

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Grid Reliability and Resiliency Pricing)	Docket No. RM18-1-000
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REPLY COMMENTS OF ADVANCED ENERGY BUYERS GROUP

November 7, 2017

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I. INTRODUCTION

Pursuant to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) October 2, 2017, Notice Inviting Comments,¹ the Advanced Energy Buyers Group (“AE Buyers Group”) on behalf of large energy users² is submitting reply comments to reiterate our recommendation that the Federal Energy Regulatory Commission (“FERC” or “Commission”) decline to finalize the Grid Resiliency Pricing Rule proposed by the Department of Energy (“DOE”) in a Notice of Proposed Rulemaking (“NOPR”) in Docket No. RM18-1-000. Upon review of the comments in this case, we remain concerned that the NOPR would disrupt wholesale markets and impose burdensome costs on consumers, including members of the AE Buyers Group, without providing meaningful improvements to the reliability and resilience of the electricity system. Moreover, the comments submitted in this case strengthen our view that the electricity system is not currently facing an urgent threat to reliability and resilience, an assessment that lies at the core of DOE’s proposal. In sum, as large energy users, we are concerned that this proposal is both very expensive and unnecessary.

Our comments below review the additional evidence submitted in this docket, with a particular emphasis on comments from the North American Electric Reliability Corporation (“NERC”) and by Regional Transmission Organizations (“RTOs”), Independent System Operators (“ISOs”), and their associated independent market monitors and market monitoring

¹ Federal Energy Regulatory Commission, *Grid Reliability and Resilience Pricing*, Notice Inviting Comments (Oct. 4, 2017).

² These comments represent the consensus view of the Advanced Energy Buyers Group (information and membership available at <https://info.aee.net/ae-buyers-group>). However, this document does not necessarily reflect the position of any specific member of the AE Buyers Group, and these comments should not be attributed to any individual company or companies participating in the AE Buyers Group.

units due to the direct role these entities play in assessing and maintaining cost-effective, reliable, and resilient service to customers in FERC-jurisdictional markets.

II. ABOUT THE ADVANCED ENERGY BUYERS GROUP

The Advanced Energy Buyers Group (“AE Buyers Group”) is a business-led coalition of large energy users engaging on policies to expand opportunities to procure energy that is secure, clean, and affordable.³ Members of the AE Buyers Group are leading companies and organizations spanning a range of market sectors, totaling over \$1 trillion in revenue last year and consuming well over 16 terawatt hours (TWh) of electricity annually. We share a common interest in expanding our use of advanced energy, such as renewable energy like wind, solar, geothermal, and hydropower; demand-side resources like energy efficiency, demand response, and energy storage; and onsite generation from solar photovoltaics, advanced natural gas turbines, and fuel cells. Our analyses and internal business planning has shown that expanding the use of such technologies will make us more competitive, resilient, and sustainable enterprises far into the future.

III. COMMENTS

The AE Buyers Group noted in our initial comments that we agree with the stated goal of the NOPR to ensure that “American families and business have access to reliable, resilient and affordable electricity,” and we further agree that meeting this goal “is vital to the economy,

³ See <https://info.aee.net/ae-buyers-group> for a list of AE Buyers Group members. The AE Buyers Group is convened by Advanced Energy Economy (AEE), a national business association of leading advanced energy companies. Membership in the AE Buyers Group is open only to end users of energy, and AEE’s general membership does not have any input in the positions taken by the AE Buyers Group.

national security, and quality of life.”⁴ As major consumers of electricity and as businesses that depend on a 24/7 supply of electricity, we understand the need to continually assess the state of our electricity system and to make prudent investments to improve its reliability and resilience. However, we have seen no reason to share DOE’s concern that our electricity system is facing “urgent” threats that require immediate and unprecedented action, and we are especially concerned that the NOPR would undermine the core functionality of wholesale energy markets. As we noted in our initial comments, this would lead to unnecessary increases in our operating costs and direct harm to our businesses. Comments submitted to the Commission in this docket have strengthened our view that the NOPR will be costly for our businesses and other consumers, that it would disrupt competition in wholesale markets with repercussions lasting well into the future, that the “urgent” threat to reliability and resilience identified in the NOPR does not reflect the current state of the electricity system, and that a one-size-fits-all approach relying on a single attribute (onsite fuel availability) will not lead to optimal outcomes. We have placed emphasis on comments submitted by the North American Electric Reliability Corporation (“NERC”) and by Regional Transmission Organizations (“RTOs”), Independent System Operators (“ISOs”), and their associated independent market monitors and market monitoring units due to the direct role these entities play in assessing and maintaining cost-effective, reliable, and resilient service to customers in FERC-jurisdictional markets.

