

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Grid Resiliency Pricing Rule**

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**Docket No. RM18-1-000**

**REPLY COMMENTS OF THE NATURAL GAS SUPPLY ASSOCIATION**

Pursuant to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Notice Inviting Comments on the proposed Department of Energy (“DOE”) Grid Resiliency Pricing Rule (“NOPR”), the Natural Gas Supply Association (“NGSA”) hereby respectfully submits these reply comments. NGSA is compelled to respond to the baseless assertions concerning the natural gas industry made by certain commenters in an attempt to justify self-serving policies. NGSA urges the Commission to reject such egregious mischaracterizations. Given the Commission’s obligation to ensure that any regulatory actions are based on a sound factual record and satisfy the legal standards required under the Federal Power Act (“FPA”), it must reject the DOE-proposed rule and the alternative market interventions suggested by certain commenters in the initial comments.

**I. Executive Summary**

- The Nation’s natural gas supply and delivery system is reliable. NGSA’s initial comments demonstrated that the Nation’s natural gas supply and delivery system is reliable and provides sound support for gas-fired electricity generation. Nothing submitted in the initial comments requires a different conclusion.
  
- The record does not support adoption of the DOE proposal. NGSA’s initial comments explained that the factual assertions contained in the DOE NOPR do not support adoption of the DOE proposal. Nothing submitted in others’ initial comments cures this flaw. DOE has failed to identify and support the existence of a problem that would permit FERC to find current regional transmission organization (“RTO”) or independent system operator (“ISO”) tariffs to be unjust

or unreasonable. As a result, FERC should not, and cannot, adopt the DOE proposal under section 206 of the FPA.

- FERC should not adopt alternative subsidy mechanisms. Several commenters have suggested that FERC consider taking different remedial actions than those proposed by DOE. These proposals suffer from the same problems as the DOE proposal, including inadequate record support for finding a problem that would permit FERC action under section 206, and lack of a sound policy rationale for providing generous out-of-market subsidies to support uneconomic generating units. Moreover, these new proposals were not noticed in the NOPR, and thus cannot reasonably be considered or adopted by FERC without further opportunity for public comment.

## **II. Interest of NGSA**

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. NGSA has consistently advocated for well-functioning 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 balanced energy future, one which ensures a level playing field for all market participants and eliminates inappropriate regulatory barriers to supply.

### III. Comments

#### A. **The grid operators in charge of maintaining reliability in the regions impacted by DOE's proposal all oppose the DOE proposal. These comments should be given special weight.**

The comments submitted by the RTOs and ISOs that operate the regional markets impacted by the NOPR and that are responsible for maintaining the reliability of the grid in their region should be given great weight by the Commission. In their individual filings, and as part of the ISO-RTO Council, all RTOs and ISOs subject to FERC's jurisdiction oppose the DOE proposal,<sup>1</sup> explaining that the proposal would not promote reliability and resilience. Their comments also explain that the proposal would reverse the progress FERC and the RTOs and ISOs "have made in developing robust and reliable competitive markets."<sup>2</sup> PJM Interconnection, L.L.C. ("PJM") defends the competitive market, finding that it has been instrumental to ensuring reliability.<sup>3</sup> In fact, PJM was emphatic that "[t]he evidence and events that the DOE NOPR cites do not support its assertion of a resilience crisis or its rationale for degrading competitive markets in the name of fuel resilience."<sup>4</sup> Given that the regional grid operators are the ones that most carefully observe the functioning of their markets, the unanimity of the regional operators

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<sup>1</sup> Comments of the ISO/RTO Council, Docket No. RM18-1-000 (filed Oct. 23, 2017) ("IRC Comments"); Initial Comments of PJM Interconnection, L.L.C. on the United States Department of Energy Proposed Rule, Docket No. RM18-1-000 (filed Oct. 23, 2017) ("PJM Comments"); Comments of the Midcontinent Independent System Operator, Inc., Docket No. RM18-1-000 (filed Oct. 23, 2017); Comments of ISO New England Inc., Docket No. RM18-1-000 (filed Oct. 23, 2017) ("ISO-NE Comments"); Comments of the New York Independent System Operator, Inc., Docket No. RM18-1-000 (filed Oct. 23, 2017); Comments of Southwest Power Pool, Inc., Docket No. RM18-1-000 (filed Oct. 23, 2017); Comments of the California Independent System Operator Corporation, Docket No. RM18-1-000 (filed Oct. 23, 2017).

