



September 6, 2017

Hon. James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
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Washington, DC 20585

Catherine Jereza  
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Dear Secretary Perry and Deputy Assistant Secretary Jereza:

PJM Interconnection, L.L.C. (“PJM”) has requested a 90-day extension of the Department of Energy’s emergency order number 202-17-2 (the “Order”), issued under section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c) (“Section 202(c”). Letter from Steven R. Pincus to Hon. James R. Perry dated Aug. 24, 2017 (“Renewal Request”). That Order requires the Virginia Electric and Power Company (“Dominion”) to operate two coal-fired units at its Yorktown plant in non-compliance with Clean Air Act requirements, to ensure that certain reliability-planning standards are met during peak summer load conditions. Order at 1-2. As set forth below, the relief sought by PJM exceeds the boundaries of the Department of Energy’s (the “Department”) authority under the Federal Power Act.<sup>1</sup> We therefore urge the Department to deny the renewal requested by PJM.

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<sup>1</sup> The objections raised in Sierra Club’s petition for reconsideration, submitted on July 13, 2017, all apply to the requested renewal of the Order. Rather than reiterate those objections, we incorporate them here by reference.

*A. The Circumstances Described by the Renewal Request Do Not Demonstrate an Emergency Within the Meaning of the Federal Power Act.*

PJM's renewal request would significantly re-define the 'emergency' underlying the current Order. The Order finds only that "anticipated heightened electricity demand or peak load conditions associated with hot summer weather" place "[e]lectric system reliability ...at risk." Order at 1-2. It expressly declines to find that outages related to construction of Dominion's Skiffes Creek transmission project also constitute an "emergency" under section 202(c). *Id.* at 1 (finding PJM's "Scenario Two," encompassing Skiffes Creek project, "not [to] be applicable"). PJM's Report on Yorktown Units 1 and 2 Operations Pursuant to Order No. 202-17-2 ("Report") at 2, submitted with its renewal application, incorrectly asserts that Order 202-17-2 "authorizes operation of the Yorktown Units 1 and 2 to maintain reliability at lower Dominion Energy Virginia load levels during various planned transmission outages to support construction of the Skiffes Creek Transmission Project (referred to as 'Scenario 2')." As noted above, however, Order 202-17-2 did not authorize operation of Yorktown units 1 and 2 under "Scenario 2." Order at 1.<sup>2</sup> To include those operations, the Department would need to substantially—and unlawfully—expand the scope of the current Order.

The Department should not accept PJM's invitation to undertake that expansion. Dominion is *choosing* to embark upon the Skiffes Creek transmission project; the associated outages are entirely within Dominion's control. As such, they cannot be plausibly described as an "emergency," sufficient to invoke the Department's authority under section 202(c), 16 U.S.C. § 824a(c)(1). The plain meaning of the word "emergency" does not encompass a deliberate business strategy, entered into of the utility's own volition, and avoidable at the utility's election. *See Merriam Webster's Dictionary* 407 (11th Ed. 2009). The Skiffes Creek project cannot be characterized as a "shortage of electric energy or facilities for the generation or transmission of electric energy," 16 U.S.C. § 824a(c)(1); voluntary outages of facilities that are otherwise entirely available are not a shortage. The Department's regulations confirm that a project like Skiffes Creek—which is not "unexpected," much less an "unforeseen occurrence[] not reasonably within the power of the affected 'entity' to prevent"—is not an emergency under section 202(c). 10 C.F.R. § 205.371.<sup>3</sup>

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<sup>2</sup> PJM's Report goes on to reveal that one or both Yorktown units operated to serve load after the "Warwick-Wheaton 292 transmission line (230 kV) and Wheaton 2 transformer were taken out of service on July 9," suggesting that one or more units operated under conditions not required or authorized by the Department's Order. Report at 2-3.

<sup>3</sup> Even if Dominion's planned outages could create an emergency, the remedy is an order re-connecting the lines that Dominion wishes to take out of service, 16 U.S.C.

