UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

COMMENTS OF THE
ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON),
AMERICAN CHEMISTRY COUNCIL (ACC), AMERICAN FOREST AND PAPER ASSOCIATION (AF&PA), AMERICAN IRON AND STEEL INSTITUTE (AISI), CAROLINA UTILITY CUSTOMERS ASSOCIATION (CUCA), CONNECTICUT INDUSTRIAL ENERGY CONSUMERS (CIEC), ILLINOIS INDUSTRIAL ENERGY CONSUMERS (IIEC), INDIANA INDUSTRIAL ENERGY CONSUMERS, INC. (INDIEC), LOUISIANA ENERGY USERS GROUP (LEUG), MULTIPLE INTERVENORS (MI), TEXAS INDUSTRIAL ENERGY CONSUMERS (TIEC), AND WISCONSIN INDUSTRIAL ENERGY GROUP, INC. (WIEG) (TOGETHER "U.S. MANUFACTURERS")

The Electricity Consumers Resource Council (ELCON), American Chemistry Council (ACC), American Forest and Paper Association (AF&PA), American Iron and Steel Institute (AISI), Carolina Utility Customers Association (CUCA), Connecticut Industrial Energy Consumers (CIEC), Illinois Industrial Energy Consumers (IIEC), Indiana Industrial Energy Consumers, Inc. (INDIEC), Louisiana Energy Users Group (LEUG), Multiple Intervenors (MI), Texas Industrial Energy Consumers (TIEC), and Wisconsin Industrial Energy Group, Inc. (WIEG) (together U.S. Manufacturers) submit these preliminary comments in response to the Commission's October 2, 2017 Notice

Inviting Comments in response to the Secretary of Energy's September 28, 2017 release of a proposed rule pursuant to section 403 of the Department of Energy Organization Act (Proposal).[1] As large consumers of electricity, U.S. Manufacturers' members will be directly affected by the outcome of this proceeding

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all organized markets and other regions throughout the United States. Reliable electricity supply at just and reasonable rates is essential to our members' operations.

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The business of chemistry is a key element of the nation's economy.

AF&PA is the trade association of the pulp, paper, packaging, tissue, and wood products industry in the United States. AF&PA's members are among the nation's largest consumers of electric power, purchasing over 82 billion kilowatt-hours of electricity annually nationwide. AF&PA's members include electricity consumers and producers.

[1] The Proposal subsequently was published in slightly modified form at 82 Fed. Reg. 46,940 (Oct. 10, 2017).

AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI also plays a lead role in the development and application of new steels and steelmaking technology. AISI is comprised of 19 member companies, including integrated and electric furnace steelmakers, and approximately 120 associate members who are suppliers to or customers of the steel industry.

CUCA is an organization that provides a cost-effective and successful forum to address, represent, and protect the energy interests of industrial companies with operations in North Carolina before all appropriate regulatory, legislative, and judicial bodies.

CIEC is an *ad hoc* coalition of large commercial and industrial end-users that collectively employ thousands of Connecticut workers at numerous locations throughout the State. Members of CIEC both directly and indirectly participate in the markets administered by ISO New England, Inc.

IIEC is an *ad hoc* association of large industrial and institutional end users of electricity in Illinois who have employed approximately 90,000 people in Illinois and consumed approximately 13 billion kWh of electricity. IIEC members are permitted to purchase electricity from third-party suppliers under Illinois law and are served by Commonwealth Edison Company and Ameren Illinois Company and thus have facilities located within PJM and MISO.

INDIEC is a not for profit corporation incorporated and doing business in the state of Indiana. INDIEC's 23 member companies employ over 55,000 people in Indiana and their combined gas and electric bills are over $900 million annually. Members of INDIEC are served by transmission owners within MISO and PJM.

LEUG is an unincorporated association comprised of Louisiana industrial concerns that are substantial purchasers of electricity.

MI is an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State. Multiple Intervenors' members purchase electricity directly or indirectly from competitive wholesale markets administered by the New York Independent System Operator, Inc. (NYISO).

TIEC is a trade association of large, industrial energy users within the State of Texas.

WIEG represents 30 large companies with operations in Wisconsin, which employ approximately 50,000 people. WIEG members represent many of the state's largest energy consumers including paper, malting, automobile, food processing, chemical, metal casting, and fabricating companies.

U.S. Manufacturers support and incorporate by reference the Joint Industry Commenters Opposing the DOE NOPR filed separately in this Docket and in these comments highlight the issues of particular interest to large industrial consumers of electricity.

