

Administrative Law News

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Message from the Chair

In June of this year, I will rotate off as the Chair of the Administrative Law Section and I am grateful for the honor and privilege of serving and for the fact that I was able to obtain the position after moving to an in-house counsel role at Allianz Global Assistance in 2015. I sincerely thank my colleagues and fellow Board members in the Section, with whom it is a joy and pleasure to serve. We are an active Section and have done a remarkable job of tapping Board Members who are both capable and willing. The Section has consistently delivered quality programs for our members, and the tradition continues this year.

As you are aware from targeted blast emails, the 2018 National Regulatory Conference will be held on May 17th and 18th at the College of William & Mary's Marshall-Wythe School of Law in Williamsburg, and marks the Administrative Law Section's 36th annual conference. The Conference theme is *Innovation and Regulation: Shaping the Energy of Tomorrow*, and we are excited to have FERC Commissioner Robert F. Powelson confirmed as a keynote speaker this year. Additionally, we will have great panels that will address the legal and regulatory topics of price formation, carbon pricing, natural gas markets, and renewables, as well as an ethics panel. The esteemed NRC Planning Committee – chaired this year by Elaine S. Ryan from McGuireWoods – has lined up expert panelists to explore these issues and generate thoughtful and lively debate. The NRC is seeking 7.5 to 8.5 hours of CLE credit, including two hours of ethics. The NRC is a

great opportunity for the Virginia regulatory community to socialize with regulators and other members of the Section, and all participants are invited to attend the Commissioners' reception on Thursday evening after the ethics presentation by Tom Spahn. Registration is now open and available online at www.vsb.org/site/sections/administrativelaw/nrc. I hope you will all be joining us in Williamsburg. If you would like additional information, please contact Margaret Sacks (Margaret.Sacks@scc.virginia.gov).

In addition to the National Regulatory Conference, the Section will hold its annual Brown Bag CLE lunch meeting in June. Be on the lookout for details.

Please also consider attending the Virginia State Bar Annual Meeting in Virginia Beach June 14-17. Registration is available through the VSB website.

As the year progresses, please do not hesitate to contact any of the members of our Section's Board of Governors with thoughts or ideas you may have. We are always open to suggestions about how the Section can provide value to its members and welcome your active participation. Further, we strongly encourage you to contribute to the newsletter. If you'd like to submit an article, contact our editor, Jamie Ritter (jritter@cblaw.com).

In conclusion, it has been a pleasure serving as your Chair, and I look forward to working with you again in the next year and seeing you around the "regulatory block."

-Philip R. "Duke" de Haas

Getting Back to Full Capacity: Federal Energy Regulatory Commission now with Five Members

By C. Mitch Burton, Jr.

Four new members of the Federal Energy Regulatory Commission (“FERC”) have taken the oath of office in recent months, and the FERC once again has a quorum to carry out its mission to “[a]ssist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means.”¹ In light of the recent additions, this article briefly reviews FERC quorum rules, the delegation order which permitted the agency to operate partially without a quorum, and the legal process by which members are appointed to the independent federal agency. To conclude, I briefly introduce the new Commissioners.

The FERC is established by the United States Code as an independent regulatory commission.² The significance of being an independent federal agency is somewhat obscure, but at least one author has identified a distinguishing feature to be that the members of independent agencies are insulated against presidential removal at will.³ Supreme Court Justice George Sutherland may have agreed with such a characterization, once describing the idea of an independent commission as: “a body of experts who shall gain experience by length of service – a body which shall be independent of executive authority, except in its selection, and free to exercise its judgment without the leave or hindrance of any other

official or any department of the government.”⁴

Rules pertaining to an agency quorum can be established by statutory law, or otherwise, by agency regulation or precedent. In the case of the FERC, quorum rules are established by a statutory provision providing that “a quorum for the transaction of business shall consist of at least three members present.”⁵ At full capacity, the FERC consists of five members.⁶

The FERC lost its quorum in early 2017, when former Chairman Norman C. Bay announced his resignation effective February 4, 2017. His resignation was preceded by resignations of Commissioners Tony Clark and Philip D. Moeller, and left the FERC with only two sitting members: Commissioners Cheryl LaFleur and Colette Honorable.⁷ The lack of quorum was unprecedented in FERC’s history⁸ and meant that certain business of the FERC was put on hold. The FERC cancelled its monthly open meetings and the remaining Commissioners could not vote on orders or opinions.⁹

The day before Chairman Bay resigned, the FERC issued a delegation order in anticipation of the lack of quorum that could last for an indeterminate period into the future.¹⁰ The delegation order provided the FERC’s staff with

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What Happened to Rick Perry's Proposed "Grid Resilience" Rule?

