UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Department of Energy’s Proposed Grid Resiliency Pricing Rule

) Docket No. RM18-1-000
) October 23, 2017

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COMMENTS OF TOLEDO COALITION FOR SAFE ENERGY, DON’T WASTE MICHIGAN, COALITION FOR A NUCLEAR-FREE GREAT LAKES, CITIZENS’ RESISTANCE AT FERMI TWO, ALLIANCE TO HALT FERMI 3, MICHIGAN STOP THE NUCLEAR BOMBS CAMPAIGN AND CITIZENS FOR ALTERNATIVES TO CHEMICAL CONTAMINATION AND BEYOND NUCLEAR

The Michigan and Ohio grassroots organizations Toledo Coalition for Safe Energy, Don’t Waste Michigan, Coalition for a Nuclear-Free Great Lakes, Citizens’ Resistance at Fermi Two, Alliance to Halt Fermi 3, Michigan Stop the Nuclear Bombs Campaign, and Citizens for Alternatives to Chemical Contamination; and the Takoma Park, Maryland-based organization Beyond Nuclear (“TCSE et al.”) hereby submit comments in opposition to the proposed Grid Resiliency Pricing Rule, FERC Docket No. RM18-1-000 (“Resiliency Rule”).

I. BACKGROUND

On September 29, 2017, the U.S. Department of Energy (“DOE”) submitted a letter to the Federal Energy Regulatory Commission (“FERC”), demanding changes to pricing rules for certain generation units in competitive wholesale electricity markets. On October 2, 2017, FERC responded by issuing an accelerated schedule for public comments (October 23, 2017) and reply comments (November 7, 2017). On October 10, 2017, DOE published a notice of the proposed rulemaking in the Federal Register, with a significant modification from the proposal submitted to FERC on September 29. FERC also issued a notice on October 11, 2017 of DOE’s Federal Register notice and the amended version of the proposed rule. TCSE et al. are responding to the latter amended version.

DOE is proposing the Resiliency Rule to bail out approximately 100 baseload coal and nuclear power plants in the nation’s electricity markets and to insulate them from future market competition against natural gas and more modern, flexible, and cost-effective energy resources including wind, solar and efficiency/conservation. The criteria to qualify a plant for FERC bailout protections apply almost exclusively to commercial nuclear reactors and coal-fired power plants in four regional markets covering thirty states and the District of Columbia. Forty-three
(43) of the 99 nuclear power reactors currently operating in the U.S. would be covered by the rule, and a larger number of coal-fired power plants and some other fossil fuel and biomass plants could qualify.

II. OBJECTIONS TO PROPOSED RULE

TCSE, Don’t Waste Michigan, Beyond Nuclear and Coalition for a Nuclear-Free Great Lakes are also co-signers and endorsers of the comments submitted in this proceeding by multiple groups under the auspices of Nuclear Information and Resource Service dated October 23, 2017 (“NIRS filing”), and those comments are hereby incorporated fully herein by reference.

a. Unnecessary Economic Windfall

The Sierra Club has estimated that if the proposed Resiliency Rule had been in effect through 2016, it would have cost consumers over $14 billion, based on reported market prices and the operating costs of eligible power plants. If the proposed Rule is implemented, the estimated total cost to customers in above-market rates could exceed $180 billion (in 2016 USD) by 2030. The proposal would comprise an enormous subsidy to owners of aging power plants, and as proposed, would be adopted without any substantive cost-benefit analysis or justification, environmental analyses, or consideration of alternatives.

b. Recurrence of Pollution and Contamination

Propping up plants that otherwise would be mothballed or decommissioned means that public health consequences and threats will continue for years beyond expected terminus dates of the affected plants. None of this is quantified by FERC in connection with this rulemaking. With gas-fired new plants, wind and photovoltaic solar installations coming on line while there remain older coal and nuclear plants remaining in service, there will be cumulative increases in such pollutants as mercury, radium, radiotoxins and greenhouse gases. None of this is quantified by FERC in this rulemaking. The nuclear fuel chain, which itself causes carbon emissions and gross amounts of externalized pollution, will persist unabated. Dangers attendant to the operation of aging nuclear power plants at the extreme end of their useful lives will multiply. None of this is quantified or discussed in the context of this rulemaking by FERC.

Remaking markets to once again promote large, centralized nuclear and coal generation assures that there will be recurring public health and safety threats. Mining of coal and uranium lays waste to large areas and pollutes enormous water resources. Uranium mining and reactor fuel production generate over 25,000 pounds of radioactive waste for every pound of fuel that is used in a reactor, and nearly all of it is deposited in open-air piles and ponds. This part of the waste problem disproportionately affects rural, largely indigenous communities in the U.S. and abroad. Every year, reactors consume 2,000 tonnes of enriched uranium fuel, which itself becomes lethally radioactive for at least 1,000 years. and remains a public safety risk for hundreds of thousands of years, posing threats to public health, drinking water, and nuclear proliferation well beyond the current human horizon. The potential for catastrophic accidents as
aging reactors are put to the test of operations beyond reactor design life will cause increased risk in many locations of the loss of hundreds of billions of dollars’ worth of property, human and environmental casualties.