<sup>2</sup> IRC Comments at 2.

<sup>3</sup> PJM Comments at 14-17.

<sup>4</sup> *Id.* at 14.

cannot be ignored and their assessments of the DOE NOPR in this proceeding should be given great weight.

Even without being adopted, the DOE NOPR is already having counterproductive effects by slowing the efforts currently underway in the organized markets to address issues pertaining to ensuring adequate generation. For example, on October 13, ISO New England Inc. (“ISO-NE”) announced it was delaying publication of its fuel security study due to the uncertainty around the DOE NOPR.<sup>5</sup> According to ISO-NE, the study’s objective is to quantify potential fuel security risks as a basis for stakeholder discussions on whether improvements to the wholesale market design should be made in light of potential risks to future operations.

**B. The Commission should reject false claims made by coal and nuclear interests, which are merely self-serving attempts to justify blatantly discriminatory subsidies.**

Multiple parties that stand to be enriched by DOE’s proposal filed comments making claims about vulnerabilities associated with reliance on natural gas for power generation. These claims are speculative and not supported by the facts. This direct attack on the natural gas industry must be seen for what it truly is: a last-ditch effort by owners of inefficient and costly plants that are not willing to accept market outcomes, seeking to support claims for out-of-market subsidies at the expense of consumers. The supporters of the DOE proposal are, in essence, asking the government to transfer wealth to their uneconomic generation units by increasing costs to consumers while impairing competitive markets and disadvantaging other more cost-competitive and efficient

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<sup>5</sup> ISO New England Inc., Study on Regional Fuel Security to be Delayed Pending Resolution of DOE Proposal on Grid Resiliency Pricing (Oct. 13, 2017), available at [https://www.iso-ne.com/static-assets/documents/2017/10/20171013\\_fuel\\_security\\_analysis\\_delay\\_final.pdf](https://www.iso-ne.com/static-assets/documents/2017/10/20171013_fuel_security_analysis_delay_final.pdf).

resources participating in those markets. As discussed in our Joint Industry comments, the costs associated with the DOE NOPR would be significant, and have not been acknowledged or quantified by the proposal or its supporters. The Brattle Group estimates that the annual cost of subsidies under the proposed rule would range from \$4 to \$11 billion per year – with no guarantee that this would improve grid resiliency.<sup>6</sup>

Once one gets past the pretense and examines the facts, it is clear that the DOE proposal and the comments that support it are attempts to push an agenda that is without sound legal or factual support. Fortunately, the Commission is an independent agency that has a long-standing statutory responsibility to protect consumers, and to guard against undue discrimination or preference in the rates and tariffs of public utilities, including the RTOs and ISOs.

In NGSAs' initial comments, we opposed DOE's proposal because: it would provide preferential treatment for certain types of generation; it lacks a sound legal basis; it would subsidize certain uneconomic generators; it would not contribute to reliability and resilience and might even degrade both; and it would unravel the competitive market structure that FERC has promoted over the last two decades. Further, distorting competitive markets with out-of-market subsidies would have significant impacts to forward and financial markets.<sup>7</sup> Below, we address certain points made by others in their initial comments.

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<sup>6</sup> See Joint Industry Comments Opposing the DOE Proposal at 22, Docket No. RM18-1-000 (filed Oct. 23, 2017).

<sup>7</sup> See Comment of Shell Energy North America (US), L.P. at 15-16, Docket No. RM18-1-000 (filed Oct. 23, 2017) (“Pricing based upon market fundamentals is a threshold consideration that determines whether, and how, firms like Shell Energy participate in these markets. Stepping away from a market-driven process will distort the energy market price signals required to price forward contracts and hedge risk. In such an environment, it will be more costly for firms such as Shell Energy to provide services that are complementary to day-ahead and real-time RTO/ISO markets.”).

