UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

REPLY COMMENTS OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

I. INTRODUCTION

Pursuant to the Federal Energy Regulatory Commission's (Commission) Notice Inviting Comments on Secretary of Energy's September 28, 2017 Proposed Rule under Section 403 of the Department of Energy (DOE) Organization Act (Proposed Rule),[1] the Ohio Manufacturers' Association Energy Group (OMAEG) hereby submits these reply comments in response to comments offered by various entities.

OMAEG submitted initial comments in this docket on October 23, 2017, encouraging rejection of the Proposed Rule.[2] Numerous other manufacturers and large consumers of electricity, including the American Manufacturers and Large Institutional Customers and U.S. Manufactures, strongly oppose the Proposed Rule,[3] and agree that, if implemented, the Proposed Rule would "fundamentally reconfigure the nation's wholesale electricity markets . . .[,] override the market's ability to select the most efficient

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1 Notice Inviting Comments (October 2, 2017).

2 See OMAEG Initial Comments (October 23, 2017) (Comments of OMAEG).

3 See Comments of American Manufacturers and Large Institutional Customers (October 23, 2017) and Comments of Electricity Consumers Resource Council (ELCON), et al. (collectively, U.S. Manufacturers) (October 23, 2017).

units, increase the electricity costs by many millions of dollars for untold numbers of businesses and consumers, and result in a substantial loss of U.S. manufacturing capacity and jobs."[4] The Public Utilities Commission of Ohio (PUCO), PJM Interconnection, L.L.C. (PJM), former FERC Commissioners, and numerous others, also oppose the Proposed Rule, citing concerns for the additional costs that will be borne by consumers and businesses, the lack of support for the identification of the problem and proposed remedy, and the injection of uncertainty over the future of efficient, competitive electric markets and long-term investment.[5]

OMAEG's Reply Comments further highlight the significant concerns associated with implementing the Proposed Rule and the negative impact on the competitive wholesale electric markets and manufacturers. Despite assertions to the contrary, the Proposed Rule would create a host of problems, all in the name of solving a problem that does not exist. As such, for the reasons set forth herein and in its initial comments, OMAEG respectfully requests that the Commission reject the Proposed Rule and continue to promote competitive wholesale electric markets by relying on the market-based solutions that have long benefited consumers.

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[4] Comments of U.S. Manufacturers at 5.

[5] Comments of PUCO at 1, 8-13 (October 23, 2017); Comments of PJM at 1-14 (October 23, 2017). Comments of Former FERC Commissioners at 3-11 (October 19, 2017).

II. COMMENTS

A. Ohio Utilities Miss the Mark in Their Assessment of the Proposed Rule

The parent or affiliate companies of each of Ohio's electric distribution utilities (collectively, Ohio Utilities) filed comments in this docket.[6] Notably, none of the Ohio Utilities' comments sufficiently address the cost impact that the Proposed Rule would have on their customers' electric service. But, all of the Ohio Utilities' make the error of uncritically accepting the assertion that the proposed rule may improve grid resiliency. Three of the four companies, however, stop short of endorsing the misguided Proposed Rule.[7] Only FirstEnergy completely supports its adoption.[8]

i. FirstEnergy and Others Support a Solution to a Problem, Which They Admit Is Undefined

The first step in addressing any problem is to define it. Here, the Proposed Rule purports to address grid reliability and resiliency, yet the Notice of Proposed Rulemaking fails to enumerate what is meant by "resiliency."[9] FirstEnergy, for its part is unfazed by this glaring omission from the Proposed Rule. It contends that the "Commission need not look far to find definitions of resiliency appropriate for use in this rulemaking proceeding."[10] FirstEnergy then proceeds to submit no fewer than five different definitions and gauges for resiliency before broadly concluding that resilient generation is

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6 See Comments of the Duke Energy Corporation (October 23, 2017) (Comments of Duke); Comments of American Electric Power Company, Inc. (October 23, 2017) (Comments of AEP); Comments of FirstEnergy Service Company et al. (October 23, 2017) (Comments of FirstEnergy); and Motion to Intervene and Comments of AES Companies (October 23, 2017) (Comments of AES).

7 Id.

8 See Comments of FirstEnergy at 1.

9 Comments of FirstEnergy at 17; Comments of Duke at 6; Comments of AES at 15; Comments of OMAEG at 4; Comments of PJM at 7; Comments of American Manufacturers and Large Institutional Customers at 24.