The Skiffes Creek project reflects Dominion’s business preferences, in the face of long-anticipated regulatory requirements. Regardless of the project’s merits, the Federal Power Act does not enable the Department to exercise its emergency powers—enacted to address “wartime disturbances”—merely to further those preferences. *Richmond Power and Light v. Federal Energy Reg’y Comm.*, 574 F.2d 610, 615 (D.C. Cir. 1978).<sup>4</sup>

*B. PJM Has Not Adequately Addressed Alternatives to Continued Operation of the Yorktown Units.*

PJM, in its renewal request, contends that the Yorktown units will need to remain operational for up to twenty additional months. Renewal Request 3 (claiming “extended nature” of emergency). Even if there were a genuine need for the Yorktown units, that extended time-frame offers opportunities to utilize alternatives which would reduce, at least, the hours of the Yorktown units’ operation over the entirety of that twenty-month span. Demand-response and distributed generation resources can be (and have been) effectively deployed to address limited generation shortfalls, or contingent shortfalls, similar to those described by PJM’s application.<sup>5</sup> The Department’s regulations require PJM and

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§ 824a(c)(1) (authorizing Department to order “temporary connections of facilities ... and transmission”)—not an order requiring the operation of the Yorktown units, in violation of applicable Clean Air Act air-toxics standards, 40 C.F.R. Pt. 63, Subpt. UUUUU, 16 U.S.C. § 824a(c)(2) (requiring Department to “ensure that [its] order ... to the maximum extent practicable, is consistent with applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impact.”).

<sup>4</sup> The summer peak addressed by the Department’s Order has passed. Electricity demand between September and December has not, in the past two years, reached the 18,400 MW threshold at which PJM claims Yorktown to be needed to sustain grid stability (absent deliberate outages undertaken as part of the Skiffes Creek project). Report at 2. There is therefore no imminent threat that available resources will be inadequate to provide service within the affected area of Virginia. PJM’s supporting materials suggest that winter peak loads may exceed the thresholds at which the Department found reliability standards to be implicated in the Order. But that non-imminent, potential need does not justify an extension ordering the units’ operation over the next three months. *See also* Sierra Club’s Mot. Intvn. & Pet. for Recon. (June 13, 2017) pp. 4-9.

<sup>5</sup> For example, Southern California Edison relied on battery storage to address an emergency capacity shortfall in the wake of the Aliso Canyon gas leak, using a 20MW, four-hour battery storage system, with a total procurement time of five

Dominion to detail the availability of “interruptible customers” for the duration of the anticipated emergency, as well as “contingency plan[s],” and “conservation and load reduction actions,” reflecting the importance of such measures to the Department’s statutory authority. 10 C.F.R. § 205.373. The Department’s practice has been to condition operation of bulk electric system components under Section 202(c) on implementation of load reduction practices. For example, when the Department authorized the temporary operation of the Cross-Sound Cable to provide electricity to Long Island, it required the Long Island Power Authority to “implement[] all available load reduction measures consistent with good utility practice, including curtailing and/or terminating service to interruptible customers, public appeals for conservation, reducing 30 minute reserves to zero, and implementing voltage reductions ...” Order 202-02-1, at 1 (issued August 16, 2002).<sup>6</sup> PJM’s application does not, however, discuss the availability of such measures over the full scope of the emergency that it claims to exist, nor provide any indication that Dominion has exhausted load reduction measures consistent with good utility practice.

The Department cannot fulfill its statutory obligation to ensure the maximum practicable compliance with applicable environmental requirements, and to limit hours of operation to those necessary to meet the emergency, without exploring those alternatives. 16 U.S.C. § 824a(c)(2). Moreover, the Department’s failure to address alternatives precludes any reasonable conclusion that the conditions claimed by PJM are sufficiently unavoidable and imminent to create an emergency. PJM’s application essentially announces the utility’s intention to remain idle in the face of shortages expected more than a year from now; the results cannot be fairly termed an emergency, within the meaning of section 202(c).