I. BACKGROUND

U.S. Manufacturers strongly oppose the Proposal and urge FERC to terminate this proceeding. Fundamentally, the Proposal is anti-competitive. It would fundamentally reconfigure the nation's wholesale electricity markets by undoing the competitive markets for a large number of selected generators and replacing it with a federally imposed command and control pricing system. If implemented, the Proposal would override the market's ability to select the most efficient 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. The sparse and conclusory rationale cited for the Proposal does not support this radical departure from the competitive markets.

The fundamental premise of the Proposal – that retirement of coal and nuclear generation currently is an imminent threat to the reliability and resiliency of the electric grid – is unfounded. The gradual retirement of old, uneconomic generation units is an ongoing process that reflects proper functioning of competitive markets. In order for FERC to proceed with the Proposal, it would be necessary for it to overturn decades of precedent and suddenly determine the existing RTO/ISO tariffs are unjust and unreasonable. There is no supportable basis for doing so.

Although the competitive markets are not perfect, the current, historically low electricity prices that have resulted from their operation have substantially benefited the competitiveness of the U.S. manufacturing sector that depends upon affordable and reliable energy supplies. Those markets cannot be sustained if coal, nuclear, wind, and solar resources are all compensated with out-of-market payments.

The federal government should not pick winners and losers in the energy markets and must certainly not treat U.S. manufacturing jobs as inferior to the jobs at uneconomic power plants. The Proposal would subsidize coal and nuclear generation and their jobs, putting at risk a far larger number of U.S. manufacturing jobs that face considerable pressure from foreign competition. Allocation of resources should be left to the operation of competitive markets.

Certain of the U.S. Manufacturers participated in one of the numerous requests for extension of the unprecedented abbreviated comment period. FERC denied those requests without explanation. U.S. Manufacturers present some preliminary views here, but reiterates its ongoing objection to the nature of the process that FERC has chosen to pursue and its apparent failure to implement its role as an independent commission. As FERC has not allowed adequate time to comment, detailed analysis of all of the implications and burdens that would result should the Proposal be implemented simply is not possible in the short time provided.

II. DISCUSSION

For the reasons discussed below, U.S. Manufacturers urge the Commission to terminate this proceeding and to continue its ongoing price formation and reliability related initiatives to thoughtfully and incrementally improve the functioning of the organized markets. Although the organized markets are not perfect, on the whole, through competition that does not artificially name winners and losers, they have provided considerable benefits to the U.S. economy and to industrial and other consumers of electricity.

a. **The Secretary's Assertions in Support of Expedited Rulemaking Have No Merit.**

The Proposal would force U.S. Manufacturers' members to pay billions of dollars in subsidies to the owners of uneconomic, obsolete coal and nuclear power plants, many of which are smaller facilities that have been in operation for 40 or more years. The retirement of uneconomic generation represents a normal, efficient functioning of competitive markets and has been ongoing for decades. The owners of these plants have already been fully compensated for their fixed costs. They were given "stranded cost" payments (also called a "Competitive Transition Charge") as a pre-condition to their being spun off as independent merchant generators during the restructuring era that ended about 20 years ago. Consumers have paid billions of dollars in such charges in exchange for the regulatory promise that the owners of those generators would subsequently bare the full market risk. The Proposal's conclusory assertion that "[t]he resiliency of the nation's electric grid is threatened by the premature retirements of power plants that can withstand major fuel supply disruptions caused by natural or man-made disasters" does not survive close scrutiny.

There is no demonstrated need for the Proposal that would warrant blowing up the organized competitive markets. Recent findings by both DOE Staff and NERC categorically conclude that there is no such emergency, contrary to the Proposal's selective quotations that are not representative of the complete findings or recommendations in those documents, and that do not rationally support the Proposal's remedy of default cost-of-service payments. DOE's 2017 Staff Report to the Secretary on Electricity Markets and Reliability concludes: "while markets have evolved since their introduction, they are currently functioning as designed—to ensure reliability and minimize the short-term costs of wholesale electricity—despite pressures[.]"[2] The approach suggested by the Proposal was not even raised by DOE Staff as an idea meriting further inquiry.[3] The North American Electric Reliability Corporation's CEO recently concluded that "the state of reliability in North America remains strong, and the trend line shows continuing improvement year over year".[4] More recently and specifically, NERC testified to Congress as follows:[5]

> The electricity sector is undergoing significant change that is unprecedented for both its transformational nature and rapid pace, presenting new challenges and opportunities for reliability. With appropriate insight, careful planning, and support, the electricity sector can continue to navigate these changes in a manner that results in enhanced reliability and resilience. Even with all the changes underway, the bulk power system (BPS) remains highly reliable and resilient, showing improved reliable performance year over year.

