August 18, 2017

Hon. Rick Perry
Secretary of Energy
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington D.C. 20585

Catherine Jereza
Deputy Assistant Secretary
Office of Electricity Delivery and Energy Reliability
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington D.C. 20585

Dear Secretary Perry and Deputy Assistant Secretary Jereza:

Enclosed please find Sierra Club's Motion For Leave To File A Response And Response To The Answers By Dominion Energy Virginia And PJM Interconnection, L.L.C., which was filed on August 18, 2017.

Sincerely,

Casey Roberts

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Sierra Club Environmental Law Program

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UNITED STATES DEPARTMENT OF ENERGY

PJM Interconnection, L.L.C. Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act	)	Order No. 202-17-2

SIERRA CLUB'S MOTION FOR LEAVE TO FILE A RESPONSE AND RESPONSE TO THE ANSWERS BY DOMINION ENERGY VIRGINIA AND PJM INTERCONNECTION, L.L.C.

Sierra Club hereby respectfully seeks leave to respond to the answers filed by Dominion Energy Virginia ("Dominion") and PJM Interconnection, L.L.C. ("PJM"), to the rehearing request submitted in this proceeding by Sierra Club on July 13, 2017. In the time since Dominion and PJM filed motions for leave to answer Sierra Club's petition for rehearing, the Department has granted the petition to allow further consideration.[1] Order 202-17-3. Sierra Club submits that the Secretary of Energy ("Secretary") should grant this motion for leave to file a response to the answers submitted by Dominion and PJM, because the below response will help clarify the record and contribute to an understanding of the issues.

A. The Unavailability of Yorktown Units 1 and 2 and the Skiffes Creek Transmission Line Does Not Constitute an Emergency under the Federal Power Act.

As explained in Sierra Club's petition for rehearing, the Department of Energy ("Department") has not demonstrated the existence of an emergency that would justify the issuance of Order No. 202-17-2. Sierra Club Pet. at 4–9. The Order claims that "an emergency exists ... due to a shortage of electric energy [and] a shortage of facilities for the generation of energy." Order at 1. But neither the Order nor the materials submitted by PJM substantiate that claim—a rote invocation of "reliability" does not demonstrate an emergency, let alone one of the breadth that PJM and Dominion would claim. *See* Letter from Steven Pincus to Hon. James Perry dated June 26, 2017, Att. ("Dispatch Methodology"). The Order cites only its expectation of hot summer weather, and a potential violation of NERC reliability standards (only one of which is specified), which indicate that an energy shortage will exist upon the

[1] The Order remains effective. The Department has done nothing to suggest that decision is not effectively final.

occurrence of multiple additional events (none of which have yet occurred). As set forth in Sierra Club's rehearing petition, neither of these factors—absent some additional supporting information—demonstrates an emergency within the meaning of the Federal Power Act. Sierra Club Pet. at 4–9.

The Order also ignores the fact that the shortages it describes have been anticipated for a long time. Indeed, Dominion knew as early as March 2011,[2] when the proposed Mercury and Air Toxics Standards ("MATS") were issued, that the Yorktown coal units would not be available after April 15, 2017 unless necessary pollution controls were installed. Despite those six years of lead time, Dominion's sole strategy to provide for reliable service without Yorktown Units 1 and 2 has been a highly controversial and complex transmission project commonly referred to as Skiffes Creek. And Dominion knew, at the latest in December 2015,[3] that the Skiffes Creek transmission line would not be operational by summer 2017. Nevertheless, it took no action to pursue other alternatives to ensure reliable service for its customers. Instead, the utility chose to sit on its hands for eighteen months and then seek extraordinary relief from the Department.

Rather than disputing these facts, Dominion tries to cloud the meaning of emergency as used in the Federal Power Act—not by addressing the statutory text, but rather with a faulty emergency room analogy. This attempt, however, falls flat. The plain meaning of the word "emergency," the surrounding statutory context, and the Department's own regulations[4] all lead to the conclusion that shortages of electric energy or of facilities for the generation of energy can only be considered emergencies if such shortages are

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[2] *See* EPA, National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, Proposed Rule, 79 Fed. Reg. 24,976 (May 3, 2011). Pre-publication version of the proposed rule was available March 16, 2011. *See* https://www.epa.gov/mats/epa-proposes-mercury-and-air-toxics-standards-mats-power-plants.

[3] In December 2015, Dominion had not yet received the requisite U.S. Army Corps of Engineers permit for the transmission line project. Because the shortest timeline on which the construction of the project could be complete is, by Dominion's own estimate, eighteen months, Dominion knew in December 2015 that the line would not be in service by June 2017.

[4] Applicable regulations define "emergency" as "an *unexpected* inadequate supply of electric energy which may result from the *unexpected* outage or breakdown of facilities for the generation, transmission or distribution of electric power." 10 C.F.R. § 205.371 (emphasis added).

unanticipated, and beyond the ability of the local authorities to avoid. Here, the unavailability of the Yorktown coal units and the Skiffes Creek line had been expected for years (during which time alternative plans for reliable service could have been implemented).