**1. The natural gas system is highly reliable and resilient. FERC must reject outlandish mischaracterizations about the natural gas industry made in an attempt to justify new subsidies.**

In an attempt to justify arbitrary enrichment of one type of generation over another, a number of comments by parties supporting the NOPR have painted a distorted picture of the natural gas industry through exaggerated statements and inaccurate claims. The North American Coal Corporation goes as far as to speculate that if coal plants do not get full cost recovery and consequently retire, they believe a “future Polar Vortex like event could have lethal consequences.”<sup>8</sup> This is unsupported fear mongering. Other commenters supporting the NOPR reference the Polar Vortex as their prime example of the vulnerabilities associated with reliance on natural gas generation, but the facts tell a very different tale; that is, the natural gas industry performed remarkably well despite record high demand during that time period. NGSAs has already refuted claims about the Polar Vortex in detail in our initial comments.<sup>9</sup> FERC staff concluded in its assessment of the Polar Vortex that the gas industry was able to meet firm customer demand. Other credible parties agree. PJM strongly disagrees with those that point to the Polar Vortex as evidence of a gas vulnerability, stating that such claims are unsupported by the facts and in fact, the *largest category of outages were from coal units*, [emphasis added] while natural gas interruptions were not a major driver of forced outages.<sup>10</sup>

The American Coalition for Clean Coal Electricity (“ACCCE”) and the National Mining Association (“NMA”) argue that “the electricity grid is now less resilient than it

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<sup>8</sup> Comment of North American Coal Corporation at 2, Docket No. RM18-1-000 (filed Oct. 23, 2017) (“NACC Comment”).

<sup>9</sup> Comments of the Natural Gas Supply Association at 4, Docket No. RM18-1-000 (filed Oct. 23, 2017) (“NGSA Initial Comments”).

<sup>10</sup> PJM Comments at 12; NGSA Initial Comments at 16.

was before the Polar Vortex, with fewer coal-fired facilities and more reliance on natural gas and intermittent renewables.”<sup>11</sup> Using facts, PJM completely dispels that notion. PJM’s comments compare two days with similar temperatures during the 2014 and 2015 winters, and show that there was already a dramatic reduction in all outage categories in 2015 as compared to the Polar Vortex period due to winter preparedness measures.<sup>12</sup> And since 2015, PJM has put in place a capacity performance program which holds generators accountable for failure to perform, and thus stands to substantially reduce outage rates. Also, PJM provides data that shows that the fuel mix in their region is more diverse and that coal and nuclear capacity make up more than 50% of winter capacity based on 2015 data.<sup>13</sup>

To further these claims, ACCCE and NMA refer to a flawed sensitivity analysis performed by PJM that examined the fuel mix needed to maintain system reliability during a Polar Vortex event.<sup>14</sup> Applying outage data from the Polar Vortex (Winter 2013-2014) as well as the following winter (2014-2015) to various portfolios, PJM suggested that a majority of the hypothetical resilient portfolios included a high share of coal-fired and nuclear generation. Yet, even PJM’s initial comments in this proceeding suggest that applying prior outage data is not an appropriate basis for predicting the future. In its initial comments, PJM stated that “[t]he unusually high unforced outage rate during the Polar Vortex has been mitigated . . . through various measures, including

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<sup>11</sup> Comments of the American Coalition for Clean Coal Energy and National Mining Association in Support of the Department of Energy’s Grid Reliability and Resilience Pricing Proposed Rule at 43, Docket No. RM18-1-000 (filed Oct. 23, 2017) (“ACCCE/NMA Comments”).

<sup>12</sup> PJM Comments, App. A at 3-6.

<sup>13</sup> *Id.* at 23.

<sup>14</sup> ACCCE/NMA Comments at 16 (citing PJM Interconnection, Appendix to PJM’s Evolving Resource Mix and System Reliability 41 (2017)).

PJM's Capacity Performance reforms and steps it has taken for winter preparedness.”<sup>15</sup> PJM explained that it has “taken a number of actions since the 2014 Polar Vortex to improve generation performance, many of which were implemented by winter of 2015 and did result in a reduction in total forced outages of 15,395MWs (38.3%) . . . under similar temperature, weather and system loads.”<sup>16</sup>

Furthermore, as NGSAs explained in its initial comments, the Polar Vortex performance data for gas-fired generators includes an entire category of “gas interruptions” that are primarily associated with contracting and economic decisions by generators, not operational performance of the natural gas industry. Given the substantial changes made in PJM after the Polar Vortex experience as well as the inclusion of outages driven by generator decisions to rely on interruptible service in the Polar Vortex data, it is misleading to use PJM's Polar Vortex data as representative of what may occur during a similar situation in the future.

