ADVANCED ENERGY BUYERS GROUP

the policy voice of advanced energy purchasers

Advanced Energy Buyers Group Comments Re: Federal Power Act (FPA) § 202(c)

Submitted to AskOE@hq.doe.gov

April 25, 2018

COMMENTS OF THE ADVANCED ENERGY BUYERS GROUP

The Advanced Energy Buyers Group ("AE Buyers Group" or "Group") appreciates the opportunity to provide brief comments to the Department of Energy ("DOE" or "Department") in response to the recent request from FirstEnergy Solutions ("FES"), specifically regarding the Department's potential use of its Federal Power Act ("FPA") § 202(c) authority.[1]

The AE Buyers Group strongly urges DOE against use of its § 202(c) authority in this case because doing so is inconsistent with the statute, would be an unlawful departure from its prior use, and would undermine competitive wholesale markets while raising electricity prices at the cost of electricity consumers such as our companies. Furthermore, we note that there is no reliability or resilience emergency in PJM Interconnection ("PJM") that warrants emergency

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[1] These comments represent the consensus view of the Advanced Energy Buyers Group (https://info.aee.net/ae-buyers-group). However, this document does not necessarily the reflect the position of any specific member of the AE Buyers Group, and these comments should not be attributed to any individual company or companies participating in the AE Buyers Group.

government intervention, and that even if any reliability or resilience concerns were to be identified as a result of FES's announced plant retirements, PJM already has many tools at its disposal to respond to such threats, and ample time to do so.

ABOUT THE AE BUYERS GROUP

The Advanced Energy Buyers Group is a business-led coalition of large energy users engaging on policies to expand opportunities to procure energy that is secure, clean, and affordable. Our companies are among the 71% of Fortune 100 companies and 43% of Fortune 500 companies that have established renewable and/or climate targets as part of our corporate sustainability commitments. Members of the AE Buyers Group are leading companies and organizations spanning a range of market sectors. We share a common interest in expanding our use of advanced energy, such as renewable energy like wind, solar, geothermal, and hydropower; demand-side resources like energy efficiency, demand response, and energy storage; and onsite generation from solar photovoltaics, advanced natural gas turbines, and fuel cells.

In 2017, members of the AE Buyers Group totaled over $1 trillion in revenue and collectively consumed over 18 terawatt hours ("TWh") of electricity, including over 11 TWh hours of renewable electricity, equivalent to the electricity sales for the states of North Dakota and Delaware, respectively. This collective electricity use includes a significant footprint in the PJM region.

MOTION TO INTERVENE

The AE Buyers Group is not aware of any formal "proceeding" to consider FES's March 29, 2018 request that would require intervention (and granting of party status) to preserve its rights to fully participate under the FPA. Nevertheless, as a precaution and to preserve our rights in any ongoing or future proceeding, the AE Buyers Group respectfully requests leave to intervene and be granted party status with respect to FES's request. Given the significant footprint of the AE Buyers Group in the PJM region and the unique perspective of the Group as described above, the AE Buyers Group submits that it has a significant interest in this matter that cannot be adequately represented by any other party.

COMMENTS

The AE Buyers Group is extremely concerned that FES's request would violate DOE's authority and disrupt wholesale markets at the expense of consumers, while ignoring readily available options to address any reliability or resilience concerns that are found to exist. The AE Buyers Group's comments are organized as follows:

I. Granting FES's request would undermine competitive markets at significant cost to consumers;

II. FES's request has not met the statutory requirements of § 202(c), and granting the request would be a significant and unlawful departure from DOE's prior use of the statute;

III. There is no imminent resilience or reliability emergency in the PJM market, as PJM itself has made clear; and

IV. Existing tools in the PJM market are available and more appropriate to identify and address any reliability or resilience challenges posed by retirement of FES's plants.

These comments are explained in more detail below.

I. Granting FES's request would undermine competitive markets at significant cost to consumers.

FES's request is fundamentally antithetical to the principles of competitive markets, and granting this request would increase costs and undermine market competition in the near-term while also setting a dangerous precedent and reducing confidence in the federal government's commitment to the principles of competition in wholesale electricity markets.

In particular, the AE Buyers Group is concerned that granting FES's request—which appears to be intended to apply to its entire fleet and to all other coal and nuclear plants in PJM, not just the plants slated for retirement—would disrupt the core function of competitive wholesale markets and undermine competition by limiting the ability of these markets to send accurate price signals and drive optimal, cost-effective market outcomes.[2] This approach is inconsistent with long-standing efforts by federal regulators and policymakers to maintain and improve the competitive wholesale markets, and would result in direct harm to our companies along with many other customers.