We urge FERC to reject the NOPR, as proposed, and pursue an approach that first defines and assesses potential threats to grid reliability and resilience, and then addresses any identified

⁴ DOE, Grid Resiliency Pricing Rule, Notice of Proposed Rulemaking, Docket No. RM17-3-000 (hereafter “NOPR”), at 3.

threats through market mechanisms designed to improve reliability and resilience without unduly increasing the cost of electricity.

A. The AE Buyers Group remains concerned that the NOPR will be costly and disruptive while bringing few benefits—if any—for reliability and resilience.

In initial comments submitted to the Commission, the AE Buyers Group expressed several concerns regarding the proposal put forward by DOE. Our review of comments submitted by other stakeholders in this case strengthens these concerns, as we explain below.

i. The AE Buyers Group’s concerns regarding cost impacts of the NOPR are confirmed and expanded.

The AE Buyers Group argued in our initial comments that a final rule consistent with the NOPR would cause a significant increase in the costs to consumers, including our businesses, without providing any demonstrated benefits. We cited initial studies estimating that the proposal could lead to annual cost increases ranging from \$3.8 billion to up to \$14 billion.⁵

Commenters provided additional estimates confirming that the proposal would result in significant cost increases. Of particular note, Monitoring Analytics, the Independent Market Monitor for PJM Interconnection (“PJM”), the region likely to be most impacted by DOE’s proposal, estimated significant cost increases in PJM. Monitoring Analytics notes that “the DOE Proposal does not state exactly how it would require RTO/ISOs to define full recovery of the cost of service...” and as such provides a range of estimates for lower rates of replacement value.⁶ With cost recovery at current replacement value, Monitoring Analytics found:

⁵ See ICF analysis, as reported in RTO Insider, *ICF Analysis: DOE NOPR Cost Could near \$4B/Year* (October 4, 2017), <https://www.rtoinsider.com/icf-doe-nopr-76642/>; Sierra Club, *New Analysis Finds Dramatic Costs of Perry’s Directive to FERC*, (Oct. 16, 2017) available at <http://www.sierraclub.org/press-releases/2017/10/new-analysis-finds-dramatic-costs-perrys-directive-ferc>.

⁶ *Comments of the Independent Market Monitor for PJM*, Docket No. RM18-1-000 (October 23, 2017) (“Monitoring Analytics Comments”) at 2.

In 2016, the DOE Proposal would result in an increased cost to customers of about 32 billion dollars, if the nuclear and coal units were all paid the current replacement value... That increase equals 384 percent of the total payments for capacity in PJM in 2016, 144 percent of the total payments for energy in PJM in 2016 and 84 percent of the total cost of wholesale energy in PJM in 2016.⁷

Consistent with this assessment, Potomac Economics, the Independent Market Monitor for the Midcontinent Independent System Operator (MISO) and the Market Monitoring Unit for the New York Independent System Operator (“NYISO”) and the Independent System Operator of New England (“ISO-NE”) concluded, “The NOPR’s government-mandate to guarantee full cost recovery of selected resources that may be economic to retire will likely generate costs that vastly exceed any reasonable estimate of VOLL [value of lost load].”⁸ Potomac Economics further notes that full cost recovery is “unreasonable” because “a generator in the market need only recover its going forward costs to have the incentive to remain in operation.”⁹ Another estimate calculates the cost of the proposal at \$29 billion over five years and \$101 billion over 15 years, stating that “reregulating large quantities of merchant coal and nuclear generation will increase consumer costs by approximately \$7.1 billion annually over next first [sic] five years.”¹⁰

In addition to cost increases as a direct result of cost-of-service regulation for eligible coal and nuclear facilities, commenters noted that the NOPR would increase costs in other ways, including but not limited to:

- **Loss of market-driven incentives to increase operational efficiency.** Monitoring

Analytics notes, “[t]he introduction of market incentives resulted in significant

⁷ Monitoring Analytics Comments at 5.

