reject the NOPR and that it should do so.

LPPC’s narrative comments responding to the NOPR appear in Section III, below, and its responses to certain of the specific questions posed by FERC Staff are provided in Section IV.

II. LPPC AND ITS INTEREST IN THIS PROCEEDING

LPPC is an association of the 26 largest state-owned and municipal utilities in the nation and represents the larger, asset-owning members of the public power sector.² LPPC members are also members of APPA and own approximately 90% of the transmission assets owned by non-federal public power entities.

² LPPC’s members are: Austin Energy, Chelan County Public Utility District No. 1, Clark Public Utilities, Colorado Springs Utilities, CPS Energy (San Antonio), Electricities of North Carolina, Grand River Dam Authority, Grant County Public Utility District, IID Energy (Imperial Irrigation District), JEA (Jacksonville, FL), Long Island Power Authority, Los Angeles Department of Water and Power, Lower Colorado River Authority, MEAG Power Nebraska Public Power District, New York Power Authority, Omaha Public Power District, Orlando Utilities Commission, Platte River Power Authority, Puerto Rico Electric Power Authority, Sacramento Municipal Utility District, Salt River Project, Santee Cooper, Seattle City Light, Snohomish County Public Utility District No. 1, and Tacoma Public Utilities.

LPPC members are located throughout the nation, both within and outside Regional Transmission Organization and Independent System Operator (“RTO/ISO”) boundaries. Many LPPC members outside RTO boundaries actively trade in RTO markets over interties, and many have committed to join the California Independent System Operator’s (“CAISO”) Western Energy Imbalance Market in the near future, while others are contemplating such membership. Certain LPPC members are exploring Southwest Power Pool (“SPP”) membership through the activities of the Mountain West Transmission Group. Others are in ERCOT, where market policy is outside FERC jurisdiction and therefore the reach of the NOPR. Still others are in regions where robust bilateral markets outside of the reach of the NOPR meet customers’ needs.

LPPC recognizes that with the version of the NOPR published in the Federal Register on October 10, DOE narrowed the scope of the proposal to RTOs/ISOs with capacity markets. That narrower scope continues to include LPPC members, and LPPC comments with them in mind. LPPC is also moved to comment because it remains unclear how much more broadly the NOPR may ultimately be applied if it is adopted.

III. COMMENTS

A. If FERC Pursues this Inquiry, It Should Focus on the Reliability Attributes of Critical Generating Resources.

The NOPR’s exclusive focus on financial support for generating resources with 90-day fuel supply on site presumes a problem to be solved and a conclusion regarding needed resources in organized markets. Rather than beginning with a pre-determination of the resources needed to support resilience and reliability in organized markets, FERC should proceed by (1) developing working definitions and metrics for “resilience” and “reliability”; (2) defining the generating resource attributes that are needed to meet those needs; and (3) examining on a regional basis

whether remedies are needed, what they might be, and in what time frame. This inquiry is appropriately limited to the organized markets that are the focus of the NOPR.

There is no settled definition for the term “resilience” or a clear conceptual distinction between this term and the more general topic of grid reliability. Though the NOPR considers the topics together without distinction, they do have distinct connotations, and these distinctions call for a focus upon resources with different characteristics.

The term “resilience” is often used generally to refer to the ability of a system to recover from high impact events, and sometimes to refer to the ability of the grid to resist interruption. A few available definitions are as follows:

- PJM Interconnection, PJM’s Evolving Resource Mix and System Reliability, 5 n.16 (Mar. 30, 2017) (“Resilience, in the context of the bulk electric system, relates to preparing for, operating through and recovering from a high-impact, low-frequency event. Resilience is remaining reliable even during these events.”),³
- The Nat’l Assoc. of Regulatory Util. Comm’rs, Resilience in Regulated Utilities, 14 (Nov. 2013) (“resilience can be defined as the robustness and recovery characteristics of utility infrastructure and operations, which avoid or minimize interruptions of service during an extraordinary and hazardous event.”),⁴
- North American Electric Reliability Corporation (“NERC”), Severe Impact Resilience: Considerations and Recommendations, 11-13 (2012) (“Resilience’ is generally defined as the ability to recover or adjust to misfortune or change.”).⁵

³ <http://www.pjm.com/~media/library/reports-notice/special-reports/20170330-pjms-evolving-resource-mix-and-system-reliability.ashx>.