Comments supporting the DOE proposal greatly exaggerated potential risks related to reliance on pipelines for natural gas delivery by conjuring up hypothetical situations that do not match reality.<sup>17</sup> However, similar hypothetical scenarios could be conjured up for every resource type. Actual operations of the natural gas industry provides the best indicator of the high level of reliability provided to firm customers even during extreme events.

Speculation in some parties' initial comments warning of potential widespread failures on the grid caused by a natural gas supply issue appears indicative of a general

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<sup>15</sup> PJM Comments at 8.

<sup>16</sup> *Id.*, App. A at 4.

<sup>17</sup> *E.g.*, NACC Comment at 2-3.



lack of knowledge on how the natural gas industry operates. In our initial comments, NGSAs explained that natural gas pipeline operational issues have a limited market impact.<sup>18</sup> The vast array of available supply, storage, and delivery options has resulted in a highly flexible and resilient natural gas industry in which operational issues rarely result in an impact on firm deliveries to gas customers. Pipeline operators are able to redirect a shipper's gas using other available supply and transportation options to continue service, thereby isolating the impacts of most incidents to a localized area. Thus, unlike the power industry, it is extremely unlikely that an operational issue would result in a widespread cascading event. Moreover, as we previously explained, less than 0.00007% of power outages were related to fuel supply disruptions for the period 2012 to 2016,<sup>19</sup> proving that the exaggerated claims in initial comments are not supported by real world evidence. This means that more than 99.9999% of power outages were *not* related to fuel supply disruptions.

Another scare tactic used by several commenters relies on shifting focus from the issue of electric system resilience to potential gas price volatility.<sup>20</sup> This line of argument is unpersuasive for at least three reasons: (1) natural gas generators (and other natural gas customers) can, and do, contract for natural gas supplies under long term contracts or otherwise hedge against possible price volatility in the natural gas spot market; (2) natural gas spot prices are less volatile since the advent of shale gas production; and (3) fuel price volatility is not a rationale offered in the DOE proposal, which focuses on reliability, and the record does not support using this rationale as a basis for the DOE

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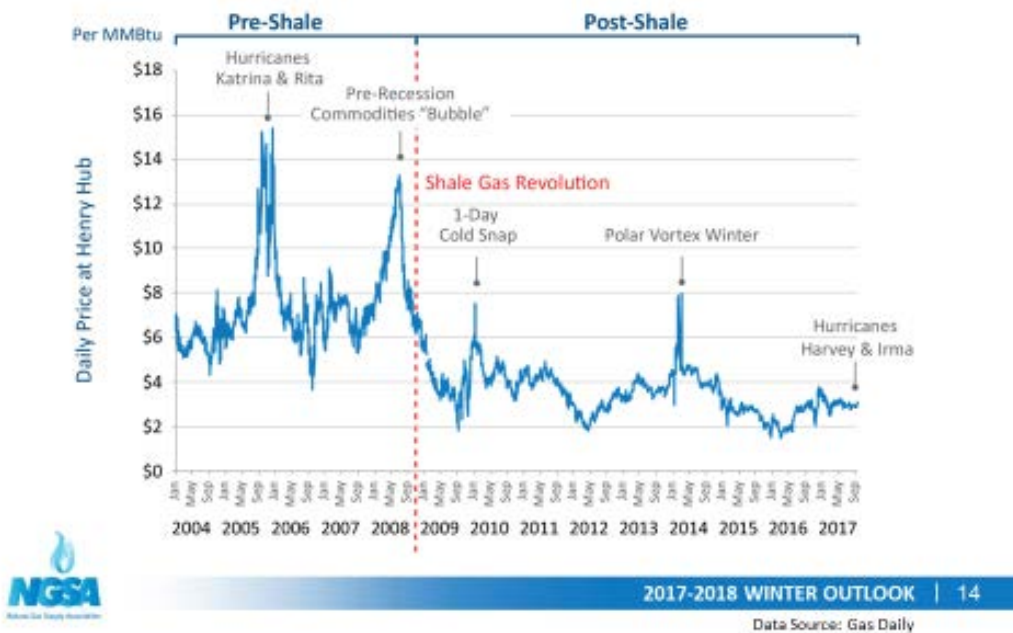
<sup>18</sup> NGSAs Initial Comments at 6.

