



EMBARGOED FOR MAY 8 AT 5:45 AM

**NEWS FROM: ADVANCED ENERGY ECONOMY, AMERICAN PETROLEUM INSTITUTE, AMERICAN WIND ENERGY ASSOCIATION, ELECTRIC POWER SUPPLY ASSOCIATION, INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA AND THE NATURAL GAS SUPPLY ASSOCIATION**

## **Subsidies for Uneconomic Power Plants Wrong Choice, Broad Energy Coalition Opposes Federal Action Based on Faulty Factual and Legal Premise**

*Natural Gas-Renewables-Power-Efficiency Groups Submit Legal Analysis Showing No ‘Emergency’ Justifying Action Under Existing Federal Authorities, Inappropriate to Long-term Market Support of Uneconomic Power Plants*

(Washington, D.C.) – An unusual coalition representing natural gas, power, renewable energy and energy efficiency industry associations submitted a legal analysis to the Department of Energy (DOE) late Monday opposing federal use of emergency authority to provide a long-term subsidy for aging and uneconomic power plants that would otherwise retire. Such federal action is under consideration following a request from FirstEnergy Solutions (FES), an owner of power plants now in bankruptcy proceedings.

The industry groups’ legal analysis notes that the Federal Energy Regulatory Commission recently rejected a similar proposal from DOE and initiated a broader review of electric power system “resilience” to determine whether any change in market rules is needed. FES has since petitioned DOE to use its emergency powers under Section 202(c) of the Federal Power Act to prevent the company’s power plants from closing, and others have pointed to even more obscure statutory provisions to seek similar action.

The analysis refutes that an “emergency” exists requiring the use of emergency authorities, pointing out that none of the referenced emergency authorities appropriately apply to the requested relief for power plants whose retirements do not threaten the reliability of electric power.

### **The legal analysis makes the following key points:**

- 1. The orderly retirement of inefficient, aging power plants in 2020 and 2021 does not constitute an emergency.** *“FirstEnergy’s claim that an emergency exists rests entirely on the observation that some coal and nuclear plants – most importantly those owned by FirstEnergy – are losing money and are therefore likely to retire in the coming years. That is not an emergency. The retirements [First Energy cites] will unfold over a period of years and will be carefully planned.”* (page 3) Further to this point, the paper quotes grid operator PJM Interconnection’s recent response to FirstEnergy’s petition: “...the PJM Transmission System will remain reliable and therefore the generating units listed above may plan to deactivate as scheduled.” (page 3)

(more)

2. **DOE must reject FirstEnergy's petition under Section 202(c) to provide above-market pricing to power plants.** *"Section 202(c) authorizes the Department to order generators to run during times of war or other emergencies ... The orderly retirement of power plants in PJM will unfold over a period of years and in the context of ample supply of generating capacity. There is no 'emergency' that could serve as the basis for using ... Section 202(c)." (page 5) "FirstEnergy's petition seeks to stretch Section 202(c) far beyond what its text can support... It does not give the Department authority to set national energy policy or to advantage one type of fuel for electric generation over others." (page 5)*
3. **The Defense Production Act does not contain authority to provide above-market pricing to power plants.** *"The Defense Production Act allows certain types of market interventions that are rare in American law. Even so, as broad as it is, the DPA is not broad enough to do what the supporters of these uneconomic power plants would like. The DPA does not allow the government to set prices. Nor does it allow the government to force market participants to buy products or services they do not wish to buy." (page 7)*
4. **Section 215A of the Federal Power Act authorizes only temporary measures in response to grid security emergencies.** *The 2015 FAST Act added Section 215A to the Federal Power Act authorizing DOE to issue emergency measures in response to a 'grid security emergency,' defined as cyberattacks, EMP attacks, geomagnetic storms and direct physical attacks with significant adverse effects on the reliability of critical electric infrastructure. "The retirement of coal and nuclear plants would not, of course, fit within any of these categories." (page 10) "Orders for 'emergency measures' may last only 15 days before an additional emergency finding is required. The 15-day limitation shows clear that ... Congress meant them in the ordinary sense that emergency measures are temporary and short-lived. FirstEnergy's request that certain favored power plants receive rate recovery for four years... would far exceed an authority limited to providing temporary, emergency relief." (pages 11-12)*

The white paper is attached.

####

**Association Media Contacts:**

Advanced Energy Economy: Monique Hanis [mhanis@aee.net](mailto:mhanis@aee.net), 202-236-8220

American Petroleum Institute: Mike Tadeo [tadeom@api.org](mailto:tadeom@api.org)

American Wind Energy Association: Evan Vaughn [evaughan@awea.org](mailto:evaughan@awea.org), 202.431.4640

Electric Power Supply Association: Nancy Bagot [nbagot@epsa.org](mailto:nbagot@epsa.org)

Interstate Natural Gas Association of America: Cathy Landry [clandry@ingaa.org](mailto:clandry@ingaa.org), 202-216-5913

Natural Gas Supply Association: Daphne Magnuson [daphne.magnuson@ngsa.org](mailto:daphne.magnuson@ngsa.org) 202-326-9314