

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Proposed Rulemaking)
Grid Resiliency Pricing Rule) **Docket No. RM 18-1-000**

COMMENTS OF WIRES

WIRES¹ respectfully submits the following initial comments in response to the September 28, 2017 Notice of Proposed Rulemaking (“NOPR”) issued by the Secretary of the U.S. Department of Energy (“DOE” or the “Secretary”) pursuant to Section 403 of the Department of Energy Organization Act (“DOE Act”), directing action by the Federal Energy Regulatory Commission (“FERC” or “Commission”) within 60 days of *Federal Register* publication.² WIRES believes this comment deadline may not afford the Commission sufficient time to develop substantial evidence that would support more than an interim action on the proposal, such as a statement of policy or technical conferences. WIRES nevertheless supports any initiative that helps ensure the continued reliability and increased resilience of the electric power system, which the NOPR quite correctly identifies as having increasing importance in the evolving American economy. However, WIRES cannot support final action by the Commission in the above-captioned docket that (1) compromises or retreats from the market-oriented and technology-neutral regulatory policies that the Commission has fostered for a quarter century, with the approval of the Congress and the court, or (2) fails to fully acknowledge the central role that development of robust electric transmission

¹ WIRES is an international non-profit trade association of investor-, publicly-, and cooperatively-owned transmission providers, transmission customers, regional grid managers, and equipment and service companies. WIRES promotes investment in electric transmission and progressive state and federal policies that advance energy markets, economic efficiency, and consumer and environmental benefits through development of electric power infrastructure. For more information, visit www.wiresgroup.com.

² Grid Resiliency Pricing Rule, 82 Fed. Reg. 46940 (proposed October 10, 2017) (to be codified at 18 C.F.R. pt. 35).

infrastructure must also play in any effort to make the grid more reliable and resilient in the coming decade.

WIRES therefore respectfully asks the Commission not to move forward with this rulemaking, as proposed, unless and until (1) an appropriate record can be developed that would justify the kind of out-of-market relief the Secretary has identified, and (2) any further proceedings in this docket include an examination of the role and importance of regional and interregional electric transmission investment in ensuring the reliability and resilience of the Nation's bulk power system and the security of the electric economy.

I. General Comment and Observations

The technological and business changes in the electric industry and its increased decentralization have raised concerns about its ability to become more resilient and to reliably meet the challenges of the increasingly electrified economy. WIRES has long argued that growing reliance on new renewable and distributed resources does not mean that reliability will decline or that resilience of the system will necessarily be compromised,³ *provided* the right infrastructure investment decisions are made in the coming years.⁴ As helpful as was the DOE Staff Report released in August,⁵ substantial further analysis needs to be performed to evaluate whether guaranteeing

³ Resilience is defined by the DOE and the National Infrastructure Advisory Council as the ability to reduce the magnitude and/or duration of disruptive events, including physical changes to infrastructure known as "hardening." Reliability is defined by the North American Electric Reliability Corporation ("NERC") as a function of adequacy, which is the ability of the system to supply aggregate electric power and energy at all times. See U.S. Department of Energy, *Staff Report to the Secretary on Electricity Markets and Reliability*, August 2017, at pp. 61-63. See also, the important consensus study report of The National Academy of Sciences, *Enhancing the Resilience of the Nation's Electricity System* (2017), which takes a comprehensive view of grid resilience, offers a series of practical recommendations in moving toward a more resilient grid, and recognizes the importance of involving state and regional grid operators, emergency preparedness organizations, and national and state regulators. (<https://doi.org/10.17226/24836>)

⁴ For a complete picture of the complementarity of distributed generation and other resources with the reliability benefits of transmission, see London Economics International, *Market Resource Alternatives: An Examination of New Technologies in the Electric Transmission Planning Process* (prepared for WIRES), October 2014.

⁵ U.S. Department of Energy, *Staff Report to the Secretary on Electricity Markets and Reliability* (August 2017) ("DOE Staff Report").

recovery of all costs for generators whose distinguishing characteristic is a stockpile of fuel will enhance grid reliability or resilience and lead to just and reasonable rates for consumers.⁶

