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October 23, 2017

VIA ELECTRONIC SUBMISSION

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

RE: Docket No. RM18-1-000, Grid Reliability and Resilience Pricing

Dear Secretary Bose,

Center for Coalfield Justice (“CCJ”) respectfully submits the following comments regarding the Department of Energy’s (“DOE”) September 28, 2017 proposal for final action (the “Proposal”) by the Federal Energy Regulatory Commission (“FERC” or the “Commission”). CCJ supports the comments submitted by Earthjustice, Natural Resources Defense Council, and Sierra Club.

Center for Coalfield Justice (“CCJ”) was founded in 1994 by individuals concerned about the impacts of longwall mining on their homes, water supplies, streams, ponds, aquifers, lakes, aquatic life, wildlife, plants, and land that makes up the beautiful landscape of this region. Over the last 21 years, CCJ has expanded its mission to work on issues related to extractive industries more generally. CCJ’s mission is “to improve policy and regulations for the oversight of fossil fuel extraction and use; to educate, empower and organization coalfield citizens; and to protect public and environmental health.” CCJ has nearly two thousand members and supporters, most of who live in

Greene and Washington counties in Pennsylvania and live with the daily impacts of coal mining, particularly longwall coal mining.

Elementary considerations of fairness and free market dictate that the rules are to govern that play and not simply the score, but the Proposal plainly asks the Commission to pick winners and losers. The Proposal is a transparent attempt to insulate coal-fired power plants and nuclear power plants that are no longer economically viable from competition and to temporarily increase coal demand. Furthermore, it does so without any prior analysis of the certain and significant environmental and socioeconomic impacts. Under the guise of reliability and resiliency, DOE relies upon political rhetoric to support its request that hardworking ratepayers subsidize these old, inefficient plants. It is outrageous to ask struggling communities, like those in Southwestern Pennsylvania, to prop up expensive coal-fired power plants.

I. The Proposal must be denied because it fails to provide sufficient factual detail and never claims that existing rates are unjust, unreasonable, or unduly discriminatory or preferential.

The Administrative Procedure Act requires that a Notice of Proposed Rulemaking (“NOPR”) “provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.” *Honeywell International, Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004). Under the Federal Power Act, the rationale for a Section 206 rule is that current rates are unjust and unreasonable. The Proposal, however, never states that wholesale rates are currently unjust and unreasonable or unduly discriminatory. This glaring omission dooms DOE’s Proposal under Section 206 of the Federal Power Act, which provides consumers statutory protection from arbitrary rate changes. *See Fed. Power Comm’n v. Sierra Pac. Power*, 350 U.S. 348, 355 (1956) (“...the purpose of the

power given to the Commission by § 206(a) is the protection of the public interest, as distinguished from the private interests of the utilities...”). A Notice of Proposed Rulemaking (“NOPR”) without a reasoned finding that current rates are unjust or unreasonable fails to provide interested parties with an opportunity to submit meaningful comments.

DOE’s Proposal contains no statement, much less a well-supported statement, that the closure of some coal-fired and nuclear power plants in competitive markets will cause rates that are or imminently will become unjust, unreasonable, unduly discriminatory or preferential. The Proposal invites interested parties to speculate on a matter that the agency should have stated explicitly and adequately supported with reliable evidence. However, it is not the responsibility of interested parties to fill the gaps in DOE’s proposal. Furthermore, the Proposal is so vague that it fails to even provide interested parties with a reasoned basis for speculating about the appropriateness of current rates.

Without a proposed finding about the appropriateness of current rates and a coherent explanation of that finding, DOE makes conclusory statements about why the proposed tariff is necessary. DOE baldly asserts that “wholesale power markets are not adequately pricing resiliency attributes of fuel-secure power,” and that “there is a growing recognition” that markets “do not necessarily pay generators for all of the attributes that they provide to the grid, including resiliency.” Even generously construed, DOE’s statements are unintelligible because the Proposal never defines “resiliency,” a concept that goes to the very heart of DOE’s Proposal.

DOE's unsupported assertions that current competitive markets "do not necessarily" recognize unspecified attributes including undefined resiliency fall far short of providing a reasoned basis for finding that the current rates must change. Because the Proposal neither includes a proposed finding about the justness and reasonableness of current rates nor any discernible explanation of how current rates are deficient, the Commission cannot finalize a legally defensible rule.

