



The following is a sample of an alternative energy regulatory update. In its full form, it would provide a thorough and digestible report for companies affected by federal regulatory policy developments, judicial rulings, and other changes in the industry. Covering capacity zone rules, QF regulatory treatment, frequency regulation, and other topics, this chart is a snapshot of how new energy technologies are being integrated. More importantly, it provides opportunities for stakeholders to get involved in open, yet discreet rulemakings, and will keep its readers on the pulse of the wholesale market.

<b>Sample Alternative Energy Update</b>				
<b>Case/Docket</b>	<b>Description</b>	<b>Why Does It Matter?</b>	<b>Most Recent Action</b>	<b>Next Action</b>
<a href="#">Renewable Exemption from Buyer Side Mitigation in NYISO</a>  ER12-360, <i>New York Independent System Operator, Inc.'s Report Regarding Buyer-Side Mitigation Rules for Small Suppliers, Renewable Resources, and Special Case Resources in New Capacity Zones.</i>	<p>On October 4, 2013, NYISO released a report stating that “[it] is open in principle to the development of an exemption for renewable resources from buyer-side mitigation in all [New Capacity Zones].”<sup>1</sup></p> <p>Beginning in 2012, NYISO is required to evaluate the need for new capacity zones every three years. FERC recently approved NYISO’s proposal to create its first new capacity zone, comprising the lower Hudson Valley and NYC.</p>	<p>Buyer side mitigation is a FERC authorized practice that is meant to ensure that large net buyers do not artificially depress capacity market prices. Unless a new entrant can prove that it is “economic,” it will be required to offer its capacity at an offer floor. Applying buyer side mitigation rules to renewables will likely make them uncompetitive with natural gas plants and keep them out of NYISO’s capacity markets.</p>	<p>The Long Island Power Authority, the NYPSC, NRDC, and the Pace Energy and Climate Center have submitted comments supporting a FERC order that would require a renewable exemption.</p>	<p>Awaiting FERC action.</p> <p><i>PJM currently has an exemption for wind and solar. In approving this exception, FERC noted that because of the intermittent nature of renewables, these resources do not have the ability to suppress capacity market prices.</i><sup>2</sup></p>

<sup>1</sup> At P 5.

<sup>2</sup> *PJM Interconnection, LLC et al.*, 135 FERC ¶ 61,022 (2011) at P 153.

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<p><u>Limits on State Power to Incentivize Renewables</u></p> <p><a href="#">PPL Energyplus, LLC v. Nazarian (MD); and PPL Energyplus, LLC v. Hanna (NJ)</a></p>	<p>Facing potential capacity shortages, MD PSC directed its utilities to enter into long-term contracts with CPV Maryland, LLC (an energy company) at a fixed rate, regardless of wholesale market prices. On September 30, the Court ruled that MD acted beyond the scope of its authority, violating the Supremacy Clause of the Constitution as well as the Federal Power Act, which created an exclusive area of federal jurisdiction in the electric energy realm regarding the regulation of interstate wholesale energy sales and transmission, including the entities that engage in such acts. NJ attempted a similar initiative with the same result.</p>	<p>A state commission has the power over siting new generation, siting transmission, and generally over distribution lines. A state cannot regulate wholesale sales or set wholesale sale prices and thus must rely on federally regulated power markets to ensure reliable investment in capacity resources. These cases make clear that this explicitly includes in-state sales of electricity that interfere with the wholesale market.</p>	<p>In its October 11, 2013 ruling, the NJ Court similarly found that the federal government alone may regulate wholesale market prices. Thus, the NJ PSC could not interfere with wholesale sales of electricity whatsoever.</p>	<p>Going forward, states will have to find other ways to incentivize and ensure the development of new generation. The court suggested that states can still offer tax-exempt bonds, property tax relief, favorable site lease agreements on state land, free brownfields for site development, or relaxed permit approvals.</p> <p>Further, NJ and MD may appeal the courts' rulings.</p>
<p><u>Varying Treatment of RECs Under Mandatory QF Purchase Obligations</u></p> <p>District Court Ruling: <a href="#">Morgantown Energy Associates v. Public Service Commission of West Virginia</a></p> <p>Notice of Intent Not To Act and</p>	<p>A proceeding involving a contract between a cogeneration QF and two local utilities that predates West Virginia's RPS statute was heard in both federal district court and before FERC. Issued on September 30, 2013, the US District Court for the Southern District of West Virginia ruled in conflict with a FERC declaratory order on the same</p>	<p>This presents a question of whether RECs are part of the "avoided cost" under PURPA and if purchasing RECs is "just and reasonable" and "nondiscriminatory."</p> <p>This conflict between federal and state law is relevant for facilities that entered into similar contracts prior to states enacting their RPS programs. It may also be relevant for QF</p>	<p>Under the WV RPS program, if a utility does not itself generate enough renewable/alternative energy, it may purchase RECs. WV rules state that the RECs can be bought together or separately from facilities that are authorized as renewable/alternative energy facilities.</p> <p>Numerous states have created and are in the process of creating similar REC markets.</p>	<p>Since the District Court ruled against a FERC declaratory order, it is very likely that there will be an appeal.</p>

