



April 16, 2018

The Honorable James Richard Perry
Secretary of Energy
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: FirstEnergy Solutions' Request for Emergency Relief under Section 202(c) of the Federal Power Act

Secretary Perry:

The Natural Gas Supply Association respectfully submits this response to the above-referenced request filed on March 29, 2018 by FirstEnergy Solutions and its affiliates (collectively, FirstEnergy) with the U.S. Department of Energy (Department). For the reasons below, we believe there is no basis to grant this request, nor is there a basis for any action at this time that would interfere with operation of the PJM market or broadly seek to support coal or nuclear power plants. PJM has already written a response to the request stating that, “there is no immediate threat to system reliability.”¹ It further stated that it has a detailed and clear process (via the PJM Tariff) to assess and address any concerns posed by the announced plant closures. Markets for electric power are serving consumers well. The Department should not use its authority to interfere in those markets, which would create inefficiencies and raise costs for consumers.

I. Comments of the Natural Gas Supply Association

FirstEnergy requests that the Department use its authority under Section 202(c) of the Federal Power Act to dictate that the owners of merchant coal and nuclear generators in PJM receive a guaranteed return on equity for four years. FirstEnergy requests a remedy that is beyond the

¹ See PJM Interconnection, *Response to FirstEnergy Solutions' Request for Emergency Relief under Section 202 of the Federal Power Act* (March 30, 2018) available at <http://www.pjm.com/-/media/documents/other-fed-state/20180330-response-to-fe-solutions-request-for-emergency-relief.ashx>

Department's authority to provide and that is based on a purported emergency lacking any basis in fact. For these reasons, the Department must deny the request.

Section 202(c) gives the Department authority to order generators to run during emergencies. Put differently, Section 202(c) allows the Department to make the act of generating electricity compulsory when it would otherwise be voluntary or, in some cases, prohibited by environmental laws. FirstEnergy would like to transform Section 202(c) from a narrow "must-run" authority into something it is not: a broad ratemaking authority akin to Sections 205 and 206 of the Federal Power Act. This is evident throughout their request. FirstEnergy does not ask that the Department order any generator to run² – an omission that cannot be squared with the statutory text. Nor does it attempt to determine how many coal and nuclear power plants must be required to run in order to alleviate the "emergency" it asks the Department to imagine. Tellingly, the only meaningful limitation FirstEnergy would impose on the scope of its requested order relates to the type of *compensation* these generators receive, and not whether each generator is necessary to address the supposed emergency.³

Instead of requesting a must-run order tailored to emergency circumstances, as applicants under Section 202(c) normally do, FirstEnergy requests rate relief. FirstEnergy asks the Department to increase the wholesale rates paid to a favored class of generators, and effectively unwind the wholesale market that the PJM stakeholders and the Federal Energy Regulatory Commission (FERC) have worked decades to develop. But Section 202(c) does not give the Department authority to supersede the FERC's authority over wholesale rates conferred in Sections 205 and 206 of the Federal Power Act. Of course, Section 202(c) ensures that generators receive "just and reasonable" terms for their actions carrying out the order. But compensation is not the purpose of Section 202(c). Rather, the reference to just and reasonable terms is only a necessary accommodation for the fact that the generator has been required to run and has therefore incurred costs. Moreover, Section 202(c) was enacted at a time when the Federal Power Commission had authority over the Federal Power Act as a whole, including Sections 205 and 206. Thus, reading Section 202(c) to provide separate ratemaking authority makes little sense within the broader context of the Federal Power Act.

For these reasons, the Department's regulations foreclose FirstEnergy's attempt to use Section 202(c) as an end run around FERC's wholesale rate authority. When it promulgated its

² FirstEnergy requests that the Department order certain generators to "enter into contracts and all necessary arrangements with PJM, on a plant-by-plant basis, to generate, deliver, interchange, and transmit electric energy, capacity, and ancillary services as needed to maintain the stability of the electric grid," and also to order "PJM to promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide to energy markets." FirstEnergy Request at 1. The first of these proposed directives would merely require that generators enter into contracts with PJM and does not specify that generation would be compulsory or that unit retirement would be prohibited or altered from the current generator deactivation rules contained in Part V of the PJM Tariff. The second of these directives solely addresses the compensation received by generators subject to the proposed order.

³ See FirstEnergy Request at 31 (excluding from the scope of its request generators that "recover any of their capital or operating costs through rates regulated by a duly authorized state regulatory authority, municipal government, or energy cooperative").

regulations implementing Section 202(c) after enactment of the Department of Energy Organization Act, the Department rightly left rate issues to FERC, stating that “this responsibility is vested in the Federal Energy Regulatory Commission (FERC) and must be addressed in its regulations.”⁴ Thus, in Section 205.376 of its regulations, the Department encouraged the use of existing rate schedules for service under 202(c) orders and made clear that FERC – not the Department – has responsibility for resolving “rate issues.”⁵ Nevertheless, notwithstanding this clear text and without explanation, FirstEnergy requests that the Department – not FERC – “step in and determine the just and reasonable compensation” for a broad swath of generators over a period lasting at least four years.⁶ Neither the Federal Power Act nor the Department’s regulations would authorize the Department to do so.