⁴ <https://pubs.naruc.org/pub/536F07E4-2354-D714-5153-7A80198A436D>.

⁵ www.nerc.com/docs/oc/sirtf/SIRTF_Final_May_9_2012-Board_Accepted.pdf. In its report, NERC cites the ASIS SPC.1-2009 standard on Organizational Resilience, which defines “resilience” as “the ability of an organization to resist being affected by an event or the ability to return to an acceptable level of performance in an acceptable period of time after being affected by an event.” NERC Report at 11. NERC further cites to a National Infrastructure Advisory Council Study Group Report, defining “infrastructure resilience” as “the ability to reduce the magnitude and/or duration of disruptive events. The effectiveness of a resilient infrastructure or enterprise depends upon its ability to anticipate, absorb, adapt to, and/or rapidly recover from a potentially disruptive event.” NERC Report at 12-13, *citing* NIAC Study Group, A Framework for Establishing Critical Infrastructure Resilience Goals (Oct. 2010), available at <https://www.dhs.gov/sites/default/files/publications/niac-framework-establishing-resilience-goals-final-report-10-19-10-508.pdf>.

Distinct from this emphasis on hardened assets and response to calamity, the discussion of “essential reliability services,” emphasized in NERC’s May 9, 2017 Synopsis of Reliability Assessments (“NERC Synopsis”), sent to Secretary Perry and cited in the NOPR,⁶ invokes a different set of generation resource characteristics, including frequency and voltage support, ramping and resource flexibility that are critical in providing a stable grid and integrating intermittent resources.⁷

These definitions and distinctions are important, and they are critical to defining and quantifying the reliability attributes of needed generating resources. The list of generating resources that may possess these reliability attributes is certainly longer than coal and nuclear facilities with a 90-day fuel supply. Both NERC’s and DOE’s work in this area – indeed the very work cited in the NOPR – suggest a portfolio of resources that are candidates for providing key reliability attributes. That list potentially includes: (1) hydroelectric facilities; (2) natural gas-fired generation with pipeline support or liquid fuel storage; (3) certain storage facilities (pump storage, e.g.); and (4) geothermal resources and biomass resources.⁸ There may be others, and some specific plants in these categories may not qualify. But all of this involves a discussion that FERC has not yet had with the industry and for which the NOPR does not provide.

⁶ NOPR, 82 Fed. Reg. 46,940, 46,943, n.16 (citing NERC Synopsis at 1, *available at* https://www.eenews.net/assets/2017/10/03/document_ew_01.pdf).

⁷ NERC Synopsis at 3.

⁸ *See* NERC Synopsis at 2-4 (citing the reliability characteristics of hydro-electric resources, natural gas-fired generation with dual fuel use and firm pipeline transportation, electric storage facilities); *see also* DOE Staff Report to the Secretary on Electricity Markets and Reliability, at 5 (Aug. 2017) (citing reliability characteristics afforded by natural gas-fired facilities, hydroelectric generation, geothermal resources and biomass power.), *available at* https://energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf.

B. The Commission Should Focus its Analysis Regionally, Giving Deference to Regionally-Based Solutions.

While NERC's Reliability Assessment and the DOE Staff Report upon which the NOPR relies make the point that the retirements of large centrally located coal and nuclear facilities pose a challenge to the grid, the studies also make it clear that the situation is very different in different parts of the nation. These substantially different circumstances reflect, among other things: (1) varied generation portfolios around the nation, including substantial difference in the prevalence of intermittent resources; (2) differences in the availability of transmission, firm natural gas transportation and fuel resource options; and (3) varied projections of the availability of fuel-secure generating stations.