By Eric J. Wallace

Last fall, Department of Energy Secretary Rick Perry proposed a controversial grid resilience pricing rule. This article will give a quick overview of the proposal, discussing the controversy, timeline and outcome of the proposed rule.

Background

On September 28, Secretary Perry sent a letter and Notice of Proposed Rulemaking ("NOPR") to the Federal Energy Regulatory Commission ("FERC") proposing the new grid resilience rule.¹ The letter raised concerns that recent and projected coal and nuclear generating unit retirements could jeopardize grid resilience and reliability.²

Perry cited the threat posed by extreme weather events, including the 2014 Polar Vortex and Hurricanes Irma, Harvey, and Maria and Superstorm Sandy.³ He urged FERC to act to preserve "fuel-secure generation resources" needed to "keep the lights on for all Americans in times of crisis – including on-site fuel supplies" with the "ability to provide voltage support, frequency services, operating reserves, and reactive power."⁴ The first step to ensure grid resilience, according to Perry, is to prevent premature retirements of generating resources with these attributes.⁵

The Proposal and the Controversy

Perry proposed that organized wholesale energy markets establish tariffs for eligible generators to recover their "fully allocated costs and a fair return on equity."⁶ To qualify, generating units located within organized wholesale energy markets would need to be able to provide "essential energy and ancillary reliability services and have a 90-day fuel supply on site."⁷

The proposal called for a sharp departure from the current market structure, which relies on "open, wholesale competitive markets for the sale of electricity."⁸ According to a bipartisan group of former FERC Commissioners opposing the Perry NOPR, efforts to foster competitive wholesale electricity markets have been successful, providing "lower costs and better, more reliable services."⁹

Secretary Perry disagreed, raising the concern that "[d]istorted price signals" in organized energy wholesale energy markets under-value "grid reliability and resiliency benefits provided by traditional baseload resources, such as coal and nuclear."¹⁰ While stakeholders generally supported the goal of a resilient power system, critics said the proposed rule would disrupt energy markets and raise costs for customers.¹¹ Many

opponents saw Perry's proposal as an attempt to bail out coal-fired power plants and the coal industry, undermining cleaner natural gas and renewable energy sources.¹²

Here in Virginia, we are located within the footprint of the organized wholesale energy market operated by PJM Interconnection, LLC ("PJM").¹³ Responding to the proposed rule, PJM was blunt: "The DOE NOPR is a direct assault on competitive markets that [FERC] and [Regional Transmission Organizations ("RTOs")/Independent System Operators ("ISOs")] have spent years building and refining."¹⁴ PJM explained that subsidization of coal and nuclear plants provides them an anticompetitive advantage, which "distorts market prices and investment signals, significantly degrading competitive markets, and leaves in place uneconomic, aging assets that would be forced into retirement but for the subsidy."¹⁵

After receiving hundreds of sets of stakeholder comments, FERC had to decide what action to take, if any, to address the problem identified by Perry: that "organized markets do not necessarily pay generators for all the attributes they provide to the grid, including resiliency," failing to fully compensate baseload power generators.¹⁶ Following a brief discussion of the relationship between Secretary Perry and the FERC, this article will conclude with a look at FERC's decision on the NOPR and the next steps for grid resilience.

FERC's Independence from the Department of Energy

The NOPR raised the issue of the relationship between FERC, as an independent regulatory commission, and the Department of Energy.¹⁷ Does Secretary Perry have the authority to propose rules applicable to the FERC?

