

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

PJM Interconnection, L.L.C.) Order No. 202-17-2

**MOTION FOR LEAVE TO ANSWER
AND ANSWER OF PJM INTERCONNECTION, L.L.C.**

I. MOTION FOR LEAVE TO ANSWER REHEARING REQUEST

PJM Interconnection, L.L.C. (“PJM”) respectfully seeks leave to answer the rehearing request submitted in the above referenced proceeding by Sierra Club on July 13, 2017 (“Rehearing Request”). PJM submits the Secretary of Energy (“Secretary”) should grant this request for leave to answer because it will help clarify the record and contribute to an understanding of the issues.

II. EXECUTIVE SUMMARY

Sierra Club’s claim that in Order No. 202-17-2 (the “Order”) the Secretary has not demonstrated that an emergency exists to justify issuance of an order under section 202(c) of the Federal Power Act (“FPA”)¹ is flawed and based on a mischaracterization of the basis for the need for an emergency order. Sierra Club engages in a tortured application of the rules of statutory interpretation to conclude that “emergency” under the statute must always be a “sudden” or “unexpected” occurrence.² PJM **does** concur that the Secretary’s authority under FPA Section 202 (c) must be targeted, limited and anchored in specific identified reliability emergency but PJM does not agree that there should be read into the statute a separate criteria that the emergency must be ‘sudden.’ A

¹ 16 U.S.C. § 824a(c).

² Rehearing Request at page 5.

foreseen or anticipated violation that cannot be corrected in time, as is the situation in this case given the delays in permitting of the Skiffes Creek transmission project and the United States Environmental Protection Agency's ("EPA") Mercury and Air Toxics Standards ("MATS") requirements³ deadlines, is as much an emergency as is a 'sudden' unanticipated event. Otherwise the Secretary will be left with no authority to address reliability emergencies depending on when the emergency was first foreseen. This cannot be a reasonable reading of Congressional intent.⁴ The emergency in this case arises from regulatory action which would prohibit the use of the Yorktown Units as contemplated by the Department of Energy's ("DOE") regulations.⁵ Absent action by the Secretary load would be shed as service on the Peninsula. The absence of a load shed or the Secretary's action permitting the Yorktown Units to run would result in NERC violations. This fact pattern clearly fits the Secretary's action into a reasonable reading of his authority under the FAST Act.⁶

Sierra Club incorrectly states the Order and PJM's application argues that the remedial measures in NERC Reliability Standards have not been fully satisfied as a basis for finding an emergency exists.⁷ This statement ignores the fact that remedial measures have been employed but, in this specific case, the remedial measures, namely the potential use of a Remedial Action Scheme ("RAS") results in a forced interruption of service to load on the Peninsula. It is hard to imagine that Congress intended to tie the

³ 40 C.F.R. Part 63, Subpart UUUUU, National Emissions Standards for Hazardous Air Pollutants: Coal and Oil Fired Electric Utility Steam Generating Units.

⁴ *See*, 16 U.S.C. § 824a(c)(1).

⁵ 10 C.F.R. § 205.370.

⁶ Public Law No. 114-94, amending FPA Section 202(c) (In 2016 Congress passed the FAST Act which clarified the breadth of section 202(c) indicated that the Secretary's emergency actions can include temporarily suspending operation of specific environmental regulations to the extent application of those regulations was causing or contributing to the emergency; and clarified that the Secretary can act without public notice or the requirements of a formal notice and comment period).

⁷ Rehearing Request at pages 4- 5.

Secretary's hands in a case where load shedding is the only remedial step available outside of operating designated units for a limited amount of time pursuant to a FPA Section 202 (c) order.

By directing PJM to submit a Dispatch Methodology, the Order satisfies the FPA's requirements that generation be called upon only during hours necessary to meet the emergency. The Dispatch Methodology which, by design limits the operation of the plants to operating only when justified to address an imminent reliability violation also satisfies the statutory requirement that the Order, "to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation...."⁸ The Dispatch Methodology limits the dispatch the Yorktown Units to only those times when PJM, the independent grid operator, determines they are needed to mitigate reliability issues associated with scheduled and emergency transmission outages directly related to the Skiffes Creek transmission project. Given this defined objective, it is entirely appropriate for the DOE to rely on PJM, as the Regional Transmission Organization ("RTO") to implement the Dispatch Methodology subject to the reporting requirements set forth in the Secretary's Order.