⁸ *Comments of Potomac Economics, LTD*, Docket No. RM18-1-000 (October 20, 2017) (“Potomac Economics Comments”) at 16.

⁹ *Id.* at 17.

¹⁰ *Comments of Rockland Capital, LLC, Caithness Energy, LLC, Moxie Energy, LLC, Ares EIF Management, LLC and Panda Power Generation Infrastructure Fund, LLC*, Docket No. RM18-1-000 (October 23, 2017) (“Rockland Capital”) at 2.

improvements in the operation of nuclear power plants as well as other power plant types.” Therefore, Monitoring Analytics warns, “[t]he removal of market incentives will impose the risk of higher costs on customers and will remove the incentive of unit owners to operate more efficiently and at lower cost.”¹¹

- **Inefficient market activity.** By undermining market fundamentals, the NOPR would lead to greater cost increases. For example, Monitoring Analytics explains, “The artificial retention of uneconomic resources will crowd out economic resources and weaken or eliminate the incentives for competitive new entry.”¹² The Southwest Power Pool (“SPP”) Market Monitoring Unit (“SPP MMU”) holds up SPP as a warning against mixed cost-of-service and market-based regulatory regimes. According to SPP MMU’s comments, “regulatory regime and cost recovery guarantees” has resulted in excess capacity (“trending above 40 percent compared to the 12 percent minimum requirement”), increasing costs to customers “by way of inducing sub-optimal bid and offer behavior.”¹³
- **Reduced incentive for technological innovation.** PJM notes in its comments that, by quickly rewarding efficiency gains, competitive markets are able to maintain “a resource base that leverages technological change to help ensure long-term reliability.”¹⁴ Monitoring Analytics similarly explains, “Competitive investors rely on

¹¹ Monitoring Analytics Comments at 7.

¹² *Id.* at 8.

¹³ *Comments of the Southwest Power Pool Market Monitoring Unit on Notice of Proposed Rule by the Secretary of Energy*, Docket No. RM18-1-000 (October 20, 2017) (“SPP MMU Comments”) at 6-7.

¹⁴ *Initial Comments of PJM Interconnection, L.L.C. on the United States Department of Energy Proposed Rule*, Docket No. RM18-1-000 (October 23, 2017) (“PJM Comments”) at 16.

accurate signals to make decisions.”¹⁵ Such incentives would be diminished by implementation of the NOPR, resulting in long-term harm to competitive markets.

- **Increasing rates required to cover the cost of service.** Current estimates of the cost increases of the NOPR cannot fully account for potential increases over time. For example, Potomac Economics explains that the resources eligible for full cost recovery under the NOPR are, on average, “well into their expected life spans.” Potomac Economics argues in its comments that maintaining these resources will require cost recovery for “increasingly expensive projects.”¹⁶ Furthermore, Monitoring Analytics explains, “to the extent that coal plants increase their inventory to meet the 90 day fuel supply requirement, the... price of coal would likely rise with its increased demand.” As such, the rate required to cover the cost of service would also increase as coal-fired generating units become less competitive in the market.¹⁷ The ISO/RTO Council (“IRC”) warns in its comments that some generation owners may “seek ways potentially to try to remove resources from retail rate base to take advantage of potentially more attractive cost recovery at the wholesale level,” and further warns that the NOPR “could encourage the restoration of retired and mothballed units...,” which would also increase the overall cost to implement the NOPR.¹⁸
- **Loss of confidence in competitive markets.** Potomac Economics warns that the NOPR risks creating a regulatory environment in which “investors and other market

¹⁵ Monitoring Analytics Comments at 12.

¹⁶ Potomac Economics Comments at 16.