Section 401(d) of the Department of Energy Organization Act establishes FERC's independence, stating that "[i]n the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other party of the Department [of Energy]."¹⁸ While Secretary Perry does not have authority over the FERC, he is authorized to propose rules "of general applicability with respect to any function within the jurisdiction of the Commission."¹⁹ Secretary Perry issued the NOPR pursuant to Section 403, subsection A, of the Department of Energy Organization Act.²⁰ This statute gives Perry the authority to propose regulations applicable to organized wholesale energy

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Getting Back to Full Capacity *(continued)*

authority to act in four distinct areas:

- **Rate and other filings:** Delegated to the FERC staff authority to either (1) accept and suspend rate filings, and make them effective subject to refund and further order of the Commission, or (2) accept and suspend rate filings, make them effective subject to refund, and set them for hearing and settlement judge procedures. For initial rates or rate decreases submitted under section 205 of the FPA, for which suspension and refund protection are unavailable, FERC staff was granted authority under section 206 to institute proceedings in order to protect the interests of customers.¹¹
- **Extensions of time:** Delegated to the FERC staff authority to extend the time for action on matters where extensions are permitted by statute.¹²
- **Waiver requests:** Delegated to the FERC staff authority to take appropriate action on certain uncontested filings seeking waivers of the terms and conditions of tariffs, rate schedules and service agreements, including waivers related to capacity release and capacity market rules.¹³
- **Uncontested settlements:** Delegated to the FERC staff authority to accept settlements not contested by any party or participant, including Commission trial staff.¹⁴

Almost as soon as Chairman Bay's resignation was announced, interested parties and stakeholders began to highlight the need for action to restore a quorum. A key U.S. senator announced that she would "make it a top priority to work with President Trump and my colleagues to move nominees rapidly and to re-establish a working quorum on the Commission."¹⁵

The United States Code dictates the basic rules by which the FERC commissioners are appointed. The FERC's commissioners are appointed by the President, by and with the advice and consent of the Senate.¹⁶ The President designates one commissioner to serve as chairman.¹⁷ Each commissioner's membership to the FERC is limited to a five-year term, and any appointments to fill vacancies are subject to the remainder of such term.¹⁸ The commissioners are indeed legally insulated from removal at will, as the President can remove a sitting commissioner only in the event of

"inefficiency, neglect of duty, or malfeasance in office."¹⁹ The law requires that no more than three commissioners can be members of the same political party²⁰ – a requirement that perhaps discourages partisan decision making.

The FERC's quorum was restored in August 2017 after the U.S. Senate confirmed the nominations of Neil Chatterjee and Robert F. Powelson. The delegation order expired 14 days from reestablishment of quorum,²¹ and the FERC resumed its monthly open meetings on September 20, 2017.²² As of December 8, 2017, the FERC had five sitting members with the additional confirmations of Richard Glick and Chairman Kevin J. McIntyre. In order of their respective confirmations, below are the new FERC Commissioners along with their respective official biographies:

Commissioner Robert F. Powelson

Commissioner Robert F. Powelson was nominated to the Federal Energy Regulatory Commission by President Donald J. Trump in May 2017, and confirmed by the U.S. Senate on August 4, 2017. Commissioner Powelson came to FERC from the Pennsylvania Public Utility Commission, where he served since June 2008, and led as Chairman from February 24, 2011-May 7, 2015.

Under Commissioner Powelson's leadership, Pennsylvania ratepayers have had an active voice on issues such as nuclear power production, renewable investment, broadband deployment, infrastructure development, unaccounted-for water and cyber security. In 2011, Commissioner Powelson served on Pennsylvania's Marcellus Shale Advisory Commission, which reviewed the Commonwealth's existing statutes, regulations and policies and provided recommendations to develop a comprehensive strategic proposal for the responsible and environmentally sound development of Marcellus Shale.

Powelson is past president of the National Association of Regulatory Utility Commissioners, where he also was a member of the Board of Directors. He served as chairman of the NARUC Committee on Water and represented the Water Committee on NARUC's Task Force on Climate Policy. He was active in NARUC activities involving critical infrastructure and nuclear waste disposal. Commissioner Powelson worked very closely with NARUC leadership on aggressive pipeline safety standards with the U.S. Pipeline and Hazardous Materials Safety Administration.

Prior to joining the Pennsylvania PUC, Powelson served as president of the Chester County Chamber of Business & Industry. In 2005, he was selected by the Eisenhower

Presidential Fellows to be a U.S. fellow in Singapore and Australia. His previous employment includes service as the director of Government Relations for the Delaware County Chamber and staff assistant to former Congressman Curt Weldon.

