

CLIENT ALERT

# FERC Issues Final Rule on Participation of Electric Storage Resources in RTO/ISO Markets

February 22, 2018

## AUTHORS

Paul J. Pantano, Jr. | Sohair A. Aguirre

On February 15, 2018, the Federal Energy Regulatory Commission (“**FERC**” or “**Commission**”) issued a final order, Order No. 841, mandating that the regional transmission organizations and independent system operators (“**RTO/ISOs**”) revise their tariffs to allow participation in their markets by electric storage resources.<sup>1</sup> In addition, FERC explained that while the proposed rulemaking addressed reforms related to distributed energy resource (“**DER**”) aggregations, more information was needed for that aspect of the proposal. As a result, a separate technical conference will be held to address questions related to the participation of DER aggregations in the RTO/ISO markets.

Order No. 841 found that current RTO/ISO markets rules present barriers to participation by electric storage resources and, therefore, are unjust and unreasonable. Accordingly, Order No. 841 modifies section 35.28 of FERC’s regulations to require RTO/ISOs to establish new tariff provisions, or a “participation model,” applicable to electric storage resources. The new RTO/ISO electric storage participation models must:

- Ensure that an electric storage resource “is eligible to provide all capacity, energy, and ancillary services that it is technically capable of providing in the RTO/ISO markets;”<sup>2</sup>

<sup>1</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 162 FERC ¶ 61,127 at P 1 (2018) (“**Order No. 841**”).

<sup>2</sup> Order No. 841 at P 4.

---

## FERC Issues Final Rule on Participation of Electric Storage Resources in RTO/ISO Markets

- Ensure that an electric storage resource “can be dispatched and can set the wholesale market clearing price as both a wholesale seller and wholesale buyer consistent with existing market rules that govern when a resource can set the wholesale price;”<sup>3</sup>
- “Account for the physical and operation characteristics of electric storage resources through bidding parameters;”<sup>4</sup> and
- Include a minimum size requirement for participation that does not exceed 100 kW.<sup>5</sup>

The RTO/ISOs must file their proposed tariff changes within 270 days of the publication of Order No. 841 in the Federal Register. They will then have an additional 365 days to implement the tariff changes.<sup>6</sup>

### **Definition of Electric Storage**

The Commission revised section 35.38(b) of its regulations to define an electric storage resource as “a resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid.”<sup>7</sup> The Commission further clarified that the definition covers resources that can both receive electricity from the grid and store it and inject electricity back into the grid regardless of the medium of the storage, and regardless of the location of the storage (e.g., interstate transmission system, on a distribution system, or behind the meter).<sup>8</sup> Moreover, the Commission explained that because injecting electricity back into the grid is considered a wholesale sale, storage resources will be subject to applicable Commission regulations. For example, storage resources that inject electricity into the grid potentially will need to obtain market-based rate authority.

### **Creation of a Participation Model**

The Commission adopted regulation 35.28(g)(9)(i) to require the RTO/ISOs’ revised tariffs to provide participation models for electric storage resources that recognize the unique characteristics of these resources.<sup>9</sup> According to the Commission, Order No. 841 “strikes the appropriate balance between allowing each RTO/ISO to adopt market rules that

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at P 6.

<sup>7</sup> *Id.* at P 29.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at P 51.

---

## FERC Issues Final Rule on Participation of Electric Storage Resources in RTO/ISO Markets

complement its unique market design and providing sufficiently detailed requirements to ensure that each RTO/ISO eliminates barriers to electric storage participation in its markets.”<sup>10</sup>

### **Qualification Criteria and Eligibility**

In lieu of delineating specific qualification requirements, Order No. 841 imposes on the RTO/ISOs the responsibility for defining the criteria that an electric storage resource must meet for participation in the RTO/ISO market. These requirements, however, “must be based on the physical and operational characteristics of electric storage resources” and must not limit the type of technology employed by these resources.<sup>11</sup>

### **Participation as Supply and Demand**

Under Order No. 841, the RTO/ISO tariffs must provide for participation by electric storage resources as both supply and demand, as applicable, and must allow these resources to set the wholesale market clearing prices as both sellers and buyers.

### **What’s Next?**

The energy storage market is projected to grow rapidly over the next few years.<sup>12</sup> Market participants interested in the development of the RTO/ISO rules that will address the requirements of FERC Order No. 841 should actively participate in the RTO/ISO stakeholder process. While Order No. 841 provides significant contours for the landscape, there remain many details to be determined by the RTO/ISOs. In addition, FERC has scheduled a technical conference on DER aggregation on April 10-11, 2018. Interested parties should seek to participate on one of the seven panels at the conference and consider filing comments.

---

<sup>10</sup> *Id.* at P 53.

<sup>11</sup> *Id.* at P 61.

<sup>12</sup> See Facts and Figures, Energy Storage Association, [available here](#).

---

## FERC Issues Final Rule on Participation of Electric Storage Resources in RTO/ISO Markets

If you have any questions regarding this client alert, please contact the following attorneys or the attorney with whom you regularly work.

---

**Paul J. Pantano, Jr.**

202 303 1211

ppantano@willkie.com

**Sohair A. Aguirre**

202 303 1140

saguirre@willkie.com

Copyright © 2018 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at [www.willkie.com](http://www.willkie.com).