UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Grid Reliability and Resiliency Pricing	)	Docket No. RM18-1-000
	)	

COMMENTS OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

I. INTRODUCTION

The Ohio Manufacturers' Association Energy Group (OMAEG) hereby submits these comments in response to the Federal Energy Regulatory Commission's (Commission) Notice Inviting Comments dated October 2, 2017 in response to the Secretary of Energy's September 28, 2017 proposed rule submitted pursuant to Section 403 of the Department of Energy (DOE) Organization Act (Proposed Rule).

OMAEG is a non-profit entity created by the Ohio Manufacturers' Association (OMA) for the purpose of educating and providing information to energy consumers, regulatory boards, and suppliers of energy; advancing energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and, advocating on behalf of manufacturers in critical cases at the state and federal levels. OMAEG's members are all members of OMA. OMA has over 1,400 member companies of all different sizes and with various energy usage profiles, all of which are Ohio retail customers.

Like OMA, OMAEG is comprised exclusively of manufacturers who work together to protect and grow Ohio manufacturing. OMAEG strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. Ohio's manufacturing sector is one of the top consumers of electricity in the state of Ohio, and any impacts arising from future increases to electricity prices that are caused by the Proposed Rule may have a significantly negative effect on their businesses. OMAEG is regularly and actively involved in proceedings before the Public Utilities Commission of Ohio as well as this Commission. Its unique knowledge and perspective will contribute to the Commission's consideration of the Proposed Rule and the issues it presents.

As further described herein, the Commission should take affirmative steps to protect competitive wholesale markets and ensure that customers are not saddled with soaring costs arising from a scheme to protect certain uneconomic power plants. Given that the Proposed Rule will distort the energy markets and manufacturers will be negatively impacted by the Proposed Rule, the Commission should exercise its authority to reject the Proposed Rule.

II. BACKGROUND

DOE proposes to weaken the competitive foundation of energy markets in order to prop up select types of generation resources that cannot meet the competitive demands of the market. This would impair the market's ability to naturally select the most efficient generation resources to best serve customers across the United States. This will result in significantly higher energy costs for individuals and businesses. For manufacturers, this means a severe decrease in manufacturing competitiveness and jobs.

The Proposed Rule justifies inviting these deleterious effects by advancing the unfounded claim that the Proposed Rule is necessary because the retirement of coal and nuclear generation threatens the reliability and resiliency of the electric grid. The reality is that these sources of generation are being retired as part of the natural cycle of competitive markets that has long sustained efficient and competitive generation and led to massive improvements in energy efficiency. If nuclear and coal based generation are truly necessary to the reliability or resiliency of the electric grid, those sources of generation would be thriving.

For the Commission to now decide that coal and nuclear are so necessary to the resiliency and reliability of the electric grid that it needs to wade into the waters of the competitive market, it would have to suddenly reverse course and determine that existing regional transmission organization (RTO) and independent system operator (ISO) tariffs are unjust and unreasonable. There is no justification for that sort of abrupt adjustment. OMAEG does not contend that competitive markets are infallible or cannot be improved. Rather, OMAEG draws the Commission's attention to the fact that competitive markets have led to record low prices that benefit the worldwide competitiveness of manufacturing in the United States. Those benefits would be jeopardized if the Commission elects to allow certain generation resources, but not others, to be compensated with extra-market payments or subsidies.

Ultimately, the federal government should not be deciding which segments of the competitive energy markets to favor and disfavor. The competitive wholesale markets have consistently advanced the efficiency of energy generation in this country and the Commission should be wary to impede that process to rescue failing power plants when

doing so will increase costs to electric customers across the United States and harm manufacturing and the millions of jobs it supports.[1]

With these general principles in mind, OMAEG submits the below comments regarding the specifics of the Proposed Rule.

III. COMMENTS

A. DOE Has Not Demonstrated that Existing RTO and ISO Tariffs Are Unjust and Unreasonable.

The fundamental premise underlying the proposed rulemaking is that the retirement of coal and nuclear generation threatens the reliability and resiliency of the electric grid. This premise is not based in reality and fails to support the requisite finding under Section 206 of the Federal Power Act that the existing RTO or ISO Tariffs are unjust, unreasonable, unduly discriminatory, or preferential.[2]

In the Notice of Proposed Rulemaking (NOPR), DOE does not actually define system "resiliency." Due to this failure, DOE did not identify which attributes the system needs in order to achieve "resiliency" that are not being met with the current markets. Without stating which aspects of the current markets impair the resiliency this Proposed Rule seeks to achieve, DOE is unable to demonstrate that existing RTO and ISO Tariffs are unjust or unreasonable.