Coal plants produce solid and liquid wastes and air pollutants that threaten air quality, drinking water and public health, cause erosion and regional contaminations in the areas where surface mining occurs, and costs thousands of lives each year in the process, while generating more climate-disrupting carbon dioxide than any other energy source. A 2010 World Health Organization study showed more people die globally from health-related problems caused by coal than from hydroelectricity, solar, wind and nuclear. The WHO report stated 1.9 million people die annually as a result of coal-related pollution compared to 353 from nuclear power.¹ In the U.S. alone, 13,200 people die annually from coal pollution.²

The climate change implications from not phasing out dozens of coal-fired baseload plants for an additional generation, and from the continued deleterious effects of the uranium fuel cycle to sustain aging nuclear plants, must be understood clearly against the backdrop of a dangerously accelerating global warming crisis.

c. Destabilization of Electrical Grid

As modernization and modification of grid interconnections occurs locally and regionally to accommodate the new mixture of gas turbines and alternate generation sources such as wind and solar photovoltaic, the grid may be destabilized in troubling new ways. The cascading collapse of major portions of the grid east of the Mississippi in August 2003 was touched off by grounding of a power line through untrimmed trees in FirstEnergy’s distribution jurisdiction. Brownouts and blackouts in the current era of transition of the power grid are likely to be even more complex. In 2003, some two dozen reactors had to come offline immediately for safety’s sake in the northeastern U.S. as well as in Canada. It was the second largest power outage in history. Even though Ohio’s Davis-Besse Nuclear Power Station was already out of service due to a corrosion hole in the reactor lid, the $600 million FirstEnergy was hemorrhaging for repairs to the plant, along with replacement power and federal fines and penalties undoubtedly influenced the budgetary decision to not trim trees. As coal and nuclear plants age, they will cause cash flow interruptions because of major maintenance and overhaul requirements which will indirectly impinge on grid stability.

In more recent years, nuclear plants have had to come offline in Florida due to grid instability when conditions were determined to be too dangerous for them to be operating, as in times of excess summertime heat.


²http://www.catf.us/resources/publications/files/The_Toll_from_Coal.pdf
The prospect of natural disasters occurring when the electricity is actually needed most also raises the question of whether nuclear power plants should be taken offline, as in Texas and Florida during the hurricane season of 2017. A plant in Florida which operated at risk during a Florida hurricane was ultimately forced to shut down due to salt spray onto the transformer yard. Nuclear shutdowns for unexpected or poorly-quantified maintenance and repairs can continue for years, completely predictable for the deteriorating, old U.S. reactor fleet. In the report, “Walking a Nuclear Tightrope: Unlearned Lessons of Year-Plus Reactor Outages,” Union of Concerned Scientists’ reactor engineer David Lochbaum noted:

The Nuclear Regulatory Commission (NRC) seems to be following the script of the movie Groundhog Day, reliving the same bad event again and again. This event—an outage at a nuclear power plant that lasts more than a year—has happened 51 times at 41 different reactors around the United States and shows no signs of stopping.

In sum, DOE and FERC subscribe to a myth of nuclear power plant reliability that is not borne out by the documented history of the reactor industry.

d. Baseload Power Requirements Are Obsolescent

Baseload generation as conceived by FERC in the proposed Rule is no longer necessary for grid reliability. DOE’s “fuel-secure generation” mythology is not a meaningful measure of reliability, as NIRS details extensively in its comment filing. Baseload generation sources require greater resources to ensure reliability, and in the present rapidly-changing system, they can actually cause or worsen reliability problems. Moreover, it has long been recognized that the sudden, often unpredictable outage of a nuclear power plant creates both reliability risks and increases the cost of service to consumers, and there will be no shortage of unanticipated outages.

Increased technological and economical incompatibility of grid market design is easily foreseeable if the proposed rule is implemented. Flexible renewable energy generation, energy storage, and other new technologies that have far greater potential to provide energy security, reliability, and resiliency would be threatened, curtailed, or rendered ineffective in a system populated by increasingly inconsistent baseload plants. The interrelationship of these concepts must be fully analyzed and understood prior to determination of whether the proposed Rule should be implemented.

Implementation will cause an historic grid overcapacity, since new gas turbine generation, wind generators, solar farms and industrial conservation efforts will continue to gain momentum. This overcapacity situation would serve no one but the utilities able to cash in on this bailout, and it would distort prudent regulatory steps by the states. With many investments in new plant and equipment and distribution facilities in the balance, concise economic analysis of the anticipated

effects of implementation of the Rule must occur now, so that there is a common understanding
before this dramatic change takes place.

e. The Rulemaking Is a Major Federal Undertaking Which
Requires an Environmental Impact Statement

The facts about the current evolving status of the electrical power generating industry, the
consequences of using a rulemaking to induce a corporate welfare effect, and the associated
economic, social and environmental consequences likely to follow upon implementation of the
proposal all point to the imperative for compilation of an Environmental Impact Statement
(“EIS”) on the proposed rulemaking before FERC can take up the question of adopting the
proposed Rule.