The Commission's policies, based on the Energy Policy Acts of 1992 and 2005 and articulated in Order Nos. 888, 2000, 890, and 1000, have consistently created the conditions that allow all resources to compete fairly on the basis of price, the ability to provide the quality of service needed, and public policy considerations. This approach, while stated in different ways by different Commission decision makers, has been a bipartisan thread in virtually all FERC electric policy decisions since EAct 1992 and even before that in natural gas pipeline policies and orders. The DOE NOPR, if implemented, would constitute a thumb on the competitive scales in wholesale bulk power markets. Moreover, it was foreseeable that, as the Commission's pro-competitive policies and encouragement for new technologies progressed, existing baseload plants could be subject to competitive pressures from cheaper fuels or new technology and thus become outmoded, dispatched less often, or uncompetitive. For some resources, retirement is the consequence of these pressures. That kind of "creative destruction" has helped to make the power industry more economically efficient.⁷

We agree with the Secretary that the electric power system does need to be made more resilient in light of challenges like extreme weather events, threats of cyber intrusion, and competitive forces that affect operations. The overarching goal of the DOE proposal is to create a more resilient electric system. This goal is laudable, and

⁶ To make adoption of the DOE proposal legally defensible, the Commission must justify what WIRES believes constitutes a major change in policy (see e.g., *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973)) and make a finding that the current rates that would otherwise apply to the generation facilities in question do not currently meet the just and reasonable standard of the Federal Power Act § 206 (16 U.S.C. § 824e(a); *Emera Me. v. FERC*, 854 F.3d 9, 21, 24-25 (D.C. Cir. 2017)).

⁷ It is not clear that the retirements at issue are a major threat to reliability, in any event. Generation shortages account for only a small fraction of customer outages. Of these generation-related shortages, very few relate to the lack of on-site fuel, and even fewer related to the lack of long-term storage capability for on-site fuel. It may be a more effective strategy to store replacement parts for the transmission system and its substations.

equally pressing in regions with organized capacity markets as it is in those without. Clearly, resilience is an issue that is broad in scope requiring national as well as local solutions. Thus, in order to fulfill the intent of the DOE proposal, the Commission should expand this proceeding to consider the vital role of local, regional and interregional transmission system enhancements, which are the common element in supporting a reliable and resilient electric system in all regions. Ultimately, the responsibility to fulfill the intent of this initiated proceeding falls to the Commission because Section 403 does not authorize the Secretary to “direct” the outcome of this or any other FERC proceeding.⁸

II. Specific Issues Posed by the NOPR

A. Robust Grid Infrastructure Is Equally Important to System Reliability and Resilience

The multiple benefits of electric transmission investments are well-documented. The blackouts of the 1960s (e.g., in New York City) have triggered the expansion of regional transmission interconnections such that neighboring regions can assist each other under adverse circumstances. A number of studies have found that an expansion of interregional transmission links would provide similar benefits today due to the diversity of loads and resource mix.⁹ These studies suggest that the U.S. is not investing enough on transmission, particularly interregional transmission, to ensure that customers have access to lower cost energy resources and wholesale energy markets that can discipline electricity prices. However, interregional transmission planning is still in its infancy and, despite the call for it in Order No. 1000, interregional projects are not

⁸ The Commission’s jurisdiction over this matter is “exclusive” under Section 403(a) and (b) (Pub. L. No. 95-91, 91 Stat. 565, §§ 402-403 (codified at 42 U.S.C. 7172)). Control over the substantive outcome of this proceeding extends to “any function” of the Commission, including the timing of actions where, as is the case here, the time limits set by the Secretary are arguably not reasonable given the significant implications of what he proposes the FERC do.

⁹ The results of several U.S. and European analyses of the benefits of diverse kinds of transmission projects are summarized in The Brattle Group, *Well-Planned Electric Transmission Saves Customer Costs: Improved Transmission Planning Is Key To The Transition To A Carbon-Constrained Future*, June 2016 (“Brattle 2016 Study”), Section III, at pp. 6 – 11. Domestic studies by the Southwest Power Pool, the Midcontinent ISO, the Eastern Interconnection States Planning Council, the Eastern Interconnection Planning Collaborative, and the Western Electricity Coordinating Council show that forward-looking planning of regional and interregional transmission that takes into account the range of benefits of transmission results in substantial net benefits to consumers, the economy, and the environment.

developing as expected or as needed. Improving interregional planning and expanding interregional interties would provide a unique opportunity to improve the resilience of the nation's grid.¹⁰ In fact, the recent DOE Staff Report acknowledges that the flexibility and resource integration benefits provided by transmission contribute to both reliability and consumer savings:

Transmission investments provide an array of benefits that include providing reliable electricity service to customers, relieving congestion, facilitating robust wholesale market competition, enabling a diverse and changing energy portfolio, and mitigating damage and limiting customer outages (resilience) during adverse conditions. Well-planned transmission investments also reduce total costs. . . .