DOE did, however, ask its Staff to evaluate system reliability. And when the Staff conducted its investigation, its report found that the markets were "functioning as designed," meaning that they were working to "ensure reliability and minimize short-

[1] Bureau of Labor Statistics, The Employment Situation at 29 (October 6, 2017) https://www.bls.gov/news.release/pdf/empsit.pdf.

[2] 16 U.S.C. § 824e(a).

term costs of wholesale electricity."[3] At the conclusion of its extensive report, Staff discussed proposals for the Department's approach to the electricity grid.[4] Nowhere in that discussion did the report suggest advancing a life support plan for generators that had failed or were failing in the competitive markets.[5] The North American Electric Reliability Corporation (NERC) concurred with Staff's assessment when it testified before Congress that "the bulk power system (BPS) remains highly reliable and resilient, showing improved reliable performance year over year."[6]

In the NOPR, DOE emphasizes the 2014 Polar Vortex. Notably, the NOPR fails to mention that many coal and nuclear plants performed poorly during the Polar Vortex as the plants encountered equipment failures and frozen coal piles. Additionally the NOPR focuses on the winter of 2014, but does not mention the following winter, which brought about more record low temperatures.[7] The reason that DOE cannot tell a tale of calamitous unreliability from this second polar vortex is that following the 2014 event, the markets operated as markets do: the markets identified the problems that beset the grid in 2014 and they came up with solutions. In PJM, Capacity Performance Rules were implemented that address the concerns raised by the DOE. If existing market products are truly insufficient to support reliability and resiliency, however those terms may be

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3 Department of Energy, Staff Report to the Secretary on Electricity Markets and Reliability at 16 (August 2017) https://energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf.

4 Id. at 126-29.

5 See id.

6 "Powering America: Defining Reliability in a Transforming Electricity Industry," Testimony of Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corporation, Before the Subcommittee on Energy, House Committee on Energy and Commerce (September 14, 2017) http://docs.house.gov/meetings/IF/IF03/20170914/106383/HHRG-115-IF03-Wstate-CauleyG-20170914-U1.pdf.

7 Doug Stanglin and Doyle Rice, "Winter Holds Eastern U.S. in Icy Group with Record Lows," USA TODAY (February 20, 2015) https://www.usatoday.com/story/weather/2015/02/20/winter-weather-cold-snow-record-temperatures/23728379/.

defined, the proper course of action is to propose a solution tailored to product definition and the attributes sought so that all capable resources can compete to best provide service to customers. The current markets remain fully capable of ensuring reliability without the need to favor certain types of generation with subsidies paid for by captive customers.

B. Regional Transmission Organizations Effectively Address System Reliability and Resiliency, Eliminating the Need for a One-Size-Fits-All Federal Regulation.

DOE proposes that the federal regulatory apparatus usurp the authority of states and regional transmission organizations to determine its own resource procurement decisions. Existing RTO and ISO tariffs provide adequate authority for an RTO or ISO to prevent a generator retirement when such a retirement would actually threaten grid reliability. These RTOs and ISOs already have authority to enter into "Reliability Must Run" agreements that allow for cost recovery for generators that are needed for reliable and resilient grid operations. This approach is preferable to the Proposed Rule because it allows for a case-specific approach where only generators that are actually needed for grid reliability receive cost support payments and requires resource owners to formally indicate an intent to retire, which enables the RTO or ISO to separate generators that need additional payments to continue operations from those that simply want them. On the other hand, the Proposed Rule indiscriminately provides for cost support payments to any coal or nuclear power plant, regardless of whether that power plant is truly needed to maintain grid reliability and resiliency—or whether the payments are necessary to prevent retirement.

Ultimately, a federal agency should not be picking and choosing which competitors within an industry will live or die on their own merits and which will be

guaranteed survival by federal policy. Market forces will always do a better job of streamlining the market than reckless favoritism effectuated on a political whim. This has long been the Commission's policy, and that policy should not change with this case.

C. Without Any Acknowledgement of its Negative Effects, the Proposed Rule Will Harm Manufacturing.

The Proposed Rule purports to impose a regulatory burden that is limited to the initial implementation costs borne by ISOs and RTOs. The Proposed Rule, therefore, makes no attempt to quantify the millions or billions of dollars in cost increases for electricity that its adoption would impose on customers. For non-coal or nuclear generators, these costs will be felt when they are forced to compete on an uneven playing field. For residential customers, these costs will be felt when they pay their monthly electric bill. For manufacturers, these costs will be felt when they are forced to reduce their operations and lay off workers because their electric costs are cost prohibitive.