With this in mind, should the Commission continue to consider further inquiry into the need for rate mechanisms to support generation demonstrating certain reliability attributes, LPPC urges it look at these issues on a regional basis in the RTOs/ISOs to which the NOPR would apply, and to allow for the real possibility that regional needs will vary, as will appropriate remedies. In judging such needs and remedies, LPPC urges the Commission to afford substantial deference to the RTOs and ISOs and their constituent transmission owners and operators responsible for providing reliable service in each organized market to which the NOPR pertains.

C. The 60-day Time Frame Directed by DOE for Decision on the NOPR is Far Too Short to Consider the Related Issues Seriously.

The list of issues raised by the NOPR is far too large, complicated and serious to be given any reasonable consideration in 60 days. The Secretary of DOE is entitled under section 403(b) of The Department of Energy Organization Act to direct FERC to consider and take final action on a rule proposed by the Secretary within "such reasonable time limits as may be set by the Secretary." Nonetheless, the same section of the Act stipulates that FERC "shall have exclusive

jurisdiction with respect to any proposal” made by the Secretary. Because the time frame established by the Secretary is far from adequate to enable FERC to make a reasonable judgment on the proposal, LPPC urges the agency to exercise its exclusive authority to reject it. Should the Commission choose to continue to consider the issues raised by the NOPR in the context of a formal proceeding, it is free to initiate a new rulemaking, subject to a schedule that provides the industry a reasonable time within which to marshal the support and information needed to participate meaningfully, while providing the agency sufficient time to process the input.⁹

The timeframe set by DOE for the Commission to resolve the NOPR is out of line by orders of magnitude with the schedules under which FERC has considered issues of similar consequence in the past. Preceding the issuance of Order No. 890,¹⁰ for example, the Commission began the proceeding with two sequenced Notices of Inquiry in May and September of 2005,¹¹ followed by a proposed rule issued one year later,¹² a technical conference,¹³ and an ultimate decision in February of 2007. The Commission followed a similar approach in connection with Order No. 1000.¹⁴ The proposed rule that preceded Order No. 1000 was issued

⁹ The Commission has broad discretion (“at the high end of the range”) in determining whether to proceed by rulemaking. *EMR Network v. FCC*, 391 F.3d 269, 272 (D.C. Cir. 2004) (citing *American Horse Protection Ass’n, Inc. v. Lyng*, 812 F.2d 1, 4 (D.C. Cir. 1987); *WWHT, Inc. v. FCC*, 656 F.2d 807, 818 (D.C. Cir. 1981)).

¹⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹¹ *Preventing Undue Discrimination and Preference in Transmission Services*, Notice of Inquiry, FERC Statutes and Regulations ¶35,553 (2005) (NOI) (September 16, 2005); *Information Requirements for Available Transfer Capability*, Notice of Inquiry, FERC Statutes and Regulations ¶35,549 (2005) (ATC NOI). (May 27, 2005).

¹² *Preventing Undue Discrimination and Preference in Transmission Service*, Notice of Proposed Rulemaking, 151 FERC ¶ 61,211 (May 19, 2006), 71 *Fed. Reg.* 32,636 (June 6, 2006).

¹³ *Preventing Undue Discrimination and Preference in Transmission Service*, Notice of Technical Conference, Docket No. RM05-25-000 (Sept. 7, 2006); Order No. 890 at P 65.

¹⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, P 22-23 (2011), *order on reh’g and clarif.*, Order No. 1000-A, 139 FERC ¶ 61,132; *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

in June 2010,¹⁵ and the Commission ultimately issued Order No. 1000 in July 2011 – over a year after issuing its proposed rule, and over a year and a half from issuance of FERC’s initial request for comments.¹⁶

The NOPR does not make the case for an emergency calling for immediate action by this winter heating season, as would be required if processes ordinarily relied upon to reach a reasoned decision are to be given short shrift. Though the DOE and NERC studies on which the NOPR relies point to a significant level of central generating station retirements, those reports do not suggest an emergency this winter, but instead call for further inquiry and action over the next several years. Nor does DOE make the case that the remedy proposed in this docket would halt the decline in resources this very winter.

In order to consider reasonably the range of issues implicated by the NOPR, and in light of DOE’s direction that FERC must issue a final decision by December 11, the Commission should sunset the NOPR and initiate a new rulemaking proceeding, if one is thought needed in order to build an adequate record for substantive decision.