¹⁷ Monitoring Analytics Comments at 7-8.

¹⁸ *Comments of the ISO/RTO Council*, Docket No. RM18-1-000 (October 23, 2017) (“IRC Comments”) at 6.

participants may no longer respond efficiently to the market signals because of the risk of future out-of-market intervention.”¹⁹

- **Need to compensate for potential unintended consequences.** Commenters warn that the NOPR could result in unintended consequences that actually threaten reliability and resilience, which would, in turn, increase costs. For example, Potomac Economics cautioned that “the NOPR may degrade reliability by causing unsubsidized resources to retire prematurely and retarding new investment in generating resources,” and, at the same time, full cost recovery “could have the unintended effect of preventing resources that are actually harmful to the system, based on their location, from retiring.”²⁰ MISO also provides specific examples in its comments, including strains on the transmission system due to retirement of units put at risk by out-of-market support for eligible units under the NOPR; displacement of more efficient, new generation resources; and a potential decrease in transmission reliability and resilience without a good mechanism for identifying and addressing potential issues.²¹

Initial assessments of the cost to implement DOE’s NOPR cannot meaningfully assess the indirect impacts listed above—yet these and other secondary impacts could significantly increase the cost of DOE’s already-costly proposal. As we stated in our initial comments, increased operating costs from higher electricity prices directly impacts our businesses’ ability to grow and innovate, and any cost increases should be justified by corresponding benefits—an expectation

¹⁹ Monitoring Analytics Comments at 15.

²⁰ Potomac Economics Comments at 16.

²¹ *Comments of the Midcontinent Independent System Operator, Inc.*, Docket No. RM18-1-000 (October 23, 2017) (“MISO Comments”) at 3.

that we hold as consumers that the NOPR has failed to meet, as explained in detail in our initial comments and in Section III.A.iii., below.

ii. The AE Buyers Group remains concerned that the proposal would significantly distort electricity markets.

The AE Buyers Group argued that the out-of-market solution proposed by DOE would not be an optimal approach to improve reliability and resilience even in the case of an emergency, because this approach is expected to significantly disrupt electricity markets. Our comments referenced initial assessments of the impacts of the proposal from J.P. Morgan Securities analysts, Morgan Stanley analysts, and a group of former FERC Chairmen and Commissioners.²² As explained above in specific reference to cost impacts, many commenters in this docket agreed that the NOPR would undermine the functioning of FERC-jurisdictional wholesale markets, with long-lasting negative impacts for consumers. In this section, the AE Buyers Group provides a brief review of warnings regarding the expected adverse market impacts of DOE's NOPR, confirming and reiterating the concerns voiced in our initial comments.

Comments from ISOs, RTOs, and independent market monitors held the consistent view that the NOPR would distort and undermine competitive markets. The IRC warned in its comments that the NOPR “would degrade the efficiency and effectiveness of existing organized wholesale markets” and “would provide improper incentives and disincentives to current and future market participants.”²³ Monitoring Analytics similarly cautioned that the NOPR would eventually lead to “the demise of competitive markets in the PJM Region,” and further warned, “[o]nce the

²² See, Lucas Bifera, *Wall Street Views DOE Grid Proposal as Anti-competitive*, (Oct. 2, 2017) available at <https://marketintelligence.spglobal.com/our-thinking/news/wall-street-views-doe-grid-proposal-as-anticompetitive>; Comments of the Bipartisan Former FERC Commissioners in Docket No. RM18-1-000 (Oct. 19, 2017), available at https://s3.amazonaws.com/dive_static/paychek/Comments_of_BFFC_Docket_RM18-1_1.pdf.