A native of Pennsylvania, Powelson is a graduate of St. Joseph's University and received a Master of Governmental Administration degree from the University of Pennsylvania.^[23]

Commissioner Neil Chatterjee

Commissioner Chatterjee was nominated to the Federal Energy Regulatory Commission by President Donald J. Trump in May 2017 and confirmed by the U.S. Senate on August 2017. He served as Chairman from August 2017 to December 2017. Prior to joining the Commission, he was energy policy advisor to U.S. Senate Majority Leader Mitch McConnell (R-KY).

Over the years Commissioner Chatterjee has played an integral role in the passage of major energy, highway, and agriculture legislation.

Prior to serving Leader McConnell, Commissioner Chatterjee worked as a Principal in Government Relations for the National Rural Electric Cooperative Association and as an aide to House Republican Conference Chairwoman Deborah Pryce (R-OH). He began his career in Washington, D.C., with the House Committee on Ways and Means.

A native of Lexington, KY, he is a graduate of St. Lawrence University and the University of Cincinnati, College of Law. Commissioner Chatterjee is married and has three children.^[24]

Commissioner Richard Glick

Commissioner Glick was nominated to the Federal Energy Regulatory Commission by President Donald J. Trump in August 2017 and confirmed by the U.S. Senate on November 2, 2017. Before joining the Commission, Commissioner Glick was general counsel for the Democrats on the Senate Energy and Natural Resources Committee, serving as a senior policy advisor on numerous issues including electricity and renewable energy. Prior to that, Commissioner Glick was vice president of government affairs for Iberdrola's renewable energy, electric and gas utility, and natural gas storage businesses in the United States. He ran the company's Washington, D.C., office and was responsible for developing and implementing the U.S. businesses' federal legislative and regulatory policy advocacy strategies. Commissioner Glick previously served as a director of government affairs for PPM Energy and before that was director of government affairs for PacifiCorp. He served as a senior policy advisor to U.S. Energy Secretary

Bill Richardson, and before that was legislative director and chief counsel to U.S. Senator Dale Bumpers of Arkansas. From 1988-1992 Commissioner Glick was an associate with the law firm of Verner, Liipfert, Bernhard, McPherson and Hand. Commissioner Glick is a graduate of George Washington University and Georgetown Law. He and his wife Erin have a son.^[25]

Chairman Kevin J. McIntyre

Chairman McIntyre was nominated to the Federal Energy Regulatory Commission by President Donald J. Trump in August 2017 and confirmed by the U.S. Senate on November 2, 2017. Prior to joining the Commission, Chairman McIntyre was the co-leader of the global Energy Practice at the law firm Jones Day, where he practiced law for most of his nearly 30-year legal career. At the firm, he had an expansive FERC practice, counseling and representing clients in nearly all industry sectors, including natural gas, conventional electricity, oil, hydropower, wind power and other renewable resources, and energy marketing and trading. His work for energy clients spanned administrative and appellate litigation, compliance and enforcement matters, and corporate transactions. Chairman McIntyre is a graduate of San Diego State University and Georgetown Law. He and his wife Jennifer have three children.^[26] ✱

(About the Author) C. Mitch Burton, Jr. is an Assistant Attorney General in the Office of the Attorney General of Virginia, where he works primarily on electric utility matters. Mitch holds a B.A. from the University of Tennessee and a J.D. from William & Mary Law School.

(Endnotes)

1. Federal Energy Regulatory Commission, *Strategic Plan*, Mar. 2014, at 1, available at: <https://www.ferc.gov/about/strat-docs/FY-2014-FY-2018-strat-plan.pdf>.
2. 42 U.S. Code § 7171(a). ("There is established within the Department [of Energy] an independent regulatory commission to be known as the Federal Energy Regulatory Commission.").
3. Geoffrey P. Miller, *Nineteenth Annual Administrative Law Issue: Symposium: The Independence of Independent Agencies: Introduction: The Debate over Independent Agencies in Light of Empirical Evidence*, 1988 Duke L.J. 215, 216 (1988).
4. Marshall J. Breger & Gary J. Edles, *Article: Established by Practice: The Theory and Operation of Independent Federal Agencies*, 52 Admin. L. Rev. 1111, 1113 (2000) (citing *Humphrey's Ex'r v. United States*, 295 U.S. 602, 624-26 (1935) (internal quotation marks and citation omitted) (emphasis omitted)).