10 Comments of FirstEnergy at 17.

important to the grid.[11] FirstEnergy does not explain which of the definitions of resiliency should be used for the Proposed Rule or how the varying definitions would impact the Proposed Rule. FirstEnergy also explains how it believes various regional transmission organizations, reliability coordinators, and even Congress are already addressing some form of resiliency.[12] AEP, Duke, and AES also provided varying definitions of resiliency.[13] The references to a plethora of definitions and actions already being taken in a number of forums expose a major flaw in the Proposed Rule: it never actually defines the problem it is trying to solve.

ii. Retirement of Inefficient Power Plants Does Not Negatively Impact Grid Reliability or Resiliency

The initial comments and supporting documentation confirm that the fundamental premise of the Proposed Rule is unfounded. The retirement of inefficient power plants is not an imminent threat to the reliability and resiliency of the electric grid.

FirstEnergy litters its comments with conclusory statements that the retirement of coal and nuclear plants threatens resiliency. Like the Notice of Proposed Rulemaking, FirstEnergy uses the Polar Vortex of 2014 as the central justification for the claim that retirement of inefficient plants devastates grid resiliency.[14] In the rush to assume that the difficulties were caused by—and not just correlated with—retirement of inefficient plants, FirstEnergy and others overlook factors that undercut the probative value of this purported evidence. First, as noted in OMAEG's initial comments, later, comparably cold winters did not have the same negative impact on the grid after the market corrected

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[11] Id. at 17-22.

[12] Id.

[13] Comments of AEP at 4; Comments of Duke at 6; Comments of AES at 15.

[14] See Comments of FirstEnergy at 22.

the flaws that led to the 2014 reliability issues.[15] Second, as the U.S. Manufacturers noted in their initial comments, a broader view of all outages caused by major electricity disruptions demonstrates that retirement of outdated generation does not pose a serious risk.[16] In fact, only .00007% of total outage hours from 2012-2016 were caused by fuel shortages.[17] Moreover, 97% of those fuel shortage-related outage hours were caused by a single event; a single event that involved a coal-fired power plant.[18] U.S. Manufacturers further point out that severe weather, not fuel supply concerns or generation adequacy, account for the vast majority of outages.[19]

The American Manufacturers and Large Institutional Consumers supplied a more comprehensive study of the causes of, and subsequent response to, the 2014 Polar Vortex.[20] In reality, problems with a number of different generation sources, including coal piles freezing over, led to the inadequate response to that event.[21] Additionally, those comments demonstrate that the market has corrected these flaws to avoid similar issues going forward.[22]

The Proposed Rule, FirstEnergy, and others proceed under the assumption that these failing power plants could stop a resiliency crisis if they were just compensated fairly for the benefits that they provide. The statistics, however, demonstrate that this is

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15 See Comments of OMAEG.

16 Comments of the U.S. Manufacturers at 10-11 (internal citations omitted) .

17 Id. at 10.

18 Id. at 10-11.

19 Id. at 11.

20 Comments of American Manufacturers and Large Institutional Customers at 29-30.

21 Id. at 30.

22 Id.

not the case; the grid does not need failing generators to save it.[23] As the American Manufacturers and Large Institutional Consumers correctly state, the wholesale electricity markets already account for resiliency.[24] The wholesale electricity markets are not indifferent to whether or not the grid is resilient. Rather, the markets will seek solutions that are resilient and also meet the other needs of the grid on its own.

It is not the job of the federal government to step in and compensate failing generators when the free market is unwilling to do so. This perspective is further supported by the comments of PJM. PJM argues that a diverse resource portfolio is more resilient; and the current resource portfolio is more resilient than ever before.[25] With that diverse portfolio, PJM has been able to successfully develop its own resiliency strategies without the need for federal mechanisms to support failing generators.[26]

The question of whether coal or nuclear generation needs to be part of a reliable and resilient resource profile at all is not before the Commission. Economic coal and nuclear plants would be unaffected by the rejection of the Proposed Rule. They would continue operating as they do currently and continue making the same positive resiliency contributions to the grid. The only question currently before the Commission is whether to prop up failing power plants to solve a non-existent resiliency problem. U.S. Manufacturers explain that the generation retirements referenced by the Proposed Rule and others are part of a long-term gradual, natural trend that has yet to impact resiliency or reliability.[27] Allowing this natural trend to continue and result in the retirement of

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[23] Comments of U.S. Manufacturers at 10-11.