²³ IRC Comments at 1-2.

decision is made that market outcomes must be fundamentally modified, it will be virtually impossible to return to markets.”²⁴ PJM in its own comments agreed that “providing full cost of service rate recovery to favored resources severely distorts market prices and investment signals, significantly degrading competitive markets, and leaves in place uneconomic, aging assets that would be forced into retirement but for the subsidy.”²⁵ The SPP MMU similarly argued, “[a]doption of the Proposed Rule would only distort and disrupt the competitive markets and set back by decades the significant progress made in ensuring reliability of electricity service that the Commission’s rules for ISO/RTO-operated markets established.”²⁶ MISO in its comments concluded, “The Proposal’s pricing construct could fundamentally alter the economics for all generators in the MISO region by providing a superior level of compensation to resources that may otherwise retire because they are less efficient and less reliable than other units.”²⁷ Potomac Economics warned, “pursuing objectives that change the supply and demand outside of the markets will undermine and potentially destabilize the wholesale electricity markets.”²⁸ As noted above, some commenters further argued that the distortionary effects of the rule could present a direct threat to reliability and resilience.²⁹ All these comments are consistent with concerns of the AE Buyers Group regarding the impact of the NOPR on competitive wholesale markets.

The AE Buyers Group noted in our initial comments that clear and accurate prices in a stable policy environment have been very successful at accurately discovering the value of electricity

²⁴ Monitoring Analytics Comments at 1, 10.

²⁵ PJM Comments at 28.

²⁶ SPP MMU Comments at 2.

²⁷ MISO Comments at 3.

²⁸ Potomac Economics Comments at 15.

²⁹ See *supra* Section III.A.i., in particular n.20 and 21.

production and sending efficient price signals to generators and consumers to deliver the most cost-efficient market supply outcomes. We also noted that our companies are active participants in the wholesale electricity system, pursuing clean energy projects to meet our corporate energy and sustainability targets and to control our electricity costs. Comments submitted in response to the NOPR confirm our assessment of the risk this proposal poses to the stability of wholesale electricity markets, with direct negative consequences for all customers as well as for our ability to pursue energy choices to meet our specific needs.

iii. The AE Buyers Group remains confident that FERC-jurisdictional electricity markets are not facing an urgent threat to reliability and resilience.

As sophisticated customers highly dependent on 24/7 electricity that is both reliable and resilient, the AE Buyers Group explained in our initial comments that we are confident in the ability of the electricity system to efficiently meet consumer needs now and in the future, without the need for a costly federal intervention. In our comments, we cited (a) recent assessments of the reliability and resilience of the electric grid, (b) current and planned efforts of grid operators to adjust to a changing resource mix, and (c) overwhelming evidence from recent major outage events indicating that improving fuel security would not result in meaningful improvements in reliability and resilience. Below, we review comments in this docket from RTOs, ISOs, independent market monitors, and the North American Electric Reliability Corporation (“NERC”), all of which confirm our conclusion that DOE’s proposal to improve reliability and resilience by providing cost-of-service regulation to generators that stockpile fuel supply onsite will not have a significant positive impact on system reliability and resilience.

a. The AE Buyers Group remains confident that the grid is well positioned to meet customers’ needs now and in the future.

Doubling down on its assessments of the Bulk Power System (“BPS”) released prior to the introduction of DOE’s NOPR and cited in the initial comments of the AE Buyers Group, NERC plainly stated in its comments on the NOPR that “[t]he North American BPS is reliable and resilient.”³⁰ While NERC acknowledged that changes to system flexibility may impact reliability going forward, indicating that it is “continuing to study the reliability implications of coal and nuclear generation retirements and the changing resource mix,” NERC’s comments notably stated that “NERC has not identified an immediate or near-term emergency related to such retirements...,” thus negating the stated justification for the NOPR.³¹

Regional entities tasked with maintaining reliable and resilient electricity markets also confirmed the view of the AE Buyers Group that markets are well positioned to meet the needs of customers, both now and in the future. Monitoring Analytics affirmed in its comments that, “The public can have confidence in markets if they are allowed to operate without interference.”³² PJM similarly concluded that “[w]hile claiming to address an imminent threat to the “resilience” of the electric grid from looming retirement of so-called “fuel-secure” baseload resources, the DOE NOPR fails to demonstrate that any such threat is imminent, that retirements are to blame, that competitive markets and specifically capacity markets are forcing retirements that would not have otherwise occurred, or that its proposed solution will actually address the perceived problem.”³³ MISO conclusively stated, “there are no imminent near-term or short-term reliability challenges in MISO.”³⁴ Potomac Economics characterized the NOPR as a “premature

³⁰ *Comments of the North American Electric Reliability Corporation in Response to Notice of Proposed Rulemaking*, Docket No. RM18-1-000 (October 23, 2017) (“NERC Comments”) at 5.

