

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Grid Reliability and Resiliency Pricing) Docket No. RM18-1-000

**REPLY COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
IN OPPOSITION TO THE DOE NOPR**

In accordance with the Notice issued by the Federal Energy Regulatory Commission (“Commission”) on October 2, 2017, the Retail Energy Supply Association (“RESA”)¹ hereby files these Reply Comments in response to the Notice of Proposed Rulemaking (“NOPR”) in the above-referenced proceeding.² RESA filed timely Comments on October 23, 2017 and files these Reply Comments to respond to those who minimize the adverse effects that this NOPR, if implemented as proposed by the U.S. Department of Energy (“DOE”). RESA submits that supporters of the DOE NOPR ignore or minimize the effects that this rule, if implemented would have on retail customers, including commercial, industrial and residential retail customers who take service from competitive retail suppliers such as RESA members.³ RESA files these limited Reply Comments to illustrate some of the harm that will adversely impact RESA and its members. RESA supports competitive wholesale markets and a reliable and resilient grid.

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² See *Grid Resiliency Pricing Rule*, Docket No. RM18-1-000, 82 Fed. Reg. 46,940 (October 10, 2017).

³ See, e.g., Comments of Governor Jim Justice, Governor of West Virginia, filed October 23, 2017 (promoting the use of coal); Comments of FirstEnergy Service Company, filed October 23, 2017 (alleging, for example (at 31) that continued closure of coal plants will destabilize wholesale markets, which justifies the costs proposed by the NOPR).

RESA continues to believe that this NOPR is not necessary in order to continue to have a reliable and resilient grid. In support of these Reply Comments, RESA submits as follows:

I. BACKGROUND

In its Comments, RESA provided background on its organization and activities. As RESA mentioned, RESA members provide innovative service to retail customers in 22 states and the District of Columbia. All of RESA's members share the common belief that competitive wholesale and retail markets deliver a more efficient, customer-oriented outcome than the regulated utility structure. Competitive retail suppliers have proven that they bring value, savings and innovation to markets where states permit competition.⁴

RESA's members purchase a variety of wholesale services in the Regional Transmission Organization/Independent System Operator ("RTO/ISO") markets, but they offer more than just electricity services to their customers. Competitive retail suppliers may supply one or more of these and other innovative services: (1) commodity retail energy based on fixed or variable prices which are tied to wholesale prices; (2) demand response; (3) energy efficiency services to assist customer in reducing their electricity consumption; (4) renewable energy-based services; (5) real-time pricing in areas with advanced metering; (6) integrated solutions that include energy and efficiency such as smart thermostats, appliance management, etc.; and (7) data analytics and analysis of commercial/industrial consumption to increase efficient use of energy. There is no one model – competitive wholesale markets and retail choice policies in the states have allowed significant innovation which has reduced consumption of energy, lowered prices, and provided valuable services to consumers.

⁴ See "Restructuring Recharged, The Superior Performance of Competitive Electricity Markets 2008-2016" April 2017. https://www.resausa.org/sites/default/files/RESA_Restructuring_Recharged_White%20Paper_0.pdf.

If, as the DOE requests, FERC must allow for cost-of-service compensation for “fuel-secure” generation that is “frequently relied upon to make our grid reliable and resilient,”⁵ it will have an adverse effect on competitive wholesale markets, increase costs to consumers, and harm innovation. The rate shock and increased costs to consumers must not be ignored.

II. ARGUMENT

The remedy proposed in DOE’s NOPR, if implemented, would harm the wholesale competitive capacity and energy markets, lead to increased prices and ultimately harm the consumers the Federal Power Act is enacted to protect. Current capacity markets in PJM, ISO-NE, NYISO and MISO utilize auctions in some form in order to select generation to provide capacity. The proposal, which may remove from the competitive marketplace a significant amount of generation to be priced on a traditional cost-of-service basis, would adversely affect the competitive market. The Commission would be, in effect, re-regulating a large segment of the generation market.⁶ The result would be a less liquid competitive market and a less liquid bilateral market upon which competitive retail suppliers often rely.

The effect on consumers will be substantial. As the PJM Independent Market Monitor (“IMM”) states in its Comments that, “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,” as determined on a levelized basis.⁷ The increased costs “equals 384 percent of the total payments for capacity in PJM in 2016, 144 percent of the total payments for energy

⁵ NOPR at 46,945.

⁶ *See e.g.* NOPR at 46,945 (“the rule requires the organized markets to establish just and reasonable rate tariffs for the recovery of costs and a fair rate of return”).