The subsequent sections of these comments assume, *arguendo*, that this deficiency is not wholly fatal to DOE's instruction that tariffs be revised to allow full cost recovery and a fair rate of return by so-called reliable and resilient generators.

II. The Proposal is an overt political maneuver designed to bailout uneconomical coal-fired and nuclear power plants.

The proposal is a thinly veiled attempt to provide financial protection for coal and nuclear generators that are struggling to compete in the diverse energy market and to temporarily boost the demand for coal. Neither the Proposal itself nor the materials to which it refers support its two principal claims: (1) that the electricity grid faces an imminent reliability and resiliency "crisis" due to the anticipated closure of certain coal-fired and nuclear plants, and (2) that the only way to avoid that impending "crisis" is to establish rate tariffs for the full "recovery of costs and a fair rate of return" to generation facilities with a 90-day fuel supply on site.

In reality, our nation's grid does not face a reliability or resiliency – no matter how it is defined – emergency. Moreover, contrary to DOE's assertion, "reliability and resiliency" is not synonymous with on-site fuel storage.

That grid reliability is in immediate danger and only enormous piles of coal can save it is absurd. DOE's Proposal ignores or misconstrues the available evidence. In its 2016 report, the North American Electric Reliability Corporation ("NERC"), which is charged with monitoring the reliability of the grid using a variety of metrics, concluded that the reliability the of U.S. energy grid was strong and the trend line shows continued improvement. Additionally, DOE's own grid reliability study agreed that grid reliability is improving "due to better planning, market discipline, and better operating rules and standards."

III. The Proposal would have significant economic, environmental and public health impacts.

When coal is burned, harmful pollutants are released into the air. Modern air pollution controls are intended to reduce but do not eliminate harmful pollutants that are released into the environment. A recent study conducted by Carnegie Mellon University found that replacing all coal-burning power plants with natural gas generators would reduce sulfur dioxide emissions by more than 90 percent and nitrogen oxide emissions by more than 60 percent. "These compounds are major causes of fine particulate pollution. Reductions on this level would lower the total cost of national annual human health damages by US\$20 billion to \$50 billion annually."¹

Burning coal also results in an ash call coal ash, fly ash, or coal combustion waste. The main components in coal ash are arsenic, mercury, lead, cadmium, chromium, and selenium, among other heavy metals. These contaminants are associated with cancer,

¹ <https://www.scientificamerican.com/article/the-other-reason-to-shift-away-from-coal-air-pollution-that-kills-thousands-every-year/>

respiratory illnesses, and other serious health issues. Coal ash is disposed of in large surface impoundments.

The Little Blue Run Impoundment is the largest coal ash disposal pond in the nation. The 1,700-acre impoundment sits behind 400-foot-high earthen dam that is officially classified as being a “high hazard potential” risk to downstream communities in case of failure. It was built in 1975 and is filled with 20 billion gallons of coal ash and scrubber waste from FirstEnergy’s Bruce Mansfield Power Plant in Beaver County, Pennsylvania.

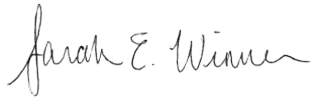
For decades, the working class families surrounding the Little Blue Run Impoundment have watched a slow-moving disaster wreak havoc on their communities and upend their way of life. Homesteads and farmsteads were buried in coal combustion waste that now emits a foul rotten egg-like smell of sulfur dioxide. The unlined impoundment has leaked large amounts of arsenic and selenium into the groundwater, nearby surface waters, and poisoned drinking water supplies. Countless seeps from the hillsides of the impoundment have caused significant damage to nearby properties.

The economic impact of the Proposal would likely be particularly acute in these working class communities that are already disproportionately burdened by the coal industry. The transfer of money from these ratepayers to uneconomical coal-fired generators is offensive particularly when healthier, lower-cost options are readily available.

IV. Conclusion

For the foregoing reasons, CCJ respectfully requests that the Commission deny DOE's Proposal.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Sarah E. Winner".

Sarah E. Winner, Esq.
Staff Attorney

Document Content(s)

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