Sierra Club's arguments that the Order fails to include "any measures that might reduce the duration of the conditions which ... create an emergency" are unsupported. The Secretary's direction to PJM to operate the Yorktown Units is limited in both time and purpose. The Yorktown Units can only be operated when needed to support reliability and under the limited conditions set forth in the Dispatch Methodology and subject to the Order's reporting requirements which ensure transparency in PJM and Dominion's implementation of the Secretary's Order.

⁸ 16 U.S.C. § 824a(c)(2).

III. ANSWER

1. An Emergency Exists Within the Meaning of the Federal Power Act

In the Order, the Secretary determined pursuant to FPA section 202(c) “that an emergency exists in the Commonwealth of Virginia due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of (the) Order will meet the emergency and serve the public interest.” The Sierra Club’s claims that the Secretary has not demonstrated that an emergency exists to justify issuance of the Order is flawed and based on a mischaracterization of the basis for the need for an emergency order.

Sierra Club’s arguments are based on a flawed interpretation of FPA section 202(c) and the definition of “emergency.” Sierra Club engages in a tortured application of the rules of statutory interpretation to conclude that “emergency” under the statute must be always be a “sudden” or “unexpected” occurrence.⁹ A “plain language” analysis of the statute¹⁰ leads to a different conclusion. FPA section 202(c) (1) gives the Secretary authority to issue an emergency order if the Secretary “determines an emergency exists by reason of a sudden increase of the demand of electric energy, or shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generation, or other causes...” A plain reading of FPA section 202(c) leads to the conclusion that, while an increase of the demand of electric energy must be “sudden,” an emergency caused by a “shortage of electric energy or of facilities for the generation or transmission of elective energy” has no such qualifying condition.

⁹ Rehearing Request at page 5.

¹⁰ See *California Independent System operator Corp. v. FERC*, 429 F. 232, 400 D.C. Cir. 2004).

The DOE's regulations cited by the Sierra Club lead to the same conclusion despite the Sierra Club's assertion to the contrary.¹¹ The regulations state that an "emergency" can also result from "a regulatory action which prohibits the use of certain electric power supply facilities."¹² The emergency in this case arises from the deactivation of the Yorktown Units which is prompted by the EPA MATS requirements¹³ by April 16, 2015. The two 1-year extensions under the MATS requirements which were available under the terms of the Clean Air Act ("CAA")¹⁴ have been requested, granted, and exhausted. The first extension was granted by the Virginia Department of Environmental Quality on June 24, 2014¹⁵ (effective through April 15, 2016) and a second term was authorized by the EPA under an Administrative Compliance Order on Consent ("EPA ACO") on April 16, 2016¹⁶ (effective through April 15, 2017) pursuant to their respective authority under the Clean Air Act. Thus, the emergency supporting the need for the Order arises from regulatory action which would prohibit the use of the Yorktown Units as contemplated by the DOE's regulation and the FPA section 202 (c).

PJM does agree with Sierra Club to the extent it is arguing that the Secretary's authority is not boundless. The Secretary, however, need not opine as to the limits of his authority. In this case, there is no doubt that his Order is justified by the existence of emergency conditions which could only be satisfied, absent his emergency Order, with the shedding of load on the peninsula. Thus, the specific application of the Secretary's

¹¹ See Rehearing Request at page 6; citing 10 C.F.R. § 205.370.

¹² 10 C.F.R. § 205.371.

¹³ 40 C.F.R. Part 63, Subpart UUUUU, National Emissions Standards for Hazardous Air Pollutants: Coal and Oil Fired Electric Utility Steam Generating Units.

¹⁴ U.S.C. § 7413(a)(4)

¹⁵ *Compliance Extension Approval for 40 CCFR 63 Subpart UUUUU – National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-fired Electric Utility Steam Generating Units*, June 24, 2014, Attachment B

¹⁶ *Administrative Compliance Order on Consent*, AED-CAA-113(a)-2016-0005, April 16, 2016, Attachment C

authority is well-grounded in fact in this particular case which obviates the necessity for a further review of the bounds of that authority.

Other sources defining “emergency” provide additional support that circumstances need not be unexpected or sudden to be an “emergency.” The DOE’s “Electric Emergency Incident and Disturbance Report” form OE-417, requires reporting on electric power emergency incidents and disturbances. “Line 10 Type of Emergency” in these reports includes the following:

“Major Generation Inadequacy: Insufficient generation exists to meet demand or unexpected problems or inadequacies develop that impact operational and/or system reliability.”