D. If the Commission Proceeds with the NOPR, All Resources Offering Reliability Attributes Should be Eligible for Special Pricing.

Should the Commission choose to proceed with the NOPR, and ultimately determine that a pricing incentive is needed to keep certain units with on-site fuel supply in service in order to maintain reliability, it must ensure that any such incentive is made available to *all* resources offering those reliability attributes to an RTO/ISO, regardless of fuel type or whether such a resource is subject to cost of service pricing. It would be discriminatory for FERC to exclude from the proposed special pricing treatment any resources which offer the same reliability

¹⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, FERC Statutes and Regulations ¶32,660 (2010), 131 FERC ¶61,253 (2010).

¹⁶ See Order No. 1000 at PP 22-24.

attributes as do coal and nuclear facilities with a 90-day fuel supply. The Commission has held that it has an obligation to treat utility suppliers on a non-discriminatory basis.¹⁷

Non-discriminatory treatment calls for the Commission to reject proposed section 35.38(g)(12)(i)(E), which excludes facilities “subject to cost of service rate regulation by any state or local regulatory authority.” If facilities provide reliability attributes to the grid, there is no reasonable ground to provide reduced compensation for their contribution solely because some portion of their cost is borne in cost of service rates. It would be discriminatory for the Commission to require that retail customer served by such generating units bear the cost of these facilities alone, when they provide reliability benefits to the grid.

IV. RESPONSES TO SPECIFIC QUESTIONS PREPARED BY FERC STAFF

LPPC provides the following responses to certain of the specific questions posed by FERC staff in its request for information.¹⁸ The answers to those questions LPPC addresses reflect the narrative input above.¹⁹

A. Need for Reform

1. What is resilience, how is it measured, and how is it different from reliability? What levels of resilience and reliability are appropriate? How are reliability and resilience valued, or not valued, inside RTOs/ISOs? Do RTO/ISO energy and/or capacity markets properly value reliability and resilience? What resources can address reliability and resilience, and in what ways?

There is no settled definition for the term “resilience” or a clear conceptual distinction between this term and the more general topic of grid reliability. Though the NOPR considers the topics together without distinction, they have distinct connotations, and these distinctions call for a focus upon resources with different characteristics.

¹⁷ See, e.g., Order No. 1000 at PP 253-54, 256.

¹⁸ *Grid Reliability and Resilience Pricing*, FERC Staff Request for Information (Oct. 4, 2017).

¹⁹ Though LPPC does not respond to all of Staff’s questions, they are all copied below for the sake of completeness.

As noted above in Section III, the term “resilience” is often used generally to refer to the ability of a system to recover from high impact events, and sometimes to refer to the ability of the grid to resist interruption. A few available definitions are as follows:

- PJM Interconnection, PJM’s Evolving Resource Mix and System Reliability, 5 n.16 (Mar. 30, 2017) (“Resilience, in the context of the bulk electric system, relates to preparing for, operating through and recovering from a high-impact, low-frequency event. Resilience is remaining reliable even during these events.”),²⁰
- The Nat’l Assoc. of Regulatory Util. Comm’rs, Resilience in Regulated Utilities, 14 (Nov. 2013) (“resilience can be defined as the robustness and recovery characteristics of utility infrastructure and operations, which avoid or minimize interruptions of service during an extraordinary and hazardous event.”),²¹
- North American Electric Reliability Corporation (“NERC”), Severe Impact Resilience: Considerations and Recommendations, 11-13 (2012) (“‘Resilience’ is generally defined as the ability to recover or adjust to misfortune or change.”).²²

Distinct from this emphasis on hardened assets and response to calamity, the discussion of “essential reliability services,” emphasized in NERC’s May 9, 2017 Reliability Assessment, sent to Secretary Perry and cited in the NOPR at 46,943, n.16,²³ invokes a different set of generation resource characteristics, including frequency and voltage support, ramping and

²⁰ <http://www.pjm.com/~media/library/reports-notice/special-reports/20170330-pjms-evolving-resource-mix-and-system-reliability.ashx>.