5. 42 U.S.C § 7171(e).
6. 42 U.S.C § 7171(b).
7. Commissioner Honorable's term on the FERC expired in June of 2017.
8. Federal Energy Regulatory Commission, *New Release: August 10, 2017* (last updated Aug. 10, 2017), <https://www.ferc.gov/media/news-releases/2017/2017-3/08-10-17.asp#.WjA6HIWnGpo>.
9. 42 U.S.C § 7171(e) ("Actions of the Commission shall be determined by a majority vote of the members present.").
10. *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).
11. *Id.* at P 4.
12. *Id.* at P 5.
13. *Id.* P 6.
14. *Id.* P 7.
15. U.S. Senate Committee on Energy and Natural Resources, *Senator Murkowski Statement on FERC Quorum* (Jan. 27, 2017), <https://www.energy.senate.gov/public/index.cfm/2017/1/sen-murkowski-statement-on-ferc-quorum>.
16. 42 U.S.C § 7171(b)(1).
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 at P 2.
22. Federal Energy Regulatory Commission, *New Release: August 10, 2017* (last updated Aug. 10, 2017), <https://www.ferc.gov/media/news-releases/2017/2017-3/08-10-17-meeting.asp#.WozkBa6nGpo>.
23. Federal Energy Regulatory Commission, *Biography – Commissioner Robert F. Powelson* (last updated Dec. 4, 2017), <https://www.ferc.gov/about/com-mem/powelson/powelson-bio.asp>.
24. Federal Energy Regulatory Commission, *Biography – Commissioner Neil Chatterjee* (last updated Dec. 7, 2017), <https://www.ferc.gov/about/com-mem/chatterjee/chatterjee-bio.asp>.
25. Federal Energy Regulatory Commission, *Biography – Commissioner Richard Glick* (last updated Dec. 5, 2017), <https://www.ferc.gov/about/com-mem/glick/glick-bio.asp>.
26. Federal Energy Regulatory Commission, *Biography – Commissioner Kevin J. McIntyre* (last updated Dec. 19, 2017), <https://www.ferc.gov/about/com-mem/mcintyre/mcintyre-bio.asp>.

“Grid Resilience” Rule *(continued)*

markets within the FERC's jurisdiction. However, Section 403(B) provides that the final say on the proposed rule is the FERC's.²¹

FERC established a new docket to consider the proposed rule, receiving hundreds of sets of comments from interested stakeholders late last year.²² While FERC did not move forward with the new rule Perry proposed, FERC is taking additional action on grid resilience, as discussed below.

DOE NOPR Outcome and the Next Steps for Grid Resilience

On January 18, 2018, FERC issued a 5-0 decision rejecting Perry's proposed grid reliability and resilience pricing rule.²³ In its order, FERC discussed the evolution of the electric power industry and FERC's efforts to ensure grid resilience, including examination of the grid's response to the 2014 Polar Vortex and market reforms to “bolster performance from capacity resources” and “address fuel supply issues during periods of system stress.”²⁴

FERC concluded that Perry's proposal did not satisfy the requirements of Section 206 of the Federal Power Act:

1. First, “a showing that the existing RTO/ISO tariffs are unjust, unreasonable, unduly discriminatory or preferential;” and
2. Second, the proposed remedy “must be shown to be just, reasonable, and not unduly discriminatory or preferential.”²⁵

FERC was not persuaded by assertions that potential retirements of generation resources threaten grid resilience or reliability.²⁶ FERC also rejected assertions that the record from its efforts on price formation supported Perry's proposal on grid resilience.²⁷ Nevertheless, FERC concluded that additional steps should be taken to better understand grid resilience and the efforts of each RTO/ISO to strengthen resilience.²⁸ Instead of moving forward with Perry's proposal, FERC initiated a new proceeding to “examine holistically the resilience of the bulk power system.”²⁹ The goals of the new proceeding include:

- Developing an understanding of “what resilience of the bulk power system means and requires”;
- Understanding “how each [RTO] and [ISO] assesses resilience in its geographic footprint”; and
- Ultimately using this information to decide what

additional steps, if any, should be taken to address resilience.³⁰

Each RTO/ISO was asked to address eighteen questions about how it “currently evaluates the resilience of its system” and to evaluate four different “options to mitigate any risks to grid resilience.”³¹ Responses from the RTOs/ISOs are due March 19 and reply comments from interested stakeholders are due April 18. ✱

(About the Author) Eric J. Wallace is an attorney with GreeneHurlocker, PLC, where his practice focuses on representing and counseling clients in the energy and renewable energy industries regarding regulatory compliance, business development, operations, and commercial transactions. Eric holds a B.S. from Washington and Lee University and a J.D. from the University of Richmond School of Law.