³¹ *Id.*

³² Monitoring Analytics Comments at 2.

³³ PJM Comments at 6.

³⁴ MISO Comments at 12.

prescription.”³⁵ These assessments confirm that DOE’s characterization of an “urgent” threat to electric system reliability and resilience is inconsistent with the current state of FERC-jurisdictional electricity markets.

b. The AE Buyers Group argues that current and planned efforts of grid operators are a preferable approach to adjust to a changing resource mix.

Many commenters described ongoing efforts to improve system reliability and resilience, which DOE chose to ignore, and noted that reliability and resilience are inherently location-specific issues, with different regions and even different individual units facing different circumstances. Both PJM and Monitoring Analytics pointed out that the ISO is actively working to improve system reliability and resilience,³⁶ and PJM notes that “the DOE NOPR overlooks many of what PJM would consider to be the more salient resilience issues, which relate to the transmission grid and not to supply resources.”³⁷ ISO-NE describes in detail in its comments steps that it has taken to address the specific challenges it faces with regard to natural gas availability during cold weather, and argues that the “NOPR does not address these risks.”³⁸ MISO similarly stated, “MISO already has several initiatives underway to evaluate and improve resilience and reliability.”³⁹ Potomac Economics argued that these regional efforts are important not only because they are already underway, but because local or regional level changes are more appropriate than a one-size-fits-all approach. Specifically, “the quantity and characteristics of the other resources in the region would play a key role in determining the resilience requirements.”

³⁵ Potomac Economics at 6.

³⁶ PJM Comments at 18-19, 26.

³⁷ *Id.* at 18.

³⁸ *Comments of ISO New England Inc.*, Docket No. RM18-1-000 (October 23, 2017) (“ISO-NE Comments”) at 5-7, 1.

³⁹ MISO Comments at 9.

In regions with excess supply, Potomac Economics argued, “compensating the NOPR’s proposed resilience resources outside of the market would provide little if any reliability value.”⁴⁰ The California Independent System Operator similarly pointed out, “Resource fleets, fuel supply options, threats to reliability and resiliency, environmental requirements, and operating conditions differ widely among the various RTO and ISO regions,” and argued that “ISOs and RTOs have a wide range of unique mechanisms for addressing the distinct reliability needs and risk-of-retirement issues in their regions.”⁴¹

Furthermore, as noted in the initial comments of the AE Buyers Group, out-of-market protection is already available on a case-specific basis to units deemed necessary to maintain system reliability and resilience. Many commenters pointed out that the more surgical, temporary, unit-specific “reliability must-run” (“RMR”) or “system support resource” (“SSR”) tariff provisions are more effective than the one-size-fits all approach taken by DOE because they respond to identified system needs that are location-specific, and therefore avoid the unintended and long-term effects expected from the NOPR.⁴² MISO in particular notes in its comments that SSR and RMR tariffs “are designed to address specifically defined reliability issues identified at specific locations... [and are] entered into only until the indicated reliability need is addressed through implementation of other measures.” MISO further argues that this approach “... stands in stark contrast to the compensation mechanism contemplated in the Proposal, which neither guarantees that an eligible resource will in fact address any reliability need, not [sic] does it ensure that maintaining operation of any such resource will be limited in

⁴⁰ Potomac Economics Comments at 7.

⁴¹ *Comments of the California Independent System Operator Corporation*, Docket No. RM18-1-000 (October 23, 2017) (“CAISO Comments”) at 2, 8.

⁴² See CAISO Comments at 12; IRC Comments at 2, 24; ISO-NE Comments at 3; MISO Comments at 12-15; Monitoring Analytics at 20; PJM Comments, Appendix A at 10.

duration to the time necessary to address an underlying need.”⁴³ The AE Buyers Group expressed similar confusion at the failure of the NOPR to explain why such existing measures are insufficient to address any threats to reliability and resilience that may arise as a result of generator retirements.