As far as one might discern from the record, the shortage is the product of Dominion's business preferences, rather than any event that plausibly could be described as unexpected or unavoidable. The claimed inadequate supply of energy was not inevitable—like the "inevitable but-not-yet-specifically-identified [medical] emergencies" in Dominion's analogy, Dom. Ans. at 5—it could have been avoided quite simply with better planning on Dominion's part. There is no evidence that Dominion seriously explored alternative means to provide reliable service, such as accelerating the development of demand response and energy efficiency resources, installing distributed solar generation that would operate a high capacity during peak summer hours, deploying energy storage resources, or increasing the operation of the oil-fired Yorktown unit 3. Dominion's sole undertaking to prevent these circumstances was to promote a foreseeably controversial and disruptive transmission project, without any apparent back-up plan.

The critical flaw of Dominion's emergency room analogy is that it conflates an expected, avoidable but urgent need with a real emergency. By Dominion's logic, an emergency would exist anytime a power plant was not able to operate legally because its owner chose not to install required pollution controls, regardless of how much lead time the owner had been given to comply with the law. Nowhere in the Federal Power Act or its legislative history is such wholesale elimination of the applicability of environmental laws contemplated. Dominion's attempt to rewrite section 202(c) should be rejected.

Like Dominion, PJM advocates for an extension of Federal Power Act section 202(c) coverage to any situation where a reliability issue arises, regardless of the foreseeability of such issue. But it ignores the clear regulatory definition of emergency, not once addressing the fact that the Department has defined the term: "'[e]mergency,' as used herein, is defined as *an unexpected inadequate supply of electric energy* which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power." 10 C.F.R. § 205.371 (emphasis added). PJM skips over this definitional sentence to an example in the regulation of circumstances under which an emergency could arise—namely, "a regulatory action which prohibits the use of certain electric power supply facilities." PJM Ans. at 3 (quoting 10 C.F.R. § 205.371). That an emergency *could* result under such circumstances does not mean that it necessarily will. If one accepts PJM's construction, then the Department would be able to

overrule any regulatory action by another agency that resulted in the prohibition of or restriction on a power plant's operation.[5] This is clearly not what Congress intended. *See* 16 U.S.C. §§ 824a-2 & 824o (providing specific, limited remedies to address reliability).

Moreover, PJM mischaracterizes the situation at hand as "[a] foreseen or anticipated violation that cannot be corrected in time." PJM Ans. at 2. Dominion knew that neither the Yorktown coal units nor the Skiffes Creek transmission line would be available in June 2017 at least as long ago as December 2015. That is, the company had eighteen months to develop and implement alternative means of maintaining reliability. Neither the Order nor any submissions by Dominion or PJM suggest that Dominion took any action whatsoever to counteract the reliability issue it anticipated.

B. The Order Violates Section 202(c) Because It Does Not Require Generation Only During Hours Necessary to Meet the Emergency and Does Not Minimize Adverse Environmental Impacts to the Maximum Extent Practicable.

Sierra Club's petition for rehearing asserts that even if the circumstances constituted an "emergency" for purposes of the Federal Power Act, "the Department has failed to meet section 202(c)'s additional criteria: that the Order 'require generation ... only during hours necessary to meet the emergency,' that the Order be 'to the maximum extent practicable ... consistent with any applicable Federal, State, or local environmental law or regulation and minimize[] any adverse environmental impacts,' and that it 'serve the public interest.'" Sierra Club Pet. at 10 (citations omitted). The answers filed by both PJM and Dominion contend that the Order satisfied what they characterize as a rather low bar for such orders, despite clear congressional limitations on the Department's exercise of this authority.

1. *The Order does not adequately constrain dispatch of Yorktown Units 1 and 2.*

With respect to "requir[ing] generation . . . only during hours necessary to meet the emergency," the Order simply states that it "authorizes operation of Yorktown Units 1 and 2 only when called upon by PJM for reliability purposes." Order at 2. The Order also states that "PJM and Dominion Energy

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[5] Moreover, it bears noting that MATS does not prohibit or limit the operation of coal-fired units like those at Yorktown, it simply requires them to comply with emission limits when they do operate. It was Dominion's choice not to install pollution control equipment on Yorktown Units 1 and 2, not any "regulatory action," that limits the operation of the unit.

Virginia must develop and implement a dispatch methodology to operate Yorktown Units 1 and 2 only when called upon to address reliability needs. *Id.* The Order does not limit these "reliability needs" or "reliability purposes" to those defining the emergency that the Department concluded exists.