(Endnotes)

1. Letter from Rick Perry, Secretary of Energy, to the Federal Energy Regulatory Commission (Sep. 28, 2017), available at <https://energy.gov/downloads/secretary-rick-perrys-letter-federal-energy-regulatory-commission> (the “Perry Letter”).
2. *Id.* at 2. “Between 2002 and 2016, more than 59 gigawatts of coal-fired power – enough to supply 59 million homes a year – went offline, thinning the economic prospects for coal producers.” Catherine Traywick and Naureen S. Malik, *How Trump’s Plan to Help Coal will Raise People’s Power Bills*, Bloomberg Politics (Nov. 28, 2017, 6:00 AM), <https://www.bloomberg.com/news/articles/2017-11-28/how-trump-s-coal-aid-plan-will-raise-power-bills-quicktake-q-a>.
3. Perry Letter at 1, 3.
4. *Id.* at 1.
5. *Id.*
6. Department of Energy, Notice of Proposed Rulemaking, *Grid Resiliency Pricing Rule*, 82 FR 46940-48 (Oct. 10, 2017), available at <https://www.energy.gov/downloads/notice-proposed-rulemaking-grid-resiliency-pricing-rule>.
7. *Id.*
8. *Comments of the Bipartisan Former FERC Commissioners* at 2, FERC Docket No. RM18-1-000 (Oct. 19, 2017).
9. *Id.* at 3.
10. Perry Letter at 1.
11. *Comments of the Bipartisan Former FERC Commissioners* at 4, FERC Docket No. RM18-1-000 (Oct. 19, 2017); see generally FERC Docket No. RM 18-1-1000.
12. See, e.g., Robinson Meyer, *Trump’s Coal Bailout is Dead*, The Atlantic, (Jan. 9, 2018, <https://www.theatlantic.com/science/archive/2018/01/trumps-coal-bailout-is-dead/550037/>); The Editorial Board, *The Trump Administration’s Coal Bailout*, N.Y. Times (Dec. 7, 2017, <https://www.nytimes.com/2017/12/07/opinion/trump-coal-bailout.html>).
13. See PJM, *Territory Served*, available at <http://www.pjm.com/about-pjm/who-we-are/territory-served.aspx>.
14. *Grid Resiliency and Pricing*, Docket No. RM-18-1-000, Initial Comments of PJM Interconnection, L.L.C. on the United States Department of Energy Proposed Rule at 27 (Oct. 23, 2017).
15. *Id.* at 28.
16. Perry Letter at 3.
17. 42 U.S.C. § 7171(a) (2017).
18. *Id.* § 7171(d).
19. *Id.* § 7173(a).
20. *Id.*
21. *Id.* § 7173(b).
22. *Grid Resiliency and Pricing*, Docket No. RM-18-1-000, Notice Inviting Comments (Oct. 2, 2017).
23. *Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures*, Docket Nos. AD18-7-000 and RM18-1-000, 162 FERC ¶ 61,012 (Jan. 8, 2018).
24. *Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures*, Docket Nos. AD18-7-000 and RM18-1-000, 162 FERC ¶ 61,012 (Jan. 8, 2018).
25. *Id.* at 8.
26. *Id.*
27. *Id.* at 9.
28. *Id.* at 7.
29. *Id.* at 1.
30. *FERC Initiates New Proceeding on Grid Resilience, Terminates DOE NOPR Proceeding*, Docket Nos. AD18-7-000 and RM18-1-000 (Jan. 8, 2018).
31. *Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures*, Docket Nos. AD18-7-000 and RM18-1-000, 162 FERC ¶ 61,012 (Jan. 8, 2018).

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