III. LEGAL NECESSITY OF AN ENVIRONMENTAL IMPACT STATEMENT

requires federal agencies such as FERC to examine and report on the environmental con-
sequences of their actions. NEPA is an “essentially procedural” statute intended to ensure “fully
informed and well-considered” decision making, but not necessarily the best decision. Vermont

Under NEPA, each federal agency must prepare an Environmental Impact Statement
(“EIS”) before undertaking a “major Federal action[ ] significantly affecting the quality of the
“major federal action” to include “actions with that may be major and which are potentially
subject to federal control and responsibility.” 40 C.F.R. § 1508.18. According to the regulations,
 “[f]ederal actions tend to fall within one of the following categories”: (1) adoption of official
policy (rules, regulations, and interpretations), (2) adoption of formal plans, (3) adoption of
programs, and (4) approval of specific projects. Id. § 1508.18(b). The regulation provides that
neither of these statements will be prepared in connection with the “promulgation of rules that
are . . . procedural.” 18 C.F.R. § 380.4(a)(2)(ii).

FERC regulations at 18 C.F.R. § 380.4(b)(1) require that:

(1) . . . [T]he Commission and its staff will independently evaluate environmental
information supplied in an application and in comments by the public. Where
circumstances indicate that an action may be a major Federal action significantly affecting
the quality of the human environment, the Commission:

   (i) May require an environmental report or other additional environmental
   information, and

   (ii) Will prepare an environmental assessment or an environmental impact
   statement.

(2) Such circumstances may exist when the action may have an effect on one of the following:
(i) Indian lands;
(ii) Wilderness areas;
(iii) Wild and scenic rivers;
(iv) Wetlands;
(v) Units of the National Park System, National Refuges, or National Fish Hatcheries;
(vi) Anadromous fish or endangered species; or
(vii) Where the environmental effects are uncertain.

The Commission has not identified the presence or absence of any of these features in its proposed rulemaking or any supportive documentation. Before the agency may claim categorical exclusion of the proposal from NEPA, it must first demonstrate that it has considered the environmental and other effects of the (DOE-preferred) power plants alongside this regulation. Even if the geographic locations of the 100 power plants somehow do not implicate the particular features or characteristics listed in the regulation, the “environmental effects” of the proposed Rule “are uncertain” and a NEPA document is required.

“[A]n EIS must be prepared if ‘substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor.’” *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1149 (9th Cir.1998); *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir.2005). To trigger the need for an EIS, a plaintiff need not show that significant effects will in fact occur; “raising substantial questions whether a project may have a significant effect is sufficient.” *Id.* at 864-65 (internal quotations omitted).

Implementation of the Resiliency Rule as proposed by DOE constitutes a major federal action because it is a predicate to decisions by FERC on interstate electrical ratesetting for utility companies which own or purchase power from the power plants affected by the proposed Rule. The proposed Rule aims to perpetuate an electrical supply policy that values retention of baseload coal and nuclear power plants notwithstanding market conditions and/or incremental evolutionary changes in the generation, storage, transmission and conservation of electricity. Absent the DOE bailout, those plants may largely be permanently closed. Keeping them operable and in utility rate bases dramatically affects the prospects of coal and radiation pollution, greenhouse gas emissions and reductions, and the presence of incentives to conserve energy or shift to nonpolluting energy sources. Under the circumstances, an EIS is warranted. *Southern California Edison Co.*, 49 F.E.R.C. 61,091 (1989) (18 C.F.R. § 380.4(b) triggered when approved merger would result in the dumping of hundreds of tons of additional air contaminants into the most polluted air in the United States).

Moreover, the findings associated with implementing the proposed Resiliency Rule are generic and not challengeable at a later time than the present; the proposed Rule presumably cannot be challenged as applied to a utility-specific ratemaking circumstance in future FERC proceedings. NEPA requires that “environmental issues be considered at every important stage in the decision making process concerning a particular action.” *Calvert Cliffs' Coordinating Comm., Inc. v. Atomic Energy Comm'n*, 449 F.2d 1109, 1118 (D.C. Cir.1971). Since the
The Council on Environmental Quality (“CEQ”) has defined major federal actions to include actions with “[i]ndirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. §§ 1508.8, 1508.18. It is not only reasonably foreseeable, but is eminently clear, that the proposed Rule will exert control over future rate decisions based on its findings. The Rule effectively removes from specific ratemaking cases certain questions of necessity or justification of newly-preferred plant and equipment because it carves out a new protected class of power generators.

The myriad economic, environmental and social effects of implementation of the proposed Rule are not easily predictable. FERC owes the public a detailed analysis before this unprecedented regulatory policy change is made. Many unanswered questions exist to be addressed within an Environmental Impact Statement. And EIS would be publicly disseminated and subjected to public comment as well as critiquing by other federal and state agencies. An EIS must be compiled sufficiently ahead of a vote by the FERC Commissioners on whether or not to adopt the proposed Rule to allow meaningful public participation. TCSE et al. therefore request that an EIS be compiled in accordance with law and regulation.

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Respectfully submitted,

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