Not only has FirstEnergy failed to request relief that the Department has authority to provide, it has also failed to identify an emergency that may serve as a predicate for action under Section 202(c). Consistent with common usage of the word “emergency,” Section 202(c) and the Department’s regulatory definition describe emergency events variously as “sudden,” “unexpected,” and “imminent.”⁷ The retirements FirstEnergy wants to prevent are neither sudden, nor unexpected, nor imminent. Most obviously, the three nuclear plants FirstEnergy has proposed to retire would not be deactivated until 2021, and even then, only if PJM determines that they can retire consistent with system reliability. The same is true for all the merchant generators on FirstEnergy’s list, the overwhelming majority of which have not indicated any intention to retire in the near term.

Nor has FirstEnergy established that the retirement of certain uneconomic generators would create an emergency. Although the Department has authority to act in emergencies, it does not have authority over long-term reliability planning on the bulk electric system. That responsibility lies with FERC, its delegate the North American Electric Reliability Corporation, and the system operators themselves, in this case PJM. Each of these organizations has concluded emphatically that the PJM system is reliable. PJM currently has a reserve margin that well exceeds its 2018 target of 16.1%.⁸ Moreover, with respect to the recent Bomb Cyclone on which FirstEnergy’s request relies, PJM has stated that “[e]ven during peak demand, PJM had

⁴ See Economic Regulatory Administration, Energy, *Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power*, 46 Fed. Reg. 39,984, 39,985 (Aug. 6, 1981).

⁵ 10 C.F.R. § 205.376.

⁶ FirstEnergy Request at 32.

⁷ See 16 U.S.C. § 824a(c); 10 C.F.R. § 205.371.

⁸ U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 1 from Sen. Lisa Murkowski (Jan. 23, 2018) available at <http://www.pjm.com/-/media/library/reports-notice/special-reports/2018/20180220-qfrs-submitted-to-andrew-ott-from-20180123-senate-committee-hearing.ashx?la=en>.

excess reserves and capacity.”⁹ For the foregoing reasons, we believe there is no evidence to grant this request, nor is there any basis for the Department to take any other action that would interfere with operation of the PJM market.

Natural gas is an affordable, clean, and flexible fuel for electric generation. Within PJM specifically, it is a fuel that greatly enhances system reliability and resilience. PJM sits atop the Marcellus and Utica shale plays. These are among the most productive and fastest growing natural gas production areas in the world,¹⁰ with pipeline infrastructure that becomes more robust each year. FirstEnergy ignores these facts as well as other measures that PJM has taken to bolster generator performance such as its phased-in capacity performance rules that provide an incentive for generators to secure firmer fuel supplies, and which have already been shown to reduce forced outages.¹¹ Far from demonstrating an emergency, PJM’s response to the 2014 Polar Vortex and 2018 Bomb Cyclone show careful planning for an increasingly resilient grid.

II. Motion to Intervene

The NGSa hereby moves to intervene in this proceeding. Founded in 1965, NGSa represents integrated and independent energy companies that produce and market domestic natural gas, and is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry. NGSa encourages the use of natural gas within a balanced national energy policy and supports the benefits of competitive markets. NGSa members trade, transact, and invest in the U.S. natural gas market in a range of different manners, and would be harmed by any exercise of Section 202(c) that restricts market competition and privileges uneconomic coal and nuclear generation. NGSa has consistently advocated for well-functioning power and natural gas markets, policies that support market transparency, efficient nomination and scheduling protocols, just and reasonable transportation rates, non-preferential terms and conditions of transportation services, and the removal of barriers to developing needed natural gas infrastructure. NGSa has a long-established commitment to ensuring a public policy environment that fosters a growing, competitive market for natural gas. NGSa also supports a

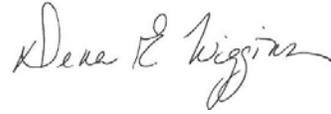
⁹ PJM Interconnection, *PJM Cold Snap Performance Dec. 28, 2017 to Jan. 7, 2018* at 1 (Feb. 26, 2018), available at <http://www.pjm.com/-/media/library/reports-notice/weather-related/20180226-january-2018-cold-weather-event-report.ashx> (“PJM Cold Snap Performance Report”).

¹⁰ See U.S. Energy Information Administration, *Dry shale gas production estimates by play* at <https://www.eia.gov/naturalgas/data.php#production>; see also, U.S. Energy Information Administration *Appalachia region drives growth in U.S. natural gas production since 2012* (Dec. 4, 2017) at <https://www.eia.gov/todayinenergy/detail.php?id=33972>.

¹¹ PJM Interconnection, *PJM Cold Snap Performance Dec. 28, 2017 to Jan. 7, 2018* (Feb. 26, 2018) at 20.

balanced energy future, one which ensures a level playing field for all market participants and eliminates inappropriate regulatory barriers to supply.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dena E. Wiggins". The signature is written in black ink and is positioned above the typed name and title.

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