²¹ <https://pubs.naruc.org/pub/536F07E4-2354-D714-5153-7A80198A436D>.

²² www.nerc.com/docs/oc/sirtf/SIRTF_Final_May_9_2012-Board_Accepted.pdf. In its report, NERC cites the ASIS SPC.1-2009 standard on Organizational Resilience, which defines “resilience” as “the ability of an organization to resist being affected by an event or the ability to return to an acceptable level of performance in an acceptable period of time after being affected by an event.” NERC Report at 11. NERC further cites to a National Infrastructure Advisory Council Study Group Report, defining “infrastructure resilience” as “the ability to reduce the magnitude and/or duration of disruptive events. The effectiveness of a resilient infrastructure or enterprise depends upon its ability to anticipate, absorb, adapt to, and/or rapidly recover from a potentially disruptive event.” NERC Report at 12-13, *citing* NIAC Study Group, A Framework for Establishing Critical Infrastructure Resilience Goals (Oct. 2010), *available at* <https://www.dhs.gov/sites/default/files/publications/niac-framework-establishing-resilience-goals-final-report-10-19-10-508.pdf>.

²³ NOPR, 82 Fed. Reg. 46,940, 46,943, n.16 (citing NERC Synopsis at 1, *available at* https://www.eenews.net/assets/2017/10/03/document_ew_01.pdf).

resource flexibility that are critical in providing a stable grid and integrating intermittent resources.²⁴

These definitions and distinctions are important, and they are critical to defining and quantifying the reliability attributes of needed generating resources. The list of generating resources that may possess these reliability attributes is certainly longer than coal and nuclear facilities with a 90-day fuel supply. Both NERC's and DOE's work in this area – indeed the very work cited in the NOPR – suggests a portfolio of resources that are candidates for providing key reliability attributes. That list potentially includes: (1) hydroelectric facilities; (2) natural gas-fired generation with pipeline support or on-site gas storage; (3) certain storage facilities (pump storage, e.g.); and (4) geothermal resources and biomass resources. There may be others, and some specific plants in these categories may not qualify, but all of that involves a discussion that FERC has yet to have with the industry.

2. The proposed rule references the events of the 2014 Polar Vortex, citing the event as an example of the need for the proposed reform. Do commenters agree? Were the changes both operationally and to the RTO/ISO markets in response to these events effective in addressing issues identified during the 2014 Polar Vortex?
3. The proposed rule also references the impacts of other extreme weather events, specifically hurricanes Irma, Harvey, Maria, and superstorm Sandy. Do commenters agree with the proposed rule's characterization of these events? For extreme events like hurricanes, earthquakes, terrorist attacks, or geomagnetic disturbances, what impact would the proposed rule have on the time required for system restoration, particularly if there is associated severe damage to the transmission or distribution system?
4. The proposed rule references the retirement of coal and nuclear resources and a concern from Congress about the potential further loss of valuable generation resources as a basis for action. What impact has the retirement of these resources had on reliability and resilience in RTOs/ISOs to date? What impact on reliability and resilience in RTOs/ISOs can be anticipated under current market constructs?

²⁴ NERC Synopsis at 3.

5. Is fuel diversity within a region or market itself important for resilience? If so, has the changing resource mix had a measurable impact on fuel diversity, or on resilience and reliability?

B. Eligibility

i. General Eligibility Questions

1. In determining eligibility for compensation under the proposed rule, should there be a demonstration of a specific need for particular services? What should be the appropriate triggering and termination provisions for compensation under the proposed rule?

Yes, and this determination should be made on a regional basis in the markets to which the NOPR pertains. While NERC's Reliability Assessment and the DOE Staff Report,²⁵ upon which the NOPR relies, make the point that the retirements of large centrally located coal and nuclear facilities poses a challenge to the grid, the studies also make it clear that the situation is very different in different parts of the nation. These substantially different circumstances reflect, among other things: (1) varied generation portfolios around the nation, including substantial difference in the prevalence of intermittent resources; (2) differences in the availability of transmission, firm natural gas transportation and fuel resource options; and (3) varied projections of the availability of fuel-secure generating stations.