The AE Buyers Group remains confident that existing tools and resources, along with reforms already underway or under consideration, will ensure continued reliability and resilience in FERC-jurisdictional wholesale markets both now and in the future.

c. Overwhelming evidence from recent major outage events indicates that the NOPR would not meaningfully increase reliability and resilience.

The AE Buyers Group noted in our initial comments that onsite fuel storage did not play a role in any of the recent major outage events cited in DOE’s NOPR, and in fact a recent Rhodium Group analysis of U.S. Energy Information Administration (EIA) data found that only 0.00007% of outage hours in the last five years were the result of fuel supply disruptions.⁴⁴

Several commenters with direct insights into the functioning of the electricity system under recent extreme events confirm that availability of a 90-day onsite fuel supply would not have changed outcomes under those events, and would not result in material improvements in system reliability and resilience moving forward. NYISO, ISO-NE, MISO, and PJM—the regions most affected by the Polar Vortex—specifically rejected DOE’s conclusion that the Polar Vortex provides evidence in support of the NOPR.⁴⁵ Commenters also pointed out that extreme events such as hurricanes result in reliability and resilience concerns that are not considered in DOE’s

⁴³ MISO Comments at 14.

⁴⁴ Trevor Houser, John Larsen, Peter Marsters, “The Real Electricity Reliability Crisis,” Rhodium Group (Oct. 3, 2017), <http://rhg.com/notes/the-real-electricity-reliability-crisis>.

⁴⁵ *Comments of the New York Independent System Operator, Inc.*, Docket No. RM18-1-000 (October 23, 2017) (“NYISO Comments”) at 5; ISO-NE Comments at 11; MISO Comments at 19; PJM Comments at 11, 22.

NOPR, in particular threats to the transmission and distribution system.⁴⁶ Potomac Economics further explained that, during extreme events, fuel availability is vulnerable not only to supply interruption, but to flooding, extreme weather, and other impacts, specifically noting:

...the Polar Vortex and other experience from recent storms... would not obviously point to long-term fuel security as a primary cause for concern, and certainly not specifically 90-days. Nor would a survey of all the significant large-scale outages since 1965. Not one of these outages was impacted by lack of long-term fuel-security.⁴⁷

Potomac Economics further specified that resources that did provide critical capability during the Polar Vortex—in particular wind energy and demand response—would not qualify under the NOPR, while the resources that are singled out for their resilience benefits “were not found to be essential” during that event.⁴⁸

The consistent assessment from different regional system operators and market monitors finding that long-term availability of onsite fuel has not played an important role in maintaining service during recent extreme events provides strong evidence that the NOPR is not an appropriate approach to address threats to reliability or resilience, even if such threats were identified and deemed to be urgent.

iv. The AE Buyers Group reiterates that DOE’s out-of-market proposal is not the optimal approach to address any deficiencies in reliability and resilience.

The AE Buyers Group argued in our initial comments that any effort to increase system reliability and resilience should rely on market mechanisms and draw from the many technology and operational solutions available rather than relying on out-of-market mechanisms to reward a

⁴⁶ See IRC Comments at 18; MISO Comments at 20; PJM Comments at 13 and Appendix A at 7-8; Potomac Economics Comments at 12.

⁴⁷ Potomac Economics Comments at 8.

⁴⁸ *Id.* at 10, 15.

single characteristic—long-term onsite fuel availability—that is only a small part of the equation. Comments submitted in response to the NOPR reiterated this critique.

Several commenters, including NERC, MISO, and Monitoring Analytics, pointed out that there are many approaches available and in use to address fuel reliability concerns that the NOPR ignores, including evaluation of gas pipeline reliability, assessment of firm gas service, potential need for a gas RTO to ensure reliability, evaluation of quality and reliability of coal deliveries, reliability of secondary fuel deliveries, encouragement of multiple pipeline connections, and dual-fuel capability for generators.⁴⁹ Commenters also pointed to technologies and services that can provide important reliability and resilience benefits unrelated to fuel reliability. For example, Monitoring Analytics pointed to demand-side resources as “a very significant and important part of the resource mix” and argued that “the role of demand side resources in the energy market and capacity market should be redefined to permit customers the maximum flexibility to respond to energy and capacity prices and to benefit immediately from that response.”⁵⁰