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months. See <https://www.sce.com/NR/sc3/tm2/pdf/3455-E.pdf>. Arizona Public Service has, similarly, chosen to install a battery to address local transmission constraints. <https://www.aps.com/en/ourcompany/news/latestnews/Pages/aps-brings-battery-storage-to-rural-arizona.aspx>. See also <https://www.premier.sa.gov.au/index.php/jay-weatherill-news-releases/7736-tesla-to-pair-world-s-largest-lithium-ion-battery-with-neoen-wind-farm-in-sa> (describing installation of 100 MW battery storage system to address local reliability problems in South Australia, with a total procurement time of 100 days following interconnection agreement).

<sup>6</sup> Available at <https://energy.gov/sites/prod/files/202%28c%29%20order%20202-02-1%20August%2016%2C%202002%20-%20CSC.pdf>.

*C. The Department Must Provide Measures to Ensure Environmental Compliance, and Limit the Hours of the Yorktown Units' Operation.*

For the reasons provided in Sierra Club's petition for reconsideration, the Department cannot—as its Order purports to do—satisfy its statutory obligation to ensure the “maximum ... practicable” compliance with environmental laws, and to limit the hours of operation of the Yorktown plant to those “necessary to meet the emergency,” 16 U.S.C. § 824a(c)(2), merely by instructing PJM to dispatch the units in whatever fashion it deems necessary “to address [the] reliability issues” that the Order deems an emergency. Order at 1. The statute does not, and could not, permit the Department to transfer its regulatory responsibility to PJM in that fashion. *See Perot v. Federal Election Com'n*, 97 F.3d 553, 559-60 (D.C. Cir. 1996). In prior Section 202(c) orders, the Department has imposed detailed limitations on the dispatch of generation units deemed necessary for an emergency. Order No. 202-05-3, at 10 (signed Dec. 20, 2005).<sup>7</sup> PJM has already demonstrated its willingness to dispatch the units under conditions outside the emergency identified in the Order, highlighting the need for similarly detailed limitations here. *See* n.2, *above*.

The extended nature of the proposed emergency should, moreover, allow for some direct mitigation of the rate of the units' toxic emissions. For example, mobile coal-treatment units are available, with minimal installation time, to reduce mercury emissions.<sup>8</sup> The eighteen- to twenty-month timeframe provided by PJM is sufficient to implement such pollution-control measures. And because the Skiffes Creek project is occurring at Dominion's election, the time-frame could be altered if necessary to allow for the adoption of such measures. Demand-side and distributed-generation resources could, likewise, be used to minimize the need to operate the Yorktown station, avoiding the expansive dispatch envisioned by PJM's current dispatch methodology. *See also* n.5, *above*.

*D. The Department Must Comply with the National Environmental Policy Act.*

The Department, when it issued its Order, relied on a categorical exclusion for “power management activities” complying with “normal operating limits,” to avoid the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”). Records of Categorical Exclusion Determination, Order No. 202-17-2 (June 16, 2017). The Order, however, compels Dominion to operate in non-compliance with applicable Clean Air Act standards—that is, outside the normal operating limits. The Department should complete the analysis required by NEPA

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<sup>7</sup> Available at <https://www.energy.gov/sites/prod/files/202%28c%29%20order%20202-05-3%20December%2020%2C%202005%20-%20Mirant%20Corporation.pdf>.

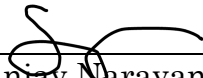
<sup>8</sup>E.g., <http://www.cabotcorp.com/solutions/products-plus/activated-carbon/injection-systems>.

before issuing any renewal. As a practical matter, such analysis could provide an exploration of alternative measures that might address some of the concerns noted in the prior sections of this letter. Given the elective nature of PJM's asserted "emergency," there should be no hurdle to satisfying NEPA; the timing of the Skiffes Creek project (like the rest of the project) is within the utility's control. And to the extent any such hurdle might exist, the Council on Environmental Quality has promulgated regulations governing emergency actions, explaining how to proceed. 40 C.F.R. § 1506.11.

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Thank you for your time and attention, and do not hesitate to contact us if you have any questions or concerns.

Sincerely,



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