⁷ Comments of the Independent Market Monitor for PJM, Docket No. RM18-5, filed October 23, 2017, at 5 (“IMM Comments”).

in PJM in 2016 and 84 percent of the total cost of wholesale energy in PJM in 2016.”⁸ Electric Power Supply Association’s (“EPSA”) witnesses David DeRamus and Collin Cain estimate that ratepayers may pay more than \$2 billion annually in long-term support payments.⁹ Finally, Rockland Capital, *et al.* witness Chilton shows that these costs are estimated to be an “average of \$7.1 billion annually for the first five years and total \$35.4 billion and \$100.8 billion over the next five and fifteen-year periods, respectively.”¹⁰ What do these numbers mean to retail customers? Rate shock.

Take as an example an industrial customer located in the Midwest. An industrial customer may operate 24 hours a day and use a consistent amount of electricity all day. This industrial customer likely faces foreign competition and struggles to keep costs low. The industrial customer may be the major employer in a town. An industrial customer with a high electric load often has electricity use as one of its highest costs. Industrial customers have worked with retail suppliers to fix electric rates, improve efficiency and use sophisticated data analytics to assist the industrial customer in keeping costs low. Neither the industrial customer nor retail suppliers could have anticipated that the Commission might eviscerate wholesale markets by allowing cost-based recovery for certain generators. Assuming a load of 100 MW, a \$1.00/MWh increase in electric rates could increase the costs to an industrial customer by more than one million dollars per year. That increase could cause an industrial customer to lose business because costs

⁸ *Id.*

⁹ Comments of Electric Power Supply Association, Docket No. RM18-5, filed October 23, 2017, affidavit of DeRamus and Cain at p.10, para 24.

¹⁰ Comments of Rockland Capital, LLC, Caithness Energy, L.L.C., Moxie Energy, LLC, Ares EIF Management, LLC and Panda Power Generation Infrastructure Fund, LLC, Docket No. RM18-1, filed October 23, 2017, at 12.

are higher than foreign competition. The industrial customer could lay off employees. The effects on the local economy could be severe.

Take as another example, a residential or commercial retail customer. It purchases a fixed price product for a two-year term. This retail customer has installed smart technology and time of use metering that allows the customer to run its appliances on off-peak times and pays rates based on whether its use is on or off-peak. This customer sees savings directly from its contractual arrangement with its retail supplier. The retail supplier is providing value to the customer in terms of rates, certainty, and innovative product offerings that include time of use rates.

The rate shock imposed by a multi-billion dollar-per-year cost increases that do not relate to competitive wholesale market price formation, would impact both the retail supplier and the customer. The retail supplier would have purchased products on the wholesale market from wholesale suppliers. The retail supplier might have hedged some of its costs and addressed known risks based on the facts known at the time. It developed a fixed price with the customer and committed to provide that price for the term of the contract. The increased costs would directly affect the bargain between the parties. First, the retail supplier is faced with additional power purchased costs that were not anticipated and are not likely hedgeable. Second, the cost-based rates, as allocated, might upset the balance between off-peak and on-peak pricing that the parties agreed upon in the long-term agreement. Third, one party will bear the increased costs. Who will bear them will depend on the contract terms – that is, whether contract permits the retail supplier to pass through the additional costs to the customer. However, the customer ultimately loses – when the contract expires, the value that the customer realized will no longer

be available. The competitive retail supplier may build additional premiums into their prices in order to address regulatory uncertainty.

Finally, assume an industrial customer decides to invest in behind the meter generation, such as a solar, wind, or geothermal project. That industrial customer has made that decision based on economics – i.e., will the system pay for itself over time. The customer (maybe with the help of a competitive retail supplier) would look to forward prices to make that basic economic determination. Upon implementation of a rule such as the DOE NOPR, the economic underpinnings and justification for the investment will be undermined after the investment is sunk, converting a prudent investment decision into one that may expose the industrial customer significant financial losses and result in a competitive disadvantage.

There are merely three examples of the practical effects of the DOE NOPR on consumers. The benefits that have been provided over the years from competitive wholesale markets and competition at the retail level is at risk. A cost-based rate recovery system for significant generation will slow innovation and may make it more difficult for retail suppliers to develop products market-based products that bring real value to commercial, industrial and residential customers. The products needed by retail suppliers will not be available for purchase. As the IMM notes in its comments (at 8), “[t]he artificial retention of uneconomic resources will crowd out economic resources and weaken or eliminate the incentives for competitive new entry.”

III. CONCLUSION

In sum, the DOE NOPR should be rejected. DOE has not shown that the existing rates are unjust and unreasonable and has simply not shown that its proposed remedy is addressing a real problem with grid resiliency. The rate shock and effects on consumers must be considered and weighed in the Commission’s decisionmaking.

WHEREFORE, RESA respectfully requests that the Commission reject the NOPR.

Respectfully submitted,

Elizabeth W. Whittle

Elizabeth W. Whittle
Counsel for
The Retail Energy Supply Association

Of Counsel:

Nixon Peabody LLP
799 9th Street, N.W.
Suite 500
Washington, DC 20001
202-585-8338
ewhittle@nixonpeabody.com

Dated: November 7, 2017