In its Answer, PJM asserts that the Department fulfilled this obligation by directing PJM to submit a Dispatch Methodology. PJM Ans. at 3. Sierra Club does not dispute that PJM, as the Regional Transmission Organization, should play a significant role in ascertaining when Yorktown Units 1 or 2 would need to run to meet objectives set out by the Department, and in actually dispatching the units. However, it is ultimately the Department's responsibility to "require generation . . . only during hours necessary to meet the emergency." 16 U.S.C. § 824a(c)(2). As noted in Sierra Club's petition, it is impermissible for the Department to delegate this role to a private entity. That is especially so where the Department has failed to provide "standards governing that obligation, and [a] clear method to review or cure any deficiencies or violations." Sierra Club Pet. at 10. For example, Sierra Club suggested that "[t]he Order could . . . condition the Yorktown units' operation on occurrence of the transmission or generation failures, and/or load conditions, which PJM's load-flow studies found might produce power shortfalls, or utilize some conditions that would trigger the "remedial action scheme" noted in PJM's application." *Id.* at 11 n7.

Not only does the Order lack meaningful standards for PJM to apply, it is also devoid of any procedure for the Department to scrutinize PJM's Dispatch Methodology. It is not mere speculation that PJM's Dispatch Methodology might not accurately reflect the scope of the Order; as described in Sierra Club's petition, PJM's submitted methodology authorizes generation at Yorktown Units 1 and 2 under conditions expressly not allowed by the Order:

> PJM's methodology asserts that "PJM may dispatch Yorktown units to help mitigate ... [r]eliability issues associated with scheduled ... transmission outages directly related to the Skiffes Creek [transmission] project," and proposes operation of the units during that transmission project. PJM Methodology at 1–3. But the Order does not authorize such operations (much less justify them). The Department's Order declines to address the need for operation of the Yorktown units "during transmission outages to support construction of system upgrades," finding PJM's request for such operations to be "not applicable until Dominion Energy Virginia obtains permitting approval for the" upgrades, and requiring "a renewal request" should those conditions change.

Sierra Club Pet. at 11.

Despite having this inconsistency brought to its attention over a month ago, the Department has not taken action to require PJM to revise its Dispatch Methodology to conform to the Order. Plainly, the Order did not contain adequate limits or protections on PJM's exercise of this delegated responsibility. PJM's Answer demonstrates obliviousness to this problem as well, when it defends the Order by noting that 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." PJM Ans. at 3. As noted in Sierra Club's petition, the Order expressly states that it does not authorize dispatch of Yorktown Units 1 and 2 "during transmission outages to support construction of system upgrades." Order at 1–2.

Nor do the Order's requirements that PJM and Dominion report on the Yorktown Units' operation and estimated emissions "ensure transparency of how PJM and Dominion are implementing the Secretary's Order," as PJM asserts. PJM Ans. at 10. As noted in Sierra Club's Petition, that reporting is not required "until the Order expires or submittal of a renewal request." Sierra Club Pet. at 10. Thus, the Department cannot timely assess whether Yorktown Units 1 and 2 are running only during peak load periods when necessary to preserve reliability, nor whether PJM and Dominion are complying with the Dispatch Methodology, thereby preventing the Department from exercising adequate oversight. Contrary to PJM's position, these reporting requirements do not provide for "transparency," as there is no mechanism through which these data will be made available to Dominion's customers or other members of the public who have an interest in how often the units are running and for what particular reliability reason.

Dominion contends that the statute does not require the Department to ensure any specific outcome of its orders, but only to issue an order that, on its face and in the most general terms, limits operation to those necessary to meet the emergency and minimizes adverse environmental impacts. Dom. Ans. at 7–8. Such an interpretation of the Federal Power Act borders on absurdity, since it suggests that the Department may wash its hands of responsibility for how its order is implemented by private entities so long as that order appears to check all of the boxes required by section 202(c). The Department cannot "ensure that the order is consistent with all applicable environmental laws and regulations and minimizes adverse environmental impacts that may occur as a result of the emergency directive," 16 U.S.C. § 824a(c)(2), if it provides only very general direction to a private entity and does not supervise implementation.

Dominion's view is also inconsistent with the Department's prior practice of issuing orders under section 202(c) that detail the conditions under which a generator can operate in emergencies. In fact, in its section on legislative history, Dominion seriously mischaracterizes the Department's 2005 order regarding the Mirant Corporation's Potomac Generating Station ("Mirant plant" and "Mirant Order").[6] Dom. Ans. at 9 (describing Order 202-05-3). While Dominion correctly notes that the Mirant Order's "Discussion" section contains general assertions that the Secretary's action complies with section 202(c), the "Ordering Paragraphs" of the Mirant Order include detailed provisions about when the Mirant plant could run and to what extent, based on the conditions that the Department had found defined the identified emergency. *Id.* at 10. Similar to the current matter, the Department ordered Mirant to submit a plan detailing how it would comply, but also made clear that "DOE would review the compliance plan and order additional requirements if necessary." Mirant Order, at 11 ¶D. Dominion's claim that the provisions in the Mirant Order are "strikingly similar to [those in] this Order," Dom. Ans. at 9, is flat out false.

Unlike the Mirant Order, the