In fact, the data cited in the Proposal are consistent with a long-term, gradual retirement of old, uneconomic generation facilities rather than a sudden unexpected

[2] DEPARTMENT OF ENERGY, STAFF REPORT TO THE SECRETARY ON ELECTRICITY MARKETS AND RELIABILITY at 16 (Aug. 2017).

[3] *Id.* at 126-29 (discussing Policy Recommendations and Areas for Further Research).

[4] FERC Reliability Conference, Panel I: Overview of the State of Reliability, Remarks of Gerry W. Cauley, CEO of the North American Reliability Corporation (NERC) at p. 1 (June 22, 2017).

[5] "Powering America: Defining Reliability in a Transforming Electricity Industry" September 14, 2017 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.

"crisis" warranting expedited rulemaking. The cited information from the August 2017 DOE Staff Report is that 59,000 MW of coal generation retired between 2002 and 2016 and that approximately 12,700 MW is anticipated to retire between 2017 and 2020. In other words, the projected retirements of 3,000 to 4,000 MW/year are entirely consistent with what has been the long-term trend.

The asserted value of on-site fuel storage as security during extreme weather events also does not hold water. During the 2014 Polar Vortex, many coal plants performed poorly – they were unable to access their on-site fuel supply because the cold conditions impacted both the coal piles and the conveyance equipment. Since then there have been considerable efforts to prevent a recurrence of the tight supply conditions, including expansion of the natural gas pipeline infrastructure and the Commission's offer cap rulemaking and approval to revisions to the PJM tariff. As FERC staff just reported in its Winter 2017-18 Energy Market Assessment:

> Since the extreme winter events of 2014, grid operators in the East have paid closer attention to winter readiness and reliability. For example, PJM and ISO New England continue to phase in performance requirements for capacity resources and the RTOS and ISOs have initiated other programs and procedures that focus on winter readiness. In the West, the Energy Imbalance Market (EIM) continues to expand this winter with the addition of Portland General Electric. These developments are expected to improve electric market operations in the winter months.[6]

FERC staff concluded that "[i]n the electric markets, electric capacity is sufficient in all regions based on current load forecasts."[7] In other weather events such as hurricanes, it

[6] Winter 2017-18 Energy Market Assessment, Docket No. AD06-3 (Oct. 19, 2017), https://www.ferc.gov/market-oversight/reports-analyses/mkt-views/2017/10-19-17-A-3.pdf.

[7] *Id.*

is the transmission system and not generation facilities that are more vulnerable to disruption.

Much of the focus on reliability and resilience has related to conditions in the PJM market. PJM's March 2017 report, "PJM's Evolving Resource Mix and System Reliability," concluded that the PJM region is efficiently evolving into more – and not less – flexible and resilient systems, notwithstanding the retirement of some coal and nuclear generation and changes in the generation mix. More generally, a recent report by The Brattle Group observes that "[t]he most recent surveys find that current and projected resource adequacy will remain within normal bounds and that sufficient generation resources will provide a high level of reliability against known and likely contingencies."[8]

A recent analysis by Rhodium Group, LLC supports ELCON's positions. Describing the Proposal as "a solution in search of a problem," Rhodium asked and answered the key question as follows:

> Has the growth in these [new] generation sources in recent years and simultaneous retirement of coal and nuclear plants created the reliability crisis Sec. Perry warns of? Is it urgent enough that FERC needs to intervene in wholesale markets in the next 60 days?
> . . . .
> We tabulated all the OE-417 reports since the beginning of 2012 to see how big of a reliability threat "fuel supply emergencies" have been.
> . . . .
> The answer is, not much of a problem at all. Between 2012 and 2016, there were roughly 3.4 billion customer-hours impacted by major electricity disruptions. Of that, 2,382 hours, or 0.00007% of the total, was due to fuel supply problems (Figure 1). <u>Interestingly, 2,333 of those customer hours</u>

[8] The Brattle Group, Evaluation of the DOE's Proposed Grid Resiliency Pricing Rule (hereinafter Brattle Group Evaluation) at p. 3 (attached to the filing in this docket by Joint Industry Commenters Opposing the DOE NOPR, which these comments support and incorporate by reference).