Wholesale markets have been very successful at accurately discovering the value of electricity production and sending efficient price signals to generators and consumers to deliver the most cost-efficient market supply outcomes. The cost-saving benefits of competitive wholesale markets have been confirmed by independent analysis, and by regional transmission organizations ("RTOs") and independent system operators ("ISOs"), including PJM.[3] Clear and accurate prices

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[2] While the AE Buyers Group notes that providing more limited relief just to the plants slated for retirement would have a smaller financial impact, the Group wishes to emphasize that there would still be a financial cost. Even more importantly, this more limited application would have the same effect of undermining confidence in markets and setting an extremely troubling precedent.

[3] *See* Steve Cicala, *Imperfect Markets versus Imperfect Regulation in U.S. Electricity Generation* , University of Chicago (Jan. 2017), available at http://home.uchicago.edu/~scicala/papers/elec_gov_v_mkt_draft_2.pdf, concluding, "markets reduce production costs by $3B per year by reallocating output among existing power plants," with some of these savings coming from a 20% reduction in the cost of operating uneconomic plants due to a 10% reduction in utilization; PJM Interconnection, *PJM Value Proposition*, http://www.pjm.com/about-pjm/value-proposition.aspx, estimating a $2.8 to $3.1 billion net annual benefit to customers from PJM"s operation of the competitive regional wholesale market, including $600 million in annual savings due to enabling "less efficient generation resources to retire and to be replaced with more efficient, less costly, plants"; and, MISO, *Value*

in a stable policy environment are critical to enabling the development and deployment of new energy technologies that help advance economic growth while still meeting customer needs for electricity that is both reliable and resilient. Allowing cost-of-service-based regulation and undue emergency relief into this market system would, in contrast, undermine the accuracy of these price signals and result in inefficient market outcomes.

Further, in addition to our perspective as consumers highly dependent on a reliable, resilient, and affordable supply of electricity, our companies are also active participants in the wholesale electricity system, pursuing clean energy projects to meet our corporate energy and sustainability targets and to control our electricity costs. In the competitive wholesale markets regulated by FERC, we are taking full advantage of the choice afforded to us as customers to pursue long-term contracts with advanced energy installations. By inserting new cost-based rates into existing wholesale markets, and by providing cost-of-service support for uneconomic units without material benefit to the energy system, FES's request would create distortionary effects that will directly harm our existing energy supply contracts and limit our ability to pursue such transactions in the future.

Any effort to respond to and address potential threats to grid reliability and resilience should make use of market principles to encourage innovation and competition, calling upon the full suite of available options and allowing cost and performance to serve as the metric for success.

Proposition, https://www.misoenergy.org/WhatWeDo/ValueProposition/Pages/ValueProposition.aspx, finding that in 2016 MISO, "provided between $2.6 billion and $3.3 billion in regional benefits, driven by enhanced reliability, more efficient use of the region's existing transmission and generation assets, and a reduced need for new assets."

II. FES's request has not met the statutory requirements of § 202(c), and granting the request would be a significant and unlawful departure from DOE's prior use of the statute.

The Federal Power Act sets very specific limitations on DOE's use of § 202(c), which have not been met in this case. Specifically, § 202(c) allows DOE to intervene in the electricity industry only during an emergency that threatens national security, specifically defined as times of "war" or during "sudden" increases in demand or shortages of supply,[4] with "emergency" defined as "unexpected . . . events [that] may be the result of weather conditions, acts of God, or unforeseen occurrences not reasonably within the power of the affected "entity" to prevent."[5] DOE's implementing regulations specifically note that "economic factors . . . generally will not be considered as emergencies unless the inability to supply electric service is imminent."[6] Even where 202(c) authority is found to be justified, this authority extends only to the "hours necessary to meet the emergency."[7]

None of these statutory requirements have been met in FES's request. The FES retirement announcements will not go into effect for a matter of years, and cannot be reasonably interpreted as a "sudden" shortage of supply or an instance in which "the inability to supply electric service is imminent."

As such, granting FES's request would represent a significant disregard for the statutory requirements, and would also be a significant departure from DOE's prior use of its 202(c)

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[4] 16 U.S.C. § 824(c)(1).

[5] 10 C.F.R. § 205.371.

[6] *Id.*

[7] 16 U.S.C. § 824(c)(2).

authority, which has been limited to specific emergency events (e.g., Hurricanes Katrina and Ike) and specific plants over specified periods (in response to extreme circumstances, i.e., lightning and flooding that interrupted plant construction). The FES request does not bear any resemblance to these prior uses of DOE's 202(c) authority. The AE Buyers Group sees no evidence in the statute that FES's request is within DOE's authority.