With this in mind, should the Commission continue to consider further inquiry into the need for rate mechanisms to support generation demonstrating certain reliability attributes, LPPC urges it look at these issues on a regional basis in each RTO/ISO to which the NOPR applies, and to allow for the real possibility that regional needs will vary, as will appropriate remedies. In judging such needs and remedies, LPPC urges the Commission to afford substantial deference

²⁵ DOE Staff Report to the Secretary on Electricity Markets and Reliability, at 5 (Aug. 2017), *available at* https://energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf

to the RTOs and ISOs and their constituent transmission owners and operators responsible for providing reliable service in each organized market to which the NOPR pertains.

2. As the proposed rule focuses on preventing premature retirements, should a final rule be limited to existing units or should new resources also be eligible for cost-recovery? Should it also include repowering of previously retired units? Alternatively, should there be a minimum number of MW or a maximum number of MW for resources receiving cost-of service payments for resilience services? If so, how should RTOs/ISOs determine this MW amount? Should this also include locational and seasonal requirements for eligible resources?
3. Are there other technical characteristics that should be required for an eligible unit besides on-site fuel capability? If so, what are those technical characteristics and what benefits do they provide? What types of resources can meet the proposed eligibility criteria of the proposed rule? What proportion of total current generating capacity does this represent?
4. If technically capable of sustaining output for a sufficient duration (and meeting other relevant requirements), should resources such as hydroelectric, geothermal, dual-fuel with adequate on-site storage, generating units with firm natural gas contracts, or energy storage (each of which might have a demonstrable store of energy to draw upon to sustain an electrical output, if not necessarily fuel) also be eligible? Why or why not? If technical capability is the appropriate criterion for eligibility, what specific technical capability should be required to be eligible?

The NOPR's exclusive focus on financial support for coal and nuclear resources with a 90-day fuel supply presumes a problem to be solved and an unsupported conclusion regarding needed resources. Rather than beginning with a pre-determination of the resources needed to support resilience and reliability in organized markets, FERC should proceed by (1) developing working definitions and metrics for "resilience" and "reliability"; (2) defining the generating resource attributes that are needed to meet those needs; and (3) examining on a regional basis whether remedies are needed, what they might be, and in what time frame.

Once appropriate definitions and metrics for resilience and reliability are defined, and the necessary reliability attributes of needed generating resources established, it may be that an array of generating resources are eligible. The list of generating resources that may possess these reliability attributes is certainly longer than coal and nuclear facilities with a 90-day fuel supply.

Both NERC's and DOE's work in this area – indeed the very work cited in the NOPR – suggests a portfolio of resources that are candidates for providing key reliability attributes. That list potentially includes: (1) hydroelectric facilities; (2) natural gas-fired generation with pipeline support or on-site gas storage; (3) certain storage facilities (pump storage, e.g.); and (4) geothermal resources and biomass resources. There may be others, and some specific plants in these categories may not qualify, but all of that involves a discussion that FERC has yet to have with the industry.

5. The proposed rule would require that eligible resources be able to provide essential energy and ancillary reliability services and includes a non-exhaustive list of services. What specific services should a resource be required to provide in order to be eligible?
6. The proposed rule would limit eligibility to resources that are not subject to cost of service rate regulation by any state or local regulatory authority. How should the Commission and/or RTOs/ISOs determine which resources satisfy this eligibility requirement?

Should the Commission choose to proceed with the NOPR, and ultimately determine that a pricing incentive is needed to keep certain units with on-site fuel supply in service in order to maintain reliability, it must ensure that any such incentive is made available to *all* resources offering those reliability attributes to an RTO/ISO, regardless of fuel type or whether such a resource is subject to cost of service pricing. It would be discriminatory for FERC to exclude from the proposed special pricing treatment any resources which offer the same reliability attributes as do coal and nuclear facilities with a 90-day fuel supply. The Commission has held that it has an obligation to treat utility suppliers on a non-discriminatory basis.²⁶

Non-discriminatory treatment also calls for the Commission to reject proposed section 35.38(g)(12)(i)(E), which excludes facilities “subject to cost of service rate regulation by any state or local regulatory authority.” If facilities provide reliability attributes to the grid, there is