Lest anyone be inclined to disregard the real-world impacts of higher electric prices, the Commonwealth of Kentucky commissioned a study on the effect of electricity prices on U.S. businesses. That study found that a 10% increase in the real price of electricity would cause a net loss of one million jobs and a decrease of $142 billion in the national Gross Domestic Product (GDP).[8] That study further concluded that those effects would be felt the strongest in the metals, paper, wood, chemical, textiles, and minerals sectors of the economy—which collectively employ 2.5 million Americans.[9] Further,

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[8] Commonwealth of Kentucky Staff at the Energy and Environment Cabinet, "The Vulnerability of the United States Economy to Electricity Price Increases" (March 2015). http://energy.ky.gov/Programs/Data%20Analysis%20%20Electricity%20Model/Vulnerability_to_Electricity_Prices.pdf.

[9] Id.

these industries are geographically clustered, so the increased prices would disproportionately harm those areas of the country that are home to these sectors.[10]

Additionally, another study in Ohio examined the gross state product per employee and measured how it changed with the cost of electricity between 1990 and 2010 to demonstrate the effects of electricity price on productivity of manufacturing in Ohio and the region.[11] The study concluded that higher electricity prices have had a statistically significant negative effect on manufacturing productivity in Ohio, as well as in four other neighboring states.[12] Specifically, the study showed that an increase of 1 cent per kilowatt-hour correlated to a decrease in gross product generated of about $2,527/employee, a total of 2.2%.[13] Similarly, the results of the study determined that those effects would be felt most keenly within the electricity-intensive industries.[14]

D. The Rapidly Accelerated Time Schedule Imposed in this Case Denies Parties the Opportunity to Effectively Respond to the Commission's Questions and Denies the Commission the Opportunity to Fully Evaluate the Complete Effects of the Proposed Rule.

Section 403(b) of DOE's Act provides that the Commission shall act on DOE's proposals in "an expeditious manner in accordance with such *reasonable* time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal" (emphasis added). The timeframe proposed by DOE is patently unreasonable. It fails to allow parties sufficient time to address the complicated issues that surround the Proposed Rule.

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10 Id.

11 I. Lendel, S. Park and A. Thomas, "Moving Ohio Manufacturing Forward: Competitive Electricity Pricing" (2013) at 30-31. *Urban Publications*. Paper 679. http://engagedscholarship.csuohio.edu/urban_facpub/679.

12 Id.

13 Id. at 31.

14 Id.

This sweeping proposal to disrupt competitive markets would impact millions across the country and the Commission should allow for all parties to have enough time to submit meaningful comments on the Proposed Rule. Given the significant nature of the Proposed Rule, the Commission should allow at least 60 days for comment, as provided in Executive Order 12,866.[15]

The volume and depth of questions posed by the Commission should mandate additional time for response. In its October 4, 2017 Request for Information, the Commission asked parties to respond to 30 different requests, many with multiple questions or subparts, affording parties less than 20 days to respond. This is entirely inconsistent with comment periods for other significant regulations that have ranged from 100 days to six months.[16]

Given that DOE does not present concrete evidence that any immediate harm will befall the electric grid should the Proposed Rule not be enacted within the near future, there is no credible reason to not extend the comment period to allow for a full consideration of the issues presented.

IV. CONCLUSION

The Commission should reject the imprudently-crafted Proposed Rule and continue its longstanding policy of competitive solutions to market impediments and fuel neutrality. The current state of affairs does not support the extreme step of using the power of the federal government to prop up failing power plants while neglecting the market benefits that have spurred efficiency, innovation, and lower prices in the energy

[15] See Executive Order 12,866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (September 30, 1993).

[16] See 75 FR 37884 (June 17, 2010); 50 FR 48540 (Nov. 25, 1985).

industry. For the reasons stated above, OMAEG respectfully requests that the Commission reject the Proposed Rule and maintain the status quo that has effectively guided the industry.

NOTICES AND COMMUNICATIONS

Notices and communications with regard to these proceedings should be addressed to:

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October 23, 2017

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.2010, I hereby certify that I have this day served the foregoing document by electronic means upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio this 23rd day of October, 2017.

/s/ Kimberly W. Bojko
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