> were due to one event in Northern Minnesota in 2014. And it involved a coal-fired power plant.
> . . . .
> Severe weather still results in hundreds of millions of customer-hours disrupted each year, 96% of the US total between 2012 and 2016 (Figure 1). This has nothing to do with fuel supply security or generation adequacy. It's about the vulnerability of transmission and distribution networks.[9]

Over the past several years, actions by NERC, including Essential Reliability Services efforts, has promoted reliability and resilience, and FERC has taken a number of steps to address price formation issues in the competitive markets and to promote reliability, including with respect to reactive power and frequency response. Now that there is a quorum of Commissioners, FERC should have the opportunity to pursue its numerous initiatives that remain pending to improve the competitiveness and efficient functioning of the electricity markets. A return to federally-imposed command and control regulation is not the answer.

b. FERC Should Preserve the Integrity of the Wholesale Markets.

The Proposal would undo the competitive wholesale electric markets that benefit all American consumers, replacing it for a large number of generators with an unworkable, intrusive centralized pricing system. Although the competitive markets are not perfect, the current, historically low electricity prices that have resulted from their operation have substantially benefited the competitiveness of the U.S. manufacturing sector that depends upon affordable and reliable energy supplies. Those

[9] Rhodium Group, LLC, The Real Electricity Reliability Crisis (Oct. 3, 2017), http://rhg.com/notes/the-real-electricity-reliability-crisis.

markets cannot be sustained if coal, nuclear, wind, and solar resources are all compensated with out-of-market payments.

Ironically, the older generating units being retired initially were compensated on a cost of service basis and were made whole by payments for their stranded costs when they entered the competitive wholesale markets. Having been fully compensated, they should not be eligible for yet another round of subsidization. The Proposal fails to take account of this history and the more than adequate returns already received by these obsolete units.

Moreover, existing RTO/ISO tariffs provide adequate authority for the RTOs and ISOs to prevent any generator retirement that threatens grid reliability. Every RTO and ISO must receive advance notice of planned retirements and has the authority to enter into so-called "Reliability Must Run" agreements[10] that provide cost recovery for generators needed for reliable operations. The case-specific evaluation of retiring units ensures that only those generating units actually needed for reliability are provided out-of-market cost support payments from the RTO/ISO. The Proposal does not seem to reflect awareness of this procedure or explain why this tailored, reliability focused solution requires protectionist intervention.

Accordingly, for FERC to justify an across-the-board requirement for full cost recovery for every merchant coal and nuclear unit, it would need to overturn its

[10] Some of the RTOs/ISOs use slightly different terminology.

existing, long-standing determinations under Section 206 of the FPA that the current organized market tariffs yield just and reasonable rates. There is no basis for doing so.

c. **FERC Should Maintain Its Policy of Fuel Neutrality**.

The Proposal runs contrary to the Commission's long-standing policy preferences for market solutions and fuel-neutrality, and will unduly discriminate against suppliers who will be at a competitive disadvantage because they do not receive the subsidy. Beginning in 1996, when FERC Order 888 gave states the option of establishing competitive wholesale electricity markets, a key feature of the market system has been neutrality among generation technologies. Most recently, on September 7, 2017, Kevin McIntyre and Richard Glick testified before the Senate Energy & Natural Resources Committee on their nominations as Commissioners, with both emphasizing that FERC should be "fuel neutral."[11] Uneconomic coal and nuclear generation should not be favored over natural gas, demand response, renewables, or other resources.

[11] *See, e.g.*, U.S. Senate Committee on Energy and Natural Resources September 7, 2017 Hearing: Pending Nominations Questions for the Record Submitted to Mr. Kevin J. McIntyre, https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=1E0AF72C-362D-4068-8C84-5BE2D84A301D (extensive references to fuel neutrality and resource neutrality).

d. The Federal Government Should Not Be Picking Favorites With Respect to Jobs.

The federal government should not pick winners and losers in the energy markets and must certainly not treat U.S. manufacturing jobs as inferior to the jobs at uneconomic power plants. The Proposal would subsidize coal and nuclear generation and their jobs, putting at risk a far larger number of U.S. manufacturing jobs that face considerable pressure from foreign competition. Allocation of resources should be left to the operation of competitive markets.

e. The Proposal Does Not Adequately Address the Burdens That It Would Impose.