²⁶ See, e.g., Order No. 1000 at PP 253-54, 256.

no reasonable ground to limit compensation for their contribution solely because some portion of their cost is borne in cost of service rates. It would be discriminatory for the Commission to require that retail customer served by such generating units bear the cost of these facilities alone, when they provide reliability benefits to the grid.

ii. 90-day Requirement

1. The proposed rule defines eligible resources as having a 90-day fuel supply. How should the quantity of a given resource's 90 days of fuel be determined? For example, should each resource be required to have sufficient fuel for 24 hours/day and sustained output at its upper operating limit for the entire 90-day period? Would there be any need for regional differences in this requirement?
2. Is there a direct correlation between the quantity of on-site fuel and a given level of resilience or reliability? Please provide any pertinent analyses or studies. If there is such a correlation, is 90 days of on-site fuel necessary and sufficient to address outages and adverse events? Or is some other duration more appropriate?

iii. Fuel Supply Requirement

1. The proposed rule requires that resources must be in compliance with all applicable environmental regulations. How should environmental regulations be considered when determining eligibility? For example, if a unit that was capable of keeping 90-days of fuel on-site was subject to emission limits that would prevent it from running at its upper operating limit for 90 days, should that unit be eligible under this proposed rule?
2. As the proposed rule references the need for resilience due to extreme weather events, including hurricanes, should there be any other eligibility criteria for the resource or fuel supply (e.g., storm hardening)? What considerations should be given to the vulnerability of 90-day fuel supplies to natural or man-made disasters such as extreme cold temperatures, icing, flooding conditions, etc. that may impact the on-site fuel supply?
3. Does the vulnerability or non-availability of on-site fuel supplies vary depending upon fuel type, location, region, or other factors?

C. Implementation

1. How would eligible resources receiving cost of service compensation under the proposed rule be committed and dispatched in the energy market?
2. How would eligible resources receiving cost based compensation under the proposed rule be considered in the clearing and pricing of centralized capacity markets?

3. What is the expected impact of this proposed rule on entry of new generation, reserve margins, retirement of existing resources, and on resource mix over time?
4. Should there be performance requirements for resources receiving compensation under the proposed rule? If so, what should the performance requirement be, and how should it be measured, or tested? What should be the consequence of not meeting the performance requirement?
5. Should there be any restrictions on alternating between market-based and cost-based compensation?

D. Rates

1. The proposed rule lists compensable costs that should be included in the rate as operating and fuel expenses, costs of capital and debt, and a fair return on equity and investment. Are there other costs that would be appropriate to be included in the rate? Would any of the listed costs be inappropriate for inclusion?
2. Should wholesale market revenues offset any cost of service payments stemming from the proposed rule?
3. How should RTOs/ISOs allocate the cost of the proposed rule to market participants?
4. How would the requirement that eligible resources receive full cost recovery be reconciled with the requirement, as stated in the regulatory text, that resources be dispatched during grid operations?

E. Other

1. The proposed requirement for submitting a compliance filing is 15 days after the effective date of any Final Rule in this proceeding, with the tariff changes to take effect 15 days after the compliance filings are due. Please comment on the proposed timing, both to develop a mechanism for implementing the required changes and to implement those changes, including whether or not such changes could be developed and implemented within that timeframe.
2. Please comment on the proposed rule's estimated burden of \$291,042 per respondent RTO/ISO, to develop and implement new market rules as proposed, including the potential software upgrades required to do so.
3. Please describe any alternative approaches that could be taken to accomplish the stated goals of the proposed rule.
4. What impact would the proposed rule have on consumers?
5. The Commission may take notice of relevant public information, including information in other Commission proceedings. If a commenter views information in another

Commission proceeding as relevant to the proposed rule, please identify that information and explain how it is relevant to the proposed rule. Such information may include a filing previously submitted by the commenter.

V. CONCLUSION

For the foregoing reasons, LPPC asks that the Commission act to reject the NOPR, and take any subsequent action, if needed, consistent with these comments.

Respectfully submitted,

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