



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
400 NORTH STREET, HARRISBURG, PA 17120

April 10, 2018

**Via Overnight and Electronic Mail**

The Honorable Rick Perry  
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Re: Motion to Intervene and Protest of Pennsylvania Public Utility Commission

Dear: Secretary Perry, Assistant Secretary Walker and Deputy Assistant Secretary  
Jereza:

The Pennsylvania Public Utility Commission (PAPUC), by and through its  
undersigned counsel, files this Motion to Intervene and Protest in the proceeding  
involving the March 29, 2018 Request for Emergency Order Pursuant to Federal Power  
Act Section 202(c) by FirstEnergy Solutions Corp. (FES).

## **I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES sent a letter (Request) to U.S. Department of Energy (Department) Secretary James Richard Perry, formally requesting that Secretary Perry invoke his emergency authority under Federal Power Act (FPA) Section 202(c),<sup>1</sup> to find that an emergency condition exists in the PJM Interconnection (PJM) territory that requires immediate intervention. In the Request, FES seeks relief under Section 202(c), whereby the Secretary would order “certain existing nuclear and coal-fired generators” to contract with PJM for energy, capacity, and ancillary services to “maintain the stability of the electric grid.”<sup>2</sup> Further, FES requests that Secretary Perry order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide.”<sup>3</sup> FES served the Request on numerous affected parties.

## **II. MOTION TO INTERVENE**

The PAPUC is the agency charged with the responsibility for regulating electric utility rates and service within the Commonwealth of Pennsylvania, pursuant to the Public Utility Code.<sup>4</sup> In this role, the PAPUC has authority to represent the interests of Pennsylvania electric consumers in proceedings before federal courts, the Federal Energy Regulatory Commission (FERC) and other federal agencies including the Department.

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<sup>1</sup> 16 U.S.C.S. § 824a (c).

<sup>2</sup> FES Letter at 1.

<sup>3</sup> *Id.* at 1.

<sup>4</sup> 66 Pa. C.S. § 101 *et seq.*

Pennsylvania is centrally located within the Mid-Atlantic Region of the United States and possesses significant amounts of fossil fuel generation, as well as renewable generation. Pennsylvania is a major consumer of electricity with its industrial, commercial, and residential load and is one of the country's largest producers of natural gas, primarily from the Marcellus Shale formation. Growing development of this fuel source has made natural gas plentiful and economically attractive. This, in turn, has greatly accelerated a shift away from coal-fired generation toward gas-fired electric generation, along with construction of gas-fired electric generation, including combustion turbines.

The PAPUC has a vested interest in ensuring that adequate generation exists to meet the current and future needs of its residents and the region. In this regard, the PAPUC has been an active supporter of electric wholesale capacity markets and the initiatives advanced by the FERC and PJM, the regional transmission organization, to incentivize the continued development of new generation in the Mid-Atlantic region. Moreover, the PAPUC has a significant and direct interest in this proceeding that is not adequately represented by other parties.

If FES' Request is granted, prospective payments made pursuant to an Emergency Order would almost certainly be recovered from consumers throughout the PJM region, including millions of ratepayers in the Commonwealth of Pennsylvania. The PAPUC opposes the Request because, contrary to the assertions made therein, no foreseeable reliability risk exists. We reserve the right to supplement this preliminary pleading to

explain, in detail, what effect the Request would have on Pennsylvania's ratepayers and competitive market.

### III. PROTEST

The PAPUC protests FES' Request as legally and factually insufficient under Section 202 (c), and further, contends that the damage to electric wholesale markets and, by extension, retail customers far outweighs the speculative benefits advocated by FES.

In support of its Protest, the PAPUC avers as follows:

- The overwhelming evidence presented in letters filed by numerous parties to this proceeding demonstrates that no "emergency condition" exists to justify the extraordinary provisions of Section 202(c) of the FPA. Additionally, the allegations are altogether too remote to be actionable. FES' nuclear units are not scheduled for deactivation until May 31, 2020, for one unit, and May 31, 2021, for 3 other units at two plant sites. Wholesale market prices and market structures in future years may depart substantially from current market prices and structures. In the absence of credible evidence, FES' Request fails as legally and factually adequate to justify the relief it requests.
- FES' Emergency Order Request seeks unprecedented and overbroad relief. FES threatens the efficient functioning of organized competitive wholesale electricity markets by providing *de facto* cost of service treatment to coal and nuclear generation without adequate justification.
- Reliability is not at credible risk, as PJM's recent filings demonstrate. Moreover, if reliability concerns do arise, PJM has adequate processes for addressing those concerns.<sup>5</sup>
- Resilience and reliability are complex topics that are currently being examined within the PJM stakeholder process. These processes should be permitted to go forward, rather than coopting these

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<sup>5</sup> Reliability Must Run (RMR) protocol in PJM Manual 14D, pursuant to which PJM may request a unit to operate past its desired deactivation date.

processes through the Department's action vis a vis Section 202(c). PJM has an ongoing stakeholder process to address market design improvements, and is currently examining several energy, capacity, and ancillary market reforms, in addition to grid resiliency<sup>6</sup> issues. FES should not be permitted, through this Request, to circumvent the thorough stakeholder process currently established in PJM to elevate their self-serving interests over those of other competitive suppliers, technologies, utilities and end-use customers.

- If granted, the Request may unnecessarily raise energy costs for consumers and directly undercut the tremendous economic advantage to the United States from abundant natural gas deposits.
- FES, through its Request, is seeking to insert itself into matters of state jurisdiction as it relates to resource adequacy, resource selection criteria and state energy policy. These are matters established by the Governor and the Pennsylvania General Assembly,<sup>7</sup> as implemented through the PAPUC, and other departments within the Commonwealth of Pennsylvania.

The PAPUC respectfully urges the Department to give all interested parties sufficient time to present their responses to the FES Request before the Department rules on the Request. The PAPUC supports and concurs in the Trade Group request, filed March 30, 2018, seeking a 60-day comment period.

#### **IV. SERVICE OF DOCUMENTS**

The PAPUC designates the following persons to receive service and communications on its behalf in this proceeding:

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<sup>6</sup> *Grid Resilience in Regional Transmission Organizations and Independent System Operators*, Docket No. AD18-7-000, Order issued January 8, 2018.

<sup>7</sup> 66 Pa.C.S. §§2801 *et seq.* and §§2201 *et seq.*

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## V. CONCLUSION

For the foregoing reasons, the PAPUC respectfully requests that the Department grant the PAPUC's Motion to Intervene, accept its Protest, provide all interested parties 60 days to file comments on the Request and reject FES' Request for relief under Section 202 (c) of the FPA.

Respectfully submitted,

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Dated: April 10, 2018