[24] Id. at 12.

[25] Comments of PJM at 19.

[26] Id. at 19-20.

[27] Comments of U.S. Manufactures at 9.

uneconomic plants will not make the grid less resilient or reliable, just as the preceding retirements have not done so.

iii. Even if a Reliability or Resiliency Problem Did Exist, It Would Be Best Addressed on a Regional Level

Putting aside the issue of whether a problem exists that needs a regulatory solution, the universal federal proposal is not the proper mechanism to address grid issues. While FirstEnergy seems to accept this one-size-fits-all approach offered by the Proposed Rule, the other Ohio Utilities realize that these problems are best addressed on a regional basis.[28]

AEP argues that region-specific planning will better enable decisionmakers to craft solutions that address the precise needs of each state or region.[29] AEP contends that these needs will be different region-to-region and that solutions crafted after a reasoned analysis of those needs will provide the most effective way to address whatever problems may exist.[30] Duke concurs with AEP's assessment, contending that "[i]t cannot be emphasized enough that, as this rule is implemented, variation in ISOs'/RTOs' configuration and operation should be respected."[31] Duke adds that the regulatory structures that underlie these markets differ from state to state.[32] Given each region's unique characteristics, generation portfolio, and history, AES also recognizes the need for regional flexibility in implementation of any final rule.[33] While Ohio and other states in the PJM region are primarily restructured states, utilities in the MISO region are

[28] Comments of AES at 1-2, 6-7; Comments of Duke at 5; Comments of AEP at 6-7.

[29] Comments of AEP at 6.

[30] Id. at 6-7.

[31] Comments of Duke at 5.

[32] Id.

[33] Comments of AES at 6.

primarily vertically integrated utilities, and the New York Independent System Operator is a single state RTO.[34] The Commission should respect these distinctions and allow states to develop solutions that address their specific needs.

PJM's comments reinforce the arguments for regional solutions advanced by AEP, Duke, AES, and others. PJM explains that the PJM region is "less dependent on any single fuel type" than other regions throughout the country.[35] Given PJM's distinct resource makeup, it should not be subjected to a rule based on a rough approximation of what is needed for grid reliability across the country.

B. Adopting the Proposed Rule Would Require the Commission to Abandon Its Own Mission

This Commission's charge is to "assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means."[36] As a bipartisan group of former Commissioners point out, the Commission has long advanced its mission through reliance on competitive market forces.[37] The former Commissioners emphasize that this Proposed Rule would be a "significant step backward" after the Commission's substantial progress towards competitive wholesale markets that promote lower costs and greater efficiencies for consumers.[38]

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34 Comments of Duke at 5.

35 Comments of PJM at 19.

36 Comments of Former FERC Commissioners at 1.

37 Id. at 2.

38 Id. at 3-4.

OMAEG concurs with the American Manufacturers and Large Institutional Customers that the law limits the Secretary of Energy's role in the rulemaking process.[39] As explained, it is up to the Commission to decide whether to adopt the Proposed Rule as the Commission has "exclusive jurisdiction with respect to any proposal made" by the Secretary of Energy.[40] As such, the Commission should engage in its legally-required analysis to determine the appropriateness of the Proposed Rule on its own merits.

OMAEG furthers supports the argument that, in order to adopt the Proposed Rule, the Commission must have a "reasoned basis" to alter the current rules.[41] Adoption of the Proposed Rule would constitute a significant departure from the Commission's precedent. To make this departure, the Commission would have to say that the current rates are "unjust, unreasonable, unduly discriminatory or preferential."[42] The thrust of the Proposed Rule's rationale that the current rates are so flawed is that the retirement of inefficient coal and nuclear plants (due to the competitive generation market) now threatens grid reliability and resiliency. As the American Manufacturers and Large Institutional Customers note, however, the DOE's own report has already concluded that there is no such threat.[43]

State public utilities commissions have similar stated goals as this Commission (e.g., the Ohio commission "is charged with assuring that Ohioans have access to adequate, safe, and reliable public utility service at a fair price."[44]). The PUCO, in

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39 Comments of American Manufacturers and Large Institutional Customers at 13-14.

