

April 11, 2018

The Honorable Fred Upton
Chairman, House Energy and Commerce
Committee Subcommittee on Energy
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Bobby Rush
Ranking Member, House Energy and Commerce
Committee Subcommittee on Energy
2188 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Ranking Member Rush,

We are writing to express a deep concern over FirstEnergy Solutions Corp's ("FirstEnergy") request for the Secretary of Energy to declare that an emergency condition exists in the PJM Interconnection, L.L.C. ("PJM") pursuant to Section 202(c) of the Federal Power Act.¹ Invoking 202(c) would not only abuse an emergency statute for industrial policy purposes, it would also cost customers billions with no clear benefit. Further, it would cripple the competitive market mechanism that drives long-term innovation to the benefit of millions of American families and businesses.

Indeed, FirstEnergy's request is the antithesis of economic conservatism, as it is the embodiment of bad governance and unwarranted government intervention into the marketplace. For this reason, former GOP FERC commissioner Nora Brownell has correctly referred to the request as a "real tragedy" for a capitalist society."²

PJM, its independent market monitor and other independent experts agree³ that no emergency condition exists in PJM. On the contrary, it uses a robust process to screen for reliability impacts of announced plans for generator retirements.⁴ For over a decade, PJM and the other regional transmission organizations and independent system operators have demonstrated a strong institutional commitment to ensure sufficient resources exist to maintain bulk system reliability. With respect to FirstEnergy's request, PJM has stated: "[w]e repeatedly disagree with [FirstEnergy] on the fundamental assertion that there is an emergency."⁵

The foremost expert on PJM's markets is its independent market monitor ("monitor"). The monitor has found that PJM's markets work well and bring the benefits of competition to households and businesses, but that out-of-market interventions "threaten the viability of competitive markets."⁶ The monitor stresses that PJM's markets do "not need rules to support specific technologies or power plants" but, rather, have areas for continuous improvement in PJM's market design conducted through the proper regulatory channels.⁷

¹ William S. Scherman and Rick C. Giannantonio, "Request for Emergency Order Pursuant to Federal Power Act Section 202(c)," March 29, 2018. <https://statepowerproject.files.wordpress.com/2018/03/fes-202c-application.pdf>.

² Ari Natter, "The U.S. May Not Declare a Power Grid Emergency After All," *BloombergMarkets*, April 9, 2018. <https://www.bloomberg.com/news/articles/2018-04-09/the-u-s-may-not-declare-a-power-grid-emergency-after-all>.

³ Numerous independent experts have noted that power plant retirements in PJM and other competitive wholesale markets are an indication of natural market evolution. For example, the technical lead of the Energy Department's 2017 study on grid reliability noted that as a root cause of retirements, competition worked as intended. See these and additional comments here: <https://www.utilitydive.com/news/silverstein-if-id-written-the-doe-grid-study-recommendations/506274>.

⁴ The steps PJM takes to evaluate the reliability effects of generator deactivations are listed here: <http://www.pjm.com/planning/services-requests/gen-deactivations.aspx>.

⁵ Kelsey Tamborrino, "All eyes on Perry after FirstEnergy move," *Politico*, March 30, 2018. <https://www.politico.com/newsletters/morning-energy/2018/03/30/all-eyes-on-perry-after-firstenergy-move-154378>.

⁶ "State of the Market Report for PJM," Monitoring Analytics, LLC, March 9, 2017, p. 1. http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2016/2016-som-pjm-sec1.pdf.

⁷ Devin Hartman, "The Market Advantage: A Q&A with Joe Bowring," *R Street Shorts* No. 40, June 2017, p. 2. <http://2o9ub0417chl2lg6m43em6psi2i.wpengine.netdna-cdn.com/wp-content/uploads/2017/06/RSTREETSHORT40.pdf>.

FirstEnergy claims that emergency conditions warrant intervention to protect portions of the 65 million people within the PJM footprint.⁸ However, leading customer trade groups unequivocally oppose such misguided energy paternalism. PJM customers are deeply concerned that this action will impose billions in direct costs to them with no tangible benefit.⁹ If the Department of Energy inappropriately uses 202(c) or any other mechanism to bail out an uneconomic company in FirstEnergy, it will only serve to trap precious resources in an uncompetitive environment.

There is no grid emergency simply because the grid is in transition. Since 2011, market signals have facilitated over 20,000 megawatts of coal plant retirements in PJM as developers continue to build new, low-cost generation that drives out higher-cost plants.¹⁰ Experts at the Brattle Group note that PJM has “passed this stress test with surprising robustness and no evident threat to reliability.”¹¹ The result has been healthy reliability metrics and lower costs for millions of American families and businesses owners in the region.¹²

When economic fundamentals shift abruptly, as they have this decade, and it causes turnover in the composition of supply, markets generate substantial economic returns for producers and consumers alike. Markets provide incentives for electricity suppliers to reallocate their resources consistent with dynamic economic conditions, which is sorely lacking under the regulated-monopoly model. We stress that the observance of rapid turnover in PJM’s generation fleet indicates market success and the type of dynamism that will fuel economic growth in the future.

If Congress and the Trump administration want to act, they should remove heavy-handed regulations where the costs outweigh the benefits and those that obstruct companies from making market-driven efficiency improvements. Furthermore, Congress should eliminate subsidies such as targeted tax credits. Picking winners and losers stifles competition and innovation and misallocates labor and capital toward companies that receive preferential treatment. Layering more favoritism on top of existing favoritism only makes matters worse. Let’s end the practice.

Sincerely,

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⁸ Scherman and Giannantonio, 2018, p. 12 <https://statepowerproject.files.wordpress.com/2018/03/fes-202c-application.pdf>.

⁹ We have spoken with leading consumer trade groups and many individual large consumers representing major manufacturers, tech companies, retail businesses and others in the PJM footprint.

¹⁰ Hartman, 2018, pp. 1-2. <http://2o9ub0417chl2lg6m43em6psi2i.wpengine.netdna-cdn.com/wp-content/uploads/2017/06/RSTREETSHORT40.pdf>.

¹¹ Johannes P. Pfeifenberger et al., “Response to U.S. Senators’ Capacity Market Questions,” The Brattle Group, May 5, 2016, p. 10. http://files.brattle.com/files/7294_brattle_open_letter_to_gao_-_response_to_u.s._senators%E2%80%99_capacity_market_questions.pdf.

¹² See reliability metrics in various annual reports by the North American Electric Reliability Corporation. See also various cost-to-load estimates from PJM and the monitor’s annual reports.