A robust transmission system is needed to provide the flexibility that will enable the modern electric system to operate. Although much transmission has been built to enhance reliability and meet customer needs, continued investment and development will be needed to provide that flexibility.¹¹

A robust grid adds immeasurably to system reliability and resilience and, conversely, if transmission is inadequate, reliability and other aspects of grid stability can be jeopardized. For example:

- Substations and transmission systems are critical to get power from generators to load, so increasing the resilience of the transmission system is just as important as improving the resilience of supply resources. A generator with sufficient fuel supplies cannot contribute to increased reliability and system resilience if the congested transmission system prevents it from delivering its energy.
- Measures that ensure protection of the transmission system from potential physical or cyber intrusion provide more consequential risk mitigation than the concerns about the unavailability of on-site fuel. Damage to transmission

¹⁰ See also, The Brattle Group, *Toward More Effective Transmission Planning: Addressing the Costs and Risks of An Insufficiently Flexible Electricity Grid*, April 2015 ("Brattle 2015 Study"); The Brattle Group, *The Benefits of Electric Transmission: Identifying and Analyzing the Value of Investment*, July 2013; Also, Southwest Power Pool, *Benefit Metrics Manual*, May 8, 2017. All are available at www.wiresgroup.com

¹¹ DOE Staff Report, at p. 75

structures and substations can take weeks to repair, even assuming replacement parts are available.

- Some parts of the transmission system are extremely over-used, potentially leading to severe operational constraints that make it vulnerable to outages of individual elements. Transmission planning predicated on establishing a more flexible and resilient grid would result in at least as great an enhancement to reliability and resilience of the electric system as any other major investment. The CEO of the North American Electric Reliability Corporation (“NERC”) acknowledged as much when describing the most pressing reliability issues in North America.¹²
- The industry (through NERC reliability standards) has been improving reliability-based planning of the transmission grid. In 2015, a study written for WIRES by The Brattle Group discussed extensively the “insurance value” of a more robust transmission grid from an economic planning perspective.¹³ Economic transmission planning should be modified to ensure consideration of this insurance value against economic disruptions caused by insufficient transmission. Such an improvement would yield significant reliability and resilience benefits that could dwarf the benefits of prolonging operation of power plants that the market has already determined are uneconomic and excessively costly to operate.

B. To Support Viable Electricity Markets, Regulatory Policy Should Be Fuel- and Technology-Neutral

The DOE NOPR, as proposed, may justifiably be accused of implicitly picking the winners and losers among energy resources. That is an uncomfortable role for the FERC, which has historically helped create structural platforms, such as open access

¹² In a letter to the Secretary, cited in the DOE Staff Report, the NERC CEO made clear that electric transmission is one of the critical methods of addressing reliability concerns in a more decentralized electric system environment where generation is also being retired:

“Because the system was designed with large, central station generation as the primary source of electricity, significant amounts of new transmission may be needed to support renewable resources located far from load centers.”

DOE Staff Report, at pp. 62-63 (emphasis added).

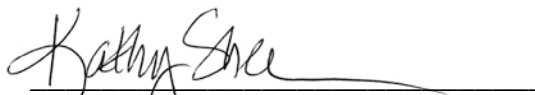
¹³ Brattle 2015 Study, at pp. 17, 36-37, 40.

and non-discriminatory delivery infrastructures for natural gas and wholesale electric power. Those reforms were founded in the belief that “competition in wholesale electricity markets is the best way to protect the public interest and ensure that electricity consumers pay the lowest price possible for reliable service.”¹⁴

In conclusion, there are two considerations missing from the NOPR. The first and most basic is an analysis of the need to prolong the lives of potentially uneconomic nuclear and coal plants in the interest of reliability and resilience compared to the potentially adverse consequences for consumers of doing so. The second omission – and in our view the most critical one – is failure to encourage regional and interregional transmission investment as a principal insurance policy against an erosion of reliability or system resilience. These are major deficiencies that can only be ameliorated by the development of substantial additional information in support of Commission decisions in this area.

WIRES thanks the Commission for considering these initial comments.

Respectfully submitted,


Kathleen Shea, Eversource Energy

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James J. Hoecker
Counsel to WIRES
750 17th Street NW, Suite 900
Washington, DC 20006
James.Hoecker@huschblackwell.com

cc: Honorable Rick Perry, Secretary
United States Department of Energy

Bruce Walker
Assistant Secretary
Office of Electricity Delivery & Energy Reliability

¹⁴ Order No. 2000 at p. 3 (89 FERC ¶ 61,285 (1999)).