40 Id. at 14 (citing 42 U.S.C. § 7173(c)).

41 American Manufacturers' Comments at 16-17 (citing *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144 (D.C. Cir. 1985))

42 16 U.S.C. § 824e

43 American Manufacturers' Comments at 16.

44 Comments of the PUCO at 3.

striving towards those goals, concurs with the former Commissioners and urges the Commission to "reject the Department of Energy's . . . Proposed Rule."[45] The PUCO notes that market solutions have greatly improved "access to adequate, safe, and reliable public utility service at a fair price."[46] In short, market reforms have worked without the aid of artificial price supports.[47] With regard to reliability, the PUCO explains that "PJM's capacity market has successfully attracted new, highly efficient, investor-supported NGCC generation in Ohio and elsewhere, while simultaneously allowing inefficient and high cost generators to retire, all without endangering resource adequacy."[48] The PUCO adds that that PJM's reserve margins "are increasing and are consistently in excess of the levels necessary to ensure reliability"[49] and that "fundamental market principals are sound in PJM's wholesale markets."[50]

Importantly, the PUCO also explains how the Proposed Ruled could affect the state commissions' rights and the advancement of their missions: "the [P]roposed [R]ule could upend a state's current authority to choose the regulatory paradigm for its utilities, but forcing all organized markets to implement cost-plus rates. This will most certainly negatively impact the ability of the PUCO to assure just and reasonable rates for our consumers and businesses."[51]

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45 Comments of PUCO at 1.

46 Id. at 3.

47 Id.

48 Id. at 7.

49 Id. at 7.

50 Id. at 8.

51 Id. at 13.

C. The Proposed Rule Is Too Costly for Manufacturers

As explained in various comments, the Proposed Rule will increase costs to manufacturers and other energy-intensive businesses, compromising businesses' ability to compete in the U.S.[52] U.S. Manufacturers attempt to quantify just what the impact of the Proposed Rule would be on manufacturers across the country.[53] They cite research that concludes that a 10% increase in the price of electricity nationally could lead to a net loss of over one million manufacturing jobs, to say nothing of jobs in other sectors that will also be impacted by increased costs caused by the Proposed Rule.[54] The PUCO cites to a potential increase in costs on consumers and businesses in PJM's retail choice states by $8.1 billion annually, explaining that "[g]ranting cost-plus compensation to all generation units that meet the DOE's proposed criteria would undoubtedly have a deleterious impact on PJM's administered wholesale markets and, as a result, on the retail prices that consumers would ultimately pay."[55] The PUCO is rightfully concerned that consumers and businesses "may incur billions of dollars of new costs that would negatively impact economic development and job growth."[56]

Contrary to the arguments of some,[57] uneconomic coal and nuclear power plants and their jobs should not take preference over U.S. manufacturing jobs and the jobs of

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52 See, e.g., Comments of American Manufacturers and Large Institutional Customers at 17-20; Comments of U.S. Manufacturers at 14-15; Comments of PUCO at 12; Comments of OMAEG at 7-8.

53 Comments of U.S. Manufacturers at 14-15.

54 Comments of U.S. Manufacturers at 14-17.

55 Comments of PUCO at 12.

56 Id.

57 See, e.g., Comments of the Ohio AFL-CIO at 1 (October 23, 2017) (Comments of AFL-CIO); Comments of the Ohio Coal Association at 6 (October 23, 2017) (Comments of Ohio Coal Association). .

customers forced to subsidize (again) the uneconomic generation plants.[58] Ohio has seen the devastation that occurs when major employers leave a region, including the loss of more than 320,000 manufacturing jobs in the last decade.[59] Economic changes, such as increased costs, negatively impact the balance sheets of manufacturers and the vendors in their supply chains. Economic changes like the one proposed here will adversely impact manufacturing and Ohio businesses. As the PUCO explained: "Quite simply, the consequences if the FERC adopts the DOE's proposal in its section 403 NOPR could be dire."[60]

III. CONCLUSION

OMAEG respectfully requests that the Commission reject the Proposed Rule for the reasons stated herein and in its initial comments. The Proposed Rule is ill-conceived and would result in disastrous consequences in the manufacturing sector and across the broader American economy.

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[58] Comments of American Manufacturers and Large Institutional Customers at 17-20; Comments of U.S. Manufacturers at 14-15;

[59] Comments of AFL-CIO at 1.

[60] Comments of PUCO at 13.

NOTICES AND COMMUNICATIONS

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November 7, 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 7th day of November, 2017.

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