

## DC Circuit partially sides with advocates against FERC

July 12, 2021



The US Court of Appeals for the District of Columbia Circuit issued a ruling Friday partially granting a petition from public advocates on a FERC order dealing with the regular review of inputs to PJM's capacity market. The appeal was backed by Delaware Division of Public Advocate, Maryland Office of People's Counsel, Office of the People's Counsel for the District of Columbia, and the Sierra Club.

The four groups appealed FERC's decision approving the RTO's updates to its capacity market inputs that were filed in 2018. PJM hired the Brattle Group to do a review of the capacity market inputs and it suggested changing the reference unit to a combined-cycle plant from a combustion turbine.

But Brattle also said the RTO and its stakeholders could decide to keep the combustion turbine if they wanted to ensure more capacity was procured. The PJM filing did wind up keeping the combustion turbine and it also added 10% to its costs, and the petitioners appealed both of those decisions.

The court found the commission made a reasonable decision when it came to accepting the combustion turbine, but not for the 10% adder. The consumer advocates argued that a combined-cycle plant would be "more just and reasonable," but the court said its role is not to ask whether a regulatory decision is the best one possible, or even whether it is better than alternatives – but rather has to determine whether the record supports FERC's decision.

"The commission articulated a satisfactory explanation for its decision that the use of a combustion turbine plant as the reference resource is just and reasonable and substantial evidence supports that decision," the court said.

The commission found that combustion turbines have qualities that make them a good reference resource. They are cheap to build and can be built fast. That makes them more responsive for addressing capacity shortages in PJM and they still get built there – with two built since 2014.

Combustion turbines are also more purely capacity market assets, whereas combined-cycle plants rely on energy-market revenues more and those are often considered harder to estimate, which has to be done to set the net cost of new entry (CONE), the court said.

The 10% adder comes from the energy market, where generators are allowed to include that to their estimated costs for mitigated bids. But evidence before the commission showed combustion turbines might not use the 10% adder in their energy market offers, with Economist James Wilson finding using it would cut their energy and ancillary services revenues 32%.

PJM's own IMM noted many gas-fired generation resources exclude the 10% adder from their offers, and even Brattle's research had a mixed reaction on how widely it was used by combustion turbines. Brattle only suggested PJM study the issue further and consider including the 10% adder.

FERC found that using the 10% adder improves the accuracy of the energy and ancillary services revenue estimate.

"The commission did not, however, assess whether, or the extent to which, combustion turbine plants would utilize the 10% adder," the court said. "Nor did the commission explain why such an assessment would be unnecessary. Moreover, the commission's response to the contrary evidence can be described as little more than a hand wave."

Net CONE is supposed to be accurate, so whether combustion turbines actually use the 10% adder is important. The court found FERC's decision approving it to be arbitrary and capricious and the adder issue was remanded back to the commission for review, though the ruling was not vacated by the court.

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