The Proposal's identification of regulatory burden is limited to the initial, first year implementation costs that would be incurred by ISOs and RTOs. There is no identification or quantification of the untold millions of dollars of costs, in the form of electricity price increases, that would be imposed on consumers (in effect representing transfer of monies from consumers to coal and nuclear generators), including consumers who are small entities. In this regard, a recent quantitative economic study commissioned by the Commonwealth of Kentucky developed an economy-wide modeling framework using multiple regression of panel data with fixed effects to estimate sector-specific electricity price elasticity coefficients to calculate changes in employment and value added for individual states, given a specific change in the price of electricity. The study concluded that with a 10% increase in the real price of electricity nationally, the United States will lose, or fail to create, over one million jobs and decrease annual Gross Domestic Product (GDP) by $142 billion.[12] The same study further stated:

> The most vulnerable sectors to electricity price increases—metals, paper, wood, chemical, textiles, and minerals—employed 2.5 million Americans and contributed $566 billion to national GDP in 2012, and would lose 74,000 jobs and $27 billion in value added. Any geographical clustering of industries vulnerable to electricity price increases will disproportionately harm the areas where those industries are located.
>
> . . . .
>
> The potential for planned electricity price increases to cause further offshoring of productive capacity in electricity-intensive industries that are vital to the United States economy and national security, such as primary metal production, warrants more careful examination.[13]

The Brattle Group's quantitative assessment is that the total costs of the Proposal could range from $5 billion to $12 billion when there is full accounting for subsidy payments reflecting operating costs, capital charges from coal retrofits, and return on undepreciated capital expenditures.[14]

The Proposal fails to satisfy the statutory obligations relating to burden assessment including potential for lost jobs in important manufacturing industries.

f. The Extraordinarily Compressed Time Schedule Makes It Impossible to Respond to FERC Staff's Extensive Questions.

Section 403(b) of the Department of Energy Organization Act states that: "The Commission shall . . . take final action on any proposal made by the Secretary . . . in an

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

[13] Id.

[14] Brattle Group Evaluation at p. 32.

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." The time frame laid out in the Proposal for notice and comment is unreasonable on its face. The Commission has failed to exercise its authority to provide for an appropriate and legally-sufficient comment period.

When agencies consider a proposed rule that could affect entire industries and the thousands of employees that work in them, as well as the electricity prices paid by millions of consumers and hundreds of thousands of businesses, such as the Proposal, it is customary and legally-required for an agency to allow time for meaningful comments filed in the record so that the agency can make a reasoned decision thereon. In fact, agencies are under an obligation to allow a comment period of not less than 60 days for typical rulemaking proceedings, unless exceptional circumstances exist.

This is one of the most significant proposed rules in decades related to the energy industry and, if finalized, would unquestionably have significant ramifications for the functioning of the competitive wholesale markets under the Commission's jurisdiction. The time frame provided for comments is far too short to allow stakeholders to submit careful analysis on this complex and significant rulemaking.

By any standard, the DOE Proposal qualifies as a "significant regulatory action" within the meaning of Executive Order 12,866, and thus a minimum of sixty days should be afforded for initial comments.[15] The Administrative Conference of the

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

United States (ACUS) likewise recommends that agencies afford at least 60 days for public comment on significant regulatory actions.[16] Other proposals under Section 403 have allowed over six months between publication in the Federal Register and final action.[17] The more than 50 questions posed in the October 4, 2017 request for additional information filed by Commission Office of Energy Policy and Innovation further demonstrates the unreasonableness of the current timeline and serve to highlight the falsity of the Proposal's claim that there is an "extensive record the Commission has already developed on the subject matter" of the Proposal. Also, as discussed in Section II.a. above, contrary to the unsupported assertions in the Proposal, there is no imminent reliability crisis or other exigency warranting a shortened comment period or expedited action.

III. CONCLUSION

For the reasons discussed above, U.S. Manufacturers urge the Commission to terminate this proceeding and to continue its ongoing price formation and reliability related initiatives to thoughtfully and incrementally improve the functioning of the organized markets. Although the competitive markets are not perfect, the current, historically low electricity prices that have resulted from their operation have substantially benefited the competitiveness of the U.S. manufacturing sector that depends upon affordable and reliable energy supplies. Those markets cannot be

[16] *See* Adoption of Recommendations, 76 FR 48789 (Aug. 9, 2011).
[17] *See* 75 FR 37884 (Jun. 17, 2010); 50 FR 48540 (Nov. 25, 1985).

sustained if coal, nuclear, wind, and solar resources are all compensated with out-of-market payments.

The federal government should not pick winners and losers in the energy markets and must certainly not treat U.S. manufacturing jobs as inferior to the jobs at uneconomic power plants. The Proposal would subsidize coal and nuclear generation and their jobs, putting at risk a far larger number of U.S. manufacturing jobs that face considerable pressure from foreign competition. Allocation of resources should be left to the operation of competitive markets. There is no imminent threat to reliability or resiliency that would warrant the extreme and unprecedented action contemplated by the Proposal.

NOTICES AND COMMUNICATIONS

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

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Dated: October 23, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.: October 23, 2017

/s/ W. RICHARD BIDSTRUP
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