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<p>Declaratory Order:  <a href="#">Morgantown Energy Associates, EL12-36, QF89-25; City of New Martinsville, West Virginia, EL12-48-000 QF85-541-001.</a></p>	<p>dispute.</p> <p>On April 24, 2012 FERC issued a declaratory order, finding that the utilities should pay extra for the QF's Renewable Energy Credits. FERC did not enforce PURPA but offered that the QF could sue in federal court to enforce the declaratory order. In direct contravention, on September 30, 2013, the US District Court for the Southern District of West Virginia ruled that no additional compensation must be paid as a matter of state law.</p> <p>PURPA does not address REC ownership. However, under PURPA, electric utilities must purchase energy and capacity made available by QFs. An electric utility is not required to pay the QF more than the avoided costs of generating the power itself or of purchasing from another source. Whether or not the electric utility purchasing the QF's output owns the associated RECs varies across different states.</p>	<p>purchase agreements in general that are silent with respect to payment for RECs.</p> <p>Both FERC and the District Court agreed that as a matter of West Virginia state law, the utilities have title to the RECs. The central issue of the case is whether the QF is entitled to additional compensation.</p> <p>If the District Court ruling is upheld, it would seem to put QFs at a competitive disadvantage if they entered into long-term contracts before the creation of RPS programs or were otherwise silent on REC compensation.</p>		
<p><a href="#">Fair Treatment of Storage Facilities That Provide</a></p>	<p>Released in 2011, FERC Order No. 755 requires RTOs and ISOs to fairly compensate</p>	<p>Frequency regulation is arguably the most viable revenue stream for storage facilities. In recent</p>	<p>The RTO/ISOs (MISO, ISO-NE, PJM, NYISO, CAISO, and SPP) are still working out</p>	<p>Awaiting FERC approval of tariff revisions for treatment of storage as it relates to</p>

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<a href="#">Frequency Regulation</a>  RM11-7; AD10-11, <i>Frequency Regulation Compensation in the Organized Wholesale Power Markets</i>	storage facilities that provide frequency regulation. This requires a capacity payment that includes opportunity cost, and a performance payment that compensates for the absolute amount of regulation that resources move up and down while also accounting for accuracy. Prior to Order 755, storage facilities were not treated equally, as traditional facilities were being compensated for their size with capacity payments while storage facilities were not being compensated for their speed and market efficiency.	years, the presence of renewables has surged given state Renewable Portfolio Standards requirements, government incentives, and a changing public. Because renewable generation is intermittent by nature, storage is anticipated to play an essential role in maintaining a balanced and reliable Bulk Transmission System.	implementation strategies to compensate storage facilities for their speed and market efficiency, and all are in various stages of tariff approval from FERC.	frequency regulations in the RTO/ISO markets.