III. There is no imminent resilience or reliability emergency in the PJM market, as PJM itself has made clear.

Members of the AE Buyers Group include technology companies, manufacturers, and retailers—all sectors heavily reliant upon a reliable and resilient source of electricity. Our companies require a steady supply of electricity on a 24-hour basis, 365 days a year, and we pay a significant price for breaks in service, whether they be small disturbances to the distribution system or large outages of the bulk power system. Estimates place the cost of infrastructure failures for large enterprises at $100,000 per hour, and for many of our businesses the costs are much higher.[8]

Given our dependence upon reliable and resilient electricity, and the consequences to our businesses of a loss of electricity supply, we carefully monitor and analyze any threats to this supply, and support necessary and cost-effective investments or actions to maintain a reliable electricity system. While there can always be incremental improvements in reliability and resilience, it is our view as engaged and highly invested consumers that FES's announced plant retirements do not present an imminent threat to reliability and resilience in PJM.

[8] Eaton, *Blackout Tracker: United States Annual Report 2016* (2017), available at http://electricalsector.eaton.com/forms/BlackoutTrackerAnnualReport, at 6.

Numerous recent assessments of the reliability and resilience of the bulk power system ("BPS") have concluded that the state of the electricity system is sound, and that it is successfully adjusting to a shifting resource mix. For example, the North American Electric Reliability Corporation ("NERC") recently reached the overarching conclusion that the state of the electricity system is sound. At a hearing before the House Subcommittee on Energy in September 2017, NERC President and Chief Executive Officer Gerry Cauley testified that "even with all the changes underway, the BPS remains highly reliable and resilient, showing improved reliable performance year over year."[9] He also expressed confidence that the system would continue to perform well despite changes to the generation mix, stating, "With appropriate insight, careful planning, and support, I am confident the electricity sector will continue to navigate these changes in a manner that results in enhanced reliability and resilience."[10]

Of particular importance here, we note that PJM itself made clear to DOE that FES's announced plant retirements do not threaten grid reliability or resilience. In a letter to the Secretary dated March 30, PJM wrote: "PJM can state *without reservation* there is no immediate threat to system reliability" (emphasis added).[11] This unequivocal assessment by PJM clearly indicates that use of § 202(c) authority in response to FES's request would be unjustified.

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[9] Gerry W. Cauley, Direct Testimony before the Subcommittee on Energy, House Committee on Energy and Commerce, "Powering America: Defining Reliability in a Transforming Electricity Industry" (Sept. 14, 2017), available at http://www.nerc.com/news/Documents/HEC9-14-17%20Cauley%20Testimony%20Final.pdf, at 1.

[10] *Id.*

[11] Vincent P. Duane, Letter to Secretary Perry Re: FirstEnergy Solutions' Request for Emergency Relief under Section 202 of the Federal Power Act (March 30, 2018), http://www.pjm.com/-/media/documents/other-fed-state/20180330-response-to-fe-solutions-request-for-emergency-relief.ashx.

IV. Existing tools in the PJM market are available and more appropriate to identify and address any reliability or resilience challenges posed by retirement of FES's plants.

The announced FES plant retirements do not pose an imminent threat, and PJM has tools to identify and address any reliability or resilience challenges posed by these retirements, as well as ample time to deploy them. Application of such tools offers a more appropriate response to FES's announced retirements—one that relies on routine implementation of PJM's established authority rather than what would be, as PJM describes it, "unnecessary, extraordinary and precedential" action on behalf of FES.

In particular, PJM notes that the plants slated for retirement "will remain operational in most cases until through May 2021," and that the retirements are not binding. In the meantime, PJM plans to follow an orderly and routine process to assess the impact of these retirements, which it outlines in its March 30 letter to the Secretary:

> "PJM will undertake a thorough analysis of its system to determine whether the announced retirements would present systemic adequacy issues or any local reliability issues, such as insufficient voltage support. Should any such finding result, the PJM Tariff provides an additional 60 days to work with FES and a range of tools available, including ordering transmission system upgrades and, if necessary, offering full cost of service compensation under Part V of the PJM Tariff to induce assets to remain temporarily on-line. Ultimately, PJM could also join FES in its instant request should other remedial options prove insufficient."[12]

The AE Buyers Group is satisfied that PJM is already taking steps to assess any threats to the reliability and resilience of our electricity service, and that there is sufficient time between now and the retirement of FES's plants to implement any necessary corrective measures. In the

[12] *Id.*

meantime, we see no justification for intervention by DOE that would short-circuit PJM's established process.

CONCLUSION

The AE Buyers Group appreciates the opportunity to provide input on FES's request, and we respectfully request DOE's consideration of our perspective in this case.

Signed,

The Advanced Energy Buyers Group

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