The “Major Generation Inadequacy” type emergency applies when “insufficient generation exists to meet demand” without the “unexpected” qualifier which applies to when “problems or inadequacies develop that impact operations and/or system reliability.” Thus, it is clear generation inadequacies that directly impact “operational and/or system reliability” are emergencies under the DOE’s reporting rules. The conditions are created under certain customer load levels which otherwise would be remedied by operating the Yorktown units until the Skiffes Creek transmission project is completed.

The NERC’s Reliability Standards provide additional support that an expected inability to meet load requirements can be an “emergency.” The NERC Reliability Standards provide for procedures for initiating and “Energy Emergency Alert” by a Reliability Coordinator. Under NERC Reliability Standards (EOP-002-3.1, Attachment 1-EOP-002 and EOP-002-2, Attachment 1-EOP-002-0) the general requirements for initiating an Energy Emergency include: “When the Load Serving Entity is, or expects to be, unable to provide its customers’ energy requirements... (emphasis added).” Thus, the

NERC defines “Energy Emergency” to include situations where there is an expectation of an inability to meet customer energy requirements.

Furthermore, the NERC defines “Emergency or BES Emergency” as follows:

“Any abnormal system condition that requires automatic or immediate manual action to prevent or limit the failure of transmission facilities or generation supply that could adversely affect the reliability of the Bulk Electric System.”¹⁷

This definition is not dependent on whether the abnormal system condition is sudden or unexpected. The concern addressed by the DOE Order is with protecting the reliability of the Bulk Electric System from abnormal system conditions arising from the failure of generation supply.

2. **The Potential Shedding of Load in Compliance with the NERC Standards is an Emergency**

Sierra Club incorrectly states the Order and PJM’s FPA 202(c) application indicates that the NERC reliability standards have not been fully satisfied as a basis for finding an emergency exists.¹⁸ In fact, the emergency is caused by the potential use of a RAS which could result in power interruptions to approximately 950 MWs of load during peak periods including over 150,000 customers in the North Hampton Roads area of Virginia.

On January 12, 2017, Virginia Electric Power Company (“Dominion Energy Virginia”) presented a RAS known as the “North Hampton RAS” to mitigate the issues seen with the Yorktown Unit deactivations. The North Hampton RAS, on its terms, requires load shedding during certain high load conditions. Essentially, Sierra Club argues that the Secretary is powerless to address potential load shedding under his emergency authority. Given the remedy of load shedding that is inherent under the North

¹⁷ Reliability Standards for the Bulk Electric System of North America, Updated July 14, 2017, Table of Requirements subject to Enforcement.

¹⁸ Rehearing Request at pages 4- 5.

Hampton RAS, the Secretary's action is entirely appropriate to avoid this extreme event damaging to the public.

PJM also notes that the EPA noted the Federal Energy Regulatory Commission's ("FERC") finding that recognized the critical need for the Yorktown Units prior to completion of the Skiffes Creek transmission project to avoid load shedding the absence of which might result in violations of NERC's Reliability Standards and "Dominion's Yorktown Unit Nos. 1 and 2 are needed ... to maintain electric reliability and to avoid possible NERC Reliability Standards."¹⁹ It was reasonable for the Secretary to take the action he did given this recognition by FERC of the need to maintain the units "to maintain electric reliability."

3. The Order Imposes Appropriate Limits on the Ability to Operate the Yorktown Units Only as Necessary to Meet the Emergency.

FPA section 202(c)(2) provides that when an order "may result in a conflict with a requirement of any Federal, State or local environmental law or regulation, the (Secretary) shall ensure that such order requires generation ... of electric energy only during hours necessary to meet the emergency and serve the public interest, and to the maximum extent practicable, is consistent with applicable Federal, State or local environmental law or regulation and minimizes any adverse environmental impacts (emphasis added)."²⁰ Sierra Club's argument that the DOE Order failed to meet these requirements is without merit. The requirement for generation to be consistent with applicable environmental laws or regulations is not absolute nor can it be absolute.