<sup>19</sup> Trevor Houser, John Larsen and Peter Marsten, "The Real Electricity Reliability Crisis," Rhodium Group (Oct. 3, 2017), available at <http://rhg.com/notes/the-real-electricity-reliability-crisis>.

<sup>20</sup> ACCCE/NMA Comments at 13.

proposal. As discussed in NGSAs initial comments, spot prices were only paid by those that were not making advance arrangements to prepare themselves for peak pricing.<sup>21</sup> During the Polar Vortex, for instance, while there were volatile prices in a number of regions in which the supply and demand balance was tight, this price increase was only borne by those gas purchasers that relied on the daily spot market for purchasing natural gas. Generators have the freedom to hedge fuel price risk as much or as little as they want in the market in order to shield themselves from market exposure to daily spot prices. Moreover, as shown in the chart below, the price fluctuations experienced in the past have been significantly mitigated by the abundance of shale gas supplies, to the point that the natural gas market prices show little, if any, response to disruptions compared to the temporary spikes that occurred during extreme events in the pre-shale era. Similar results for gas prices were observed at the gas trading hubs in the PJM region.

### Comparison of Hurricane Impact on Daily Prices What a Difference a Decade Makes



<sup>21</sup> NGSAs Initial Comments at 17.

**2. Infrastructure development and contractual choices are not indicative of unreliable natural gas industry performance.**

ACCCE and NMA in their joint comments raise issues about generators relying on interruptible pipeline transportation services<sup>22</sup> and also suggest that natural gas is a vulnerability because pipeline construction is being stymied.<sup>23</sup> As NGSAs stated in our initial comments,<sup>24</sup> sufficient infrastructure is critical to serving demand for firm natural gas transportation. A willingness by generators to financially support the building of new pipeline capacity or to have dual fuel capability should be a priority for those that depend on natural gas generation for resource adequacy. The natural gas industry cannot be expected to deliver more firm capacity than the existing infrastructure will allow, any more than any type of generating unit can perform beyond its capacity. However, incentivizing generators to make choices that ensure reliable services, such as contracting for firm transportation, and thereby supporting expansion of pipeline infrastructure, are issues that are best addressed by improving the market rules.

ISO-NE is fully aware that its region does not have sufficient pipeline capacity available to serve all demand on a peak day; its generators rely on the availability of interruptible capacity, and the ISO ensures that steps have been taken in advance so that alternative resources are in place during peak periods. This does not make the delivery or operations of natural gas less reliable – it simply illustrates that steps need to be taken to support new pipeline infrastructure or, if more economically reasonable, to secure other reliable means to support generation during those few days each year when interruptible transportation service is not available. ACCCE and NMA incorrectly contend that use of

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<sup>22</sup> ACCCE/NMA Comments at 25-27.

<sup>23</sup> *Id.* at 22.

<sup>24</sup> NGSAs Initial Comments 15.

dual fuel is a sign of a lack of reliability<sup>25</sup> but it is exactly the opposite – it shows that natural gas generators have multiple options at their disposal to “firm up” their generation in the most economic manner available.

Lastly, ACCCE and NMA totally mischaracterize ISO-NE’s 2017 Regional Electricity Outlook by insinuating that even generators signing firm contracts would not be helpful, stating, “Even where pipeline capacity allowing for additional firm contracts is added, [ISO-NE] notes that the resulting benefit is often neutralized” by utilities using this new capacity for heating or by new gas-fired generators.<sup>26</sup> This section of the ISO-NE’s 2017 Regional Electricity Outlook assumes generators will use this new capacity on an interruptible basis (not a firm basis as insinuated by ACCCE and NMA) and that is why the firm shippers (the local distribution companies that serve heating needs in this example) get priority. If generators signed firm contracts with interstate pipelines, their capacity would be just as firm and secure as any other firm shipper, including gas local distribution companies. Interstate pipelines do not prioritize between firm customers based on end-use. Such preferences would not even be permitted under the non-discrimination provisions of the Natural Gas Act.<sup>27</sup> We reiterate that natural gas suppliers and pipelines are extraordinarily reliable in meeting the demands of their firm service customers.

