

FERC Orders Advance Grid Operators' Energy Storage Plans

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On Oct. 17, the Federal Energy Regulatory Commission gave PJM Interconnection LLC and Southwest Power Pool the green light to implement their energy storage proposals to comply with FERC's Order No. 841. FERC found that these proposals reduce barriers to market participation by storage resources, by allowing them to be compensated fairly when delivering various and unique operational capabilities and services.

But stay tuned: While these orders are important progress, integration of storage resources into the wholesale market will be complex. Indeed, FERC also ordered PJM and SPP to make compliance filings to include specific rules for minimum run-time requirements in their tariffs.

In February 2018, Order No. 841 addressed the participation of electric storage resources in the capacity, energy and ancillary service markets operated by organized wholesale power markets to integrate more effectively electric storage resources, enhance competition and help ensure that those markets produce just and reasonable rates. FERC required each regional transmission organization, or RTO, and independent system operator, or ISO, to revise their tariffs to establish a participation model consisting of market rules that recognize the physical and operational characteristics of electric storage resources and facilitate their participation in their power markets.

SPP and PJM filed their draft tariff provisions in compliance with Order No. 841 in December 2018. In its Oct. 17 orders, FERC found that both SPP's and PJM's proposals generally enable electric storage resources to provide all services they are capable of providing; allow electric storage resources to be compensated for those services in the same manner as other resources; and appropriately recognize the unique physical and operational characteristics of electric storage resources.[1]

FERC's orders highlight a key operational issue that intervenors and commenters focused on in the proceeding: the minimum run time requirement for energy storage resources. FERC determined that SPP's and PJM's tariffs generally satisfy Order No. 841's directive with respect to allowing electric storage resources to de-rate their capacity to meet minimum run time requirements.

However, FERC also initiated Federal Power Act Section 206 proceedings in which both SPP and PJM must submit compliance filings to include specific rules for minimum run time requirements in their tariffs — not just memorialize them in business practice manuals. FERC directed such action by finding that minimum run time requirements affect rates, terms and conditions of service and, therefore, warrant tariff provisions.



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For PJM, the FPA Section 206 proceeding will also establish a paper hearing procedure to investigate whether PJM's minimum run time rules and procedures are unjust, unreasonable, unduly discriminatory or preferential as applied to capacity storage resources. FERC will examine whether PJM's proposal to apply a 10-hour minimum run time requirement to capacity storage resources, while only applying a four-hour minimum run time requirement to intermittent (wind/solar) resources, is unduly discriminatory or preferential.

Energy storage advocates have criticized high-duration requirements as unnecessary and unduly restrictive. They have argued that, among other things, such requirements prohibit various types of battery energy storage systems from participating in the markets, or favor certain storage facilities over others (e.g., pumped hydro). This issue demonstrates the challenge that FERC, developers and grid operators have faced in balancing the need to integrate energy storage resources into the markets, while maintaining grid reliability at a time when energy storage technology is evolving.

Both PJM's and SPP's tariff changes must be filed no later than 45 days after the publication of notice in the Federal Register of the FPA Section 206 proceedings. PJM expects to implement most of its plan by Dec. 3, while participating in the separate FPA 206 proceeding. SPP expects to implement its plan in nine months, as FERC regulators approved extra time for the grid operator to implement a new settlement management system.

Although Commissioner Bernard McNamee generally concurred with the PJM and SPP orders, he reiterated his concern raised in the Order No. 841-A proceeding that FERC is exceeding its jurisdictional authority.

McNamee argued that FERC is depriving states of their ability to determine whether distribution-level energy storage resources may use distribution facilities to access the wholesale markets, thereby claiming jurisdiction over functions and assets reserved by statute to the states. Moreover, he asserted, FERC should have permitted the states to choose whether or not behind-the-meter and distribution-connected energy storage resources may participate in the wholesale markets through an opt-out provision.

In July, expressing similar concerns, associations representing utilities and state regulatory agencies sued FERC, and asked the U.S. Court of Appeals for the D.C. Circuit to overturn portions of Order No. 841.

The utilities (represented by the American Public Power Association, Edison Electric Institute and National Rural Electric Cooperative Association) and states (represented by the National Association of Regulatory Utility Commissioners) are asking the D.C. Circuit to take up two issues: (1) whether FERC exceeded its authority under the Federal Power Act in concluding that it has exclusive jurisdiction to determine whether an energy storage resource located on the distributed grid or behind a retail customer's meter may participate in wholesale markets; and (2) whether, in light of "the impact of the Order 841 on the reliability, operations, and costs of local distribution systems and retail electric service," FERC failed to act in accordance with law when it declined to give states the opportunity to opt out of wholesale market participation.

On the other hand, clean energy advocates are urging the court to uphold FERC's Order No. 841. For example, Advanced Energy Economy and the Solar Energy Industries Association filed a motion to intervene in the U.S. District Court for the District of Columbia in support of Order No. 841. This motion argues that a ruling by the court in favor of the challengers could seriously diminish the wholesale market opportunities available to energy storage resource.

Specifically, they argue that while such a ruling would most likely leave the remainder of Order

No. 841 intact, it would limit the order to only energy storage resources connected to the transmission system, leaving states or utilities able to bar from wholesale market participation the rapidly expanding set of energy storage resources connected to the distribution grid or located at customer sites behind the retail meter.

It is likely that the court will render a decision by late spring or early summer of 2020. In the meantime, Order No. 841, as well as the orders for PJM and SPP, remain in effect, along with SPP's and PJM's compliance obligations.

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[1] Southwest Power Pool Inc., 169 FERC ¶ 61,048 (2019); PJM Interconnection LLC, 169 FERC ¶ 61,049 (2019).