In the Order, the Secretary recognizes the requirements of FPA section 202(c)(2) and addresses those requirements in a manner consistent with the EPA's operational

¹⁹ *Administrative Compliance Order on Consent*, AED-CAA-113(a)-2016-0005, April 16, 2016, P27 (the "EPA Consent Order").

²⁰ 16 U.S.C. § 824a(c)(2).

limitations described in the EPA Consent Order and limits authorization to operate Yorktown Units 1 and 2 only when needed for reliability purposes. In doing so, the Secretary required PJM and Dominion Energy Virginia to develop and implement a dispatch methodology to operate Yorktown Units 1 and 2 only when called upon by PJM as the independent grid operator/RTO to address reliability needs. This is the same approach taken by the EPA Consent Order.²¹ The EPA recognized that such a dispatch methodology under which PJM determines when the Yorktown units are needed for reliability issues associated with the Skiffes Creek transmission project and other local area transmission issues or generation emergencies serves the objective of minimizing emissions.²²

On June 27, 2017, PJM submitted the Dispatch Methodology in compliance with the DOE Order. The Dispatch Methodology is a protocol which establishes Yorktown Units 1 and 2 unit commitment procedures, describes the conditions for mitigating congestion, and describes Dominion's mitigation options under an N-2 Constraint Procedure. The Dispatch Methodology limits the ability of PJM to dispatch the Yorktown Units only when needed to mitigate reliability issues associated with scheduled and emergency transmission outages directly related to the Skiffes Creek transmission project and other local area transmission issue.

It is entirely appropriate and necessary for the DOE to rely on PJM, as the Regional Transmission Organization ("RTO") to implement the Dispatch Methodology.²³ As the RTO, PJM is the transmission provider under, and the administrator of, the PJM

²¹ EPA Consent Order P30.

²² *Id.*

²³ PJM is the RTO comprised of interconnected electric transmission systems in the mid-Atlantic region. See *PJM Interconnection, L.L.C.*, 81 FERC ¶ 61,257 (1997), and *PJM Interconnection L.L.C.*, 96 FERC ¶ 61,060 (2001), order on compliance filing, 98 FERC ¶ 61,072 (2002).

Open Access Transmission Tariff, operates the PJM markets, administers the Regional Transmission Expansion Planning Process, and controls the day-to-day operations of the bulk power system of the PJM region. PJM has operational authority over all the facilities under its control, and its existing operations meet the criteria for maintaining short-term reliability.²⁴ In Order 2000,²⁵ RTOs were organized and approved by FERC to operate and manage interstate transmission independently over a large geographic region on a non-discriminatory basis. An RTO is a single entity that coordinates transmission planning and expansion within its region to “ensure a least cost outcome that maintains or improves existing reliability levels.”²⁶

Thus, the Order and the Dispatch Methodology implemented under PJM’s independent direction satisfies the FPA’s requirements that generation is called upon only during hours necessary to meet the emergency and serve the public interest, and to the maximum extent practicable, is consistent with applicable environmental laws or regulations. Moreover the reporting requirements of the Yorktown Units operations and estimated emissions ordered by the Secretary ensure transparency of how PJM and Dominion are implementing the Secretary’s Order.

Similarly, Sierra Club’s arguments that the Order fails to include “any measures that might reduce the duration of the conditions which ... create an emergency” are unsupported. As stated above, the Order’s direction to PJM to operate the Yorktown Units is limited in both time and purpose. The Yorktown Units can only be operated when needed to support reliability and under the limited conditions set forth in the

²⁴ See *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,061 (2001).

²⁵ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. & 31,089 (1999), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. & 31,092 (2000), *appeal dismissed*, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001) (Order No. 2000).

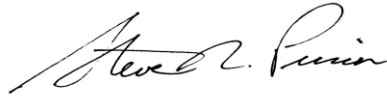
²⁶ Order No. 2000, p. 31.164.

Dispatch Methodology. Once the Skiffes Creek transmission project is completed the emergency will no longer exist and the Yorktown Units will not be needed for reliable operations in the North Hampton area of the Virginia Peninsula.

IV. CONCLUSION

PJM respectfully requests the Secretary grant PJM's motion for leave to answer and take into consideration this answer.

Respectfully submitted,



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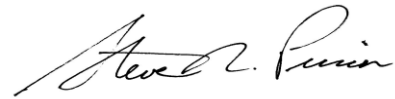
Dated: July 31, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon:

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Dated at Audubon, PA this 31st day of July, 2017



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