**3. Retirement of uneconomic, high-cost units is an indication that power markets are functioning well.**

As detailed in comments filed by the U.S. Manufacturers in this proceeding, retirement of uneconomic generation represents normal, efficient functioning of

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<sup>25</sup> ACCCE/NMA Comments at 27.

<sup>26</sup> *Id.* at 26.

<sup>27</sup> *See* section 5(a) of the Natural Gas Act, 15 U.S.C. § 717d(a).

competitive markets.<sup>28</sup> All types of resources participating in organized markets – including natural gas generation – live and die by market outcomes. As with coal, inefficient natural gas plants have been retired over recent years; in fact more natural-gas fired units (599) were retired from 2009 through 2015 than coal units (392).<sup>29</sup> Retirement of less efficient units is precisely how the competitive market is intended to work.

There are very good reasons for the retirement of coal plants over the past decade. The U.S. Energy Information Administration (“EIA”), which is part of DOE, reported that 2015 coal unit retirements were older, smaller plants that operated at low capacity factors. Retired units had a weighted average capacity factor of 24% compared to the 60% average of all coal plants. Also, EIA found that “[t]he large number of coal-fired generator retirements is primarily because of the implementation of the Environmental Protection Agency’s Mercury and Air Toxics Standards (MATS)” and owner determinations that retrofitting to meet these new standards was cost-prohibitive.<sup>30</sup> Retirements due to poor operating economics or environmental compliance costs that

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<sup>28</sup> Comments of the Electricity Consumers Resource Council (ELCON), American Chemistry Council (ACC), American Forest and Paper Association (AF&PA), American Iron and Steel Institute (AISI), Carolina Utility Customers Association (CUCA), Connecticut Industrial Energy Consumers (CIEC), Illinois Industrial Energy Consumers (IIEC), Indiana Industrial Energy Consumers, Inc. (INDIEC), Louisiana Energy Users Group (LEUG), Multiple Intervenors (MI), Texas Industrial Energy Consumers (TIEC), and Wisconsin Industrial Energy Group, Inc. (WIEG) at 5, Docket No. RM18-1-000 (filed Oct. 23, 2017) (“U.S. Manufacturers Comments”).

<sup>29</sup> U.S. Energy Information Administration, Electric Power Annual, [www.eia.gov/electricity/annual/backissues.html](http://www.eia.gov/electricity/annual/backissues.html) (last visited Nov. 1, 2017).

<sup>30</sup> U.S. Energy Information Administration, Today in Energy, “Scheduled 2015 capacity additions mostly wind and natural gas; retirements mostly coal” (Mar. 10, 2015), [https://www.eia.gov/todayinenergy/detail.php?id=20292#tabs\\_SpotPriceSlider-2](https://www.eia.gov/todayinenergy/detail.php?id=20292#tabs_SpotPriceSlider-2).

would render a unit uneconomic is strong evidence that the competitive market is functioning as intended.<sup>31</sup>

**4. DOE’s proposal for full cost recovery is not justified. Requests for even more subsidies than proposed by DOE are outrageous.**

Utility owners of coal and nuclear units have benefitted over decades from fixed cost recovery prior to restructuring. In some cases, they also received stranded cost payments for accepting the risk of participating in restructured competitive markets.<sup>32</sup> Providing an additional stream of revenue equating to full cost recovery on top of this historical recovery, as proposed by DOE, is not justified. Why should consumers be forced to pay for keeping such uneconomic plants in operation?<sup>33</sup>

Now, not only are certain coal and nuclear interests asking for full cost recovery as proposed by DOE, but they also have the audacity to ask FERC to expand the scope of plants eligible for full cost recovery<sup>34</sup> and to give the eligible plants even more than full

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<sup>31</sup> Also, while many commenters discuss the economic impacts that retiring coal and nuclear plants will have on jobs and local taxes, these considerations are well outside of FERC’s purview and are not valid considerations in this proceeding. *See, e.g.*, Comments of the Kentucky Coal Association in Support of Proposed Rule, Docket No. RM18-1-000 (filed Oct. 23, 2017); Comments of the West Virginia Coal Association in Support of the Proposed Resiliency Rule, Docket No. RM18-1-000 (filed Oct. 23, 2017) (“WVCA Comments”); Comments of the Pennsylvania Coal Alliance in Support of the Proposed Resiliency Rule, Docket No. RM18-1-000 (filed Oct. 23, 2017); Comment of Union for Jobs & Environmental Progress, Docket No. RM18-1-000 (filed Oct. 16, 2017).

<sup>32</sup> *See* U.S. Manufacturers Comments at 7.

<sup>33</sup> Since “Reliable, Efficient and Sustainable Energy for Customers” is FERC’s mission, the Commission should pay particular attention to the fact that many smaller consumers and retailers that do not regularly participate in FERC proceedings, such as Microsoft and Walmart, felt the need to file initial comments opposing the DOE proposal asking FERC to protect their interests.

<sup>34</sup> For instance, commenters have suggested that the DOE proposal be expanded to provide subsidies to: (i) newly constructed resources, as well as newly repowered resources (*see* Comments of Allegheny Electric Cooperative, Inc. in Support of Grid Reliability and Resiliency Pricing Rule at 7, Docket No. RM18-1-000 (filed Oct. 23, 2017)); (ii) units outside of RTOs/ISOs (*see* Comments of Tri-State Generation and Transmission Association, Inc. in Support of the Proposed Resiliency Rule at 3-4, Docket No. RM18-1-000 (filed Oct. 23, 2017)); (iii) coal plants “regulated” by state or local public service commissions (WVCA Comments at 4); (iv) resources subject to cost-of-service ratemaking (Letter from Rep. Kevin Cramer to FERC at 1, Docket No. RM18-1-000 (filed Oct. 16, 2017) (“Rep. Cramer Letter”)); (v) generators with a less than 90-day fuel supply (Rep. Cramer Letter at 1); (vi) resources that are close to

cost recovery.<sup>35</sup> Commenters even go so far as to ask FERC to allow plants to be eligible for subsidies even if they are out of compliance with local, state, and federal environmental laws and regulations,<sup>36</sup> or if they cannot come on line until 24 hours after being called.<sup>37</sup> This display of opportunistic behavior must be immediately brought to a halt.

### **C. New “fixes” proposed in initial comments should be rejected.**

Several commenters took the opportunity to propose that FERC adopt a different remedial action than that proposed by DOE.<sup>38</sup> These new proposed remedies suffer from the same fundamental problem as the DOE NOPR, i.e., they go straight to trying to identify a commercially advantageous solution without pausing to identify a problem. Instead, FERC should employ the processes normally used to develop sound policy: build

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mine-mouth operations (NACC Comment at 3); and (vii) all FERC-jurisdictional markets. Motion to Intervene and Comments of Peabody Energy Corporation at 9, Docket No. RM18-1-000 (filed Oct. 23, 2017) (“Peabody Comments”).

<sup>35</sup> For instance, Exelon requested that FERC issue a policy statement declaring that units that are benefiting from state programs designed to preserve the operation of resilient nuclear resources by compensating them for their emissions-free attributes – such as the New York and Illinois Zero Emissions Credit programs – will not have their offers mitigated in FERC’s markets (Comments of Exelon Corporation at 6, Docket No. RM18-1-000 (filed Oct. 23, 2017)), and FirstEnergy requested that cost recovery mechanisms allow for recovery based on pre-impairment asset values, or allow a return on equity based on an asset’s post-impairment value with an additional allowance for recovery of maturing debt and interest. Comments of FirstEnergy Service Company *et al.* in Support of the Grid Reliability and Resilience Pricing Notice of Proposed Rulemaking at 48, Docket No. RM18-1-000 (filed Oct. 23, 2017) (“FirstEnergy Comments”).

<sup>36</sup> FirstEnergy Comments at 41-42 (asking for modifications to NOPR language to eliminate state and local environmental compliance and to only require an eligible unit to be “substantially compliant” with federal laws).

<sup>37</sup> ClearPath suggests that plants be considered “operational ready” in its proposed “Ready Reserve Market” if they can come on line within 24 hours of being called upon to serve during emergency events. Comments of ClearPath Foundation at 13, Docket No. RM18-1-000 (filed Oct. 23, 2017). This extended time to respond to an emergency does little to contribute to resiliency in the face of grid operation challenges.

<sup>38</sup> *E.g.*, Peabody Comments at 8 (requesting FERC to immediately authorize a short-term expansion of Reliability Must Run contracts or provide other cost-based compensation); FirstEnergy Comments at 41 (urging FERC to direct RTO/ISOs to adopt *pro forma* tariff provisions and resiliency support resource agreement); Comments of the PSEG Companies, Docket No. RM18-1-000 (filed Oct. 23, 2017) (supporting immediate adoption DOE’s proposal for an interim period, pending FERC’s development of a long-term solution that adequately values generator fleet resiliency).

a factual record to determine whether there is a problem, and, if needed, craft a targeted remedy that addresses any identified problem without undue collateral disruption of competitive markets. The preliminary step of finding an existing tariff to be unjust and unreasonable is required before any remedy can be ordered under section 206 of the FPA. FERC does not have the authority to require changes to an RTO or ISO tariff simply because it might prefer such changes – it must follow the mandates of section 206.<sup>39</sup>

Moreover, these new proposals suffer from similar policy problems as the DOE proposal – they are overbroad, they provide uncertain benefits, they are expensive for ratepayers, and they are disruptive of competitive markets. These competitive markets have been the foundation for significant investment in generation assets and brought significantly lower electricity prices to fuel the economic recovery this country is now experiencing.

Finally, administrative law principles on adequate notice would prevent FERC from taking action on any alternative proposal offered in initial comments without further notice and comment process steps. The public has had only 15 days to digest a voluminous set of initial comments and to prepare reply comments. For an issue of this importance, the Commission must provide ample notice of the proposal that it has under consideration, and provide for a reasonable opportunity for public comment, before taking any final action.

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<sup>39</sup> Of course, a public utility, including an RTO or ISO, is free to make changes to its own tariff under section 205 of the FPA simply by showing that the changed tariff is just and reasonable. FPA Section 205, 16 U.S.C. § 824d (2012). Acting under FPA section 205, a utility would not be required to show that the current tariff is unjust or unreasonable, or that the changes would be more just and reasonable than the current tariff. *See ISO New England, Inc.*, 120 FERC ¶ 61,087 at P 50 (2007). Within an RTO or ISO, such changes under section 205 typically go through a stakeholder review process. The initial commenters proposing alternatives to the DOE proposal are free to pursue their suggested changes through the stakeholder process set out in the respective RTO/ISO tariff.



Given these issues of law, policy, and administrative procedure, NGSA urges the Commission not to adopt the DOE proposal or any of the alternative proposals suggested in initial comments. Instead, the Commission should survey each RTO/ISO on a region-by-region basis to determine (1) whether there is any region-specific resilience issue that needs to be addressed, (2) if so, whether the current RTO or ISO market rules require reform to address the issue, and (3) if so, what reform would address the issue effectively while minimizing cost to consumers and minimizing distortion of competitive energy markets. If any issues are identified by the RTOs/ISOs, FERC should take the time needed to work with the regional grid operators and stakeholders to thoroughly assess the need and best approach to improvements in that market.

#### **IV. Conclusion**

As demonstrated in our above reply comments, those parties that stand to be substantially enriched by the DOE proposal (or their own particular alternative) have much to gain by attempting to portray natural gas as an unreliable fuel. Fortunately, the facts speak for themselves. Natural gas generation, and the fuel production and delivery system that stands behind it, are proven to be reliable and provide the type of performance required to keep the grid running. Competitive energy markets are functioning today and providing consumers with dependable service in the most cost-efficient manner. There is no basis for, or need to, blatantly discriminate among generators that rely on other fuel sources. With continued market refinements to better

value generator performance through price formation reform, for instance, reliability will continue to be enhanced.

Respectfully submitted,

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Dated: November 7, 2017