Equally important, many commenters also criticized DOE’s choice to ignore market-based approaches that could deliver technology-neutral solutions to address any identified shortcomings in system reliability and resilience. SPP MMU provided perhaps the clearest articulation of this critique, stating that a competitive path implemented by ISO or RTO markets “...provides for an approach by which different technologies and companies can compete on economics to provide needed reliability products without predefining preferred technologies.”⁵¹

⁴⁹ See MISO Comments at 20; Monitoring Analytics Comments at 14; NERC Comments at 12; PJM Comments at 25-26 and Appendix A at 6, 9.

⁵⁰ Monitoring Analytics Comments at 45.

⁵¹ SPP MMU Comments at 6.

To avoid costly, distortionary outcomes, any steps taken by the Commission to improve system reliability and resilience should take these suggestions into account by adopting a market-based, technology-neutral approach. Doing so will minimize cost impacts to consumers and ensure efficient delivery of reliability and resilience benefits.

B. The AE Buyers Group requests that any action taken by the Commission allow ample time and opportunity for analysis, input, and engagement.

As noted above and in our prior comments, the AE Buyers Group disagrees with the assertion that the electricity sector is currently facing an “urgent” threat to reliability and resilience that justifies costly market intervention. Should the Commission nevertheless decide to go forward with any action in response to the NOPR, the AE Buyers Group respectfully requests that stakeholders be allowed ample opportunity to provide input, such as through technical conferences and additional comment opportunities. As customers with high electricity use, and as active participants in the electricity markets participating in demand-side programs and pursuing onsite and offsite energy projects to meet our own needs, the members of the AE Buyers Group have insights into the impact of any changes made to the regulation of wholesale electricity markets from multiple perspectives. The AE Buyers Group would welcome the opportunity to provide these insights in whatever form the Commission chooses, including participating in a Technical Conference or Conferences or submitting additional written comments.

Relatedly, the AE Buyers Group requests that any future action pursued by the Commission in response to DOE’s proposal allow sufficient time for analysis of the potential impacts of any proposed changes to FERC-jurisdictional wholesale markets. Such analysis is important to allow stakeholders to provide input that is grounded on a thorough understanding of potential costs and

benefits. Many—if not most—commenters expressed similar concerns regarding the rapid timeline for consideration and implementation of the NOPR, particularly given the sweeping effects that the proposal is expected to have on electricity markets.

Finally, many commenters both in support of and in opposition to DOE’s proposal acknowledge that the NOPR lacks sufficient detail for implementation. Some commenters provided proposed pathways for implementation of DOE’s proposal, adding important elements that were not included in the NOPR. Even ignoring the specifics of these proposals, the AE Buyers Group strongly urges the Commission against adoption of any of these proposals without additional opportunity for comment. Implementation of these proposals would constitute a failure to allow for meaningful stakeholder input because stakeholders providing reply comments on this NOPR have had only two weeks to assess and submit comments on a range of proposals that contain many important details not included in DOE’s proposal, including elements that would have a significant impact on our businesses.

As consumers who pay the price for interruptions in electricity service *and* for investments to avoid such interruptions, and as active participants in the electricity system pursuing energy choices to meet our individual needs, the AE Buyers Group respectfully requests the opportunity to meaningfully engage on any future actions by the Commission that could lead to changes in the regulation of FERC-jurisdictional wholesale markets.

IV. CONCLUSION

The AE Buyers Group supports efforts to continually assess the state of our electricity system, and we support prudent investments to improve its reliability and resilience. However, a sweeping and costly change to the regulation of wholesale markets—hastily implemented

without meaningful assessment of costs and benefits—cannot be considered prudent, just, or reasonable. We urge FERC to reject the NOPR, as proposed. Should the Commission decide to take future action in response to the NOPR, the AE Buyers Group respectfully requests ample time and opportunity for meaningful analysis, input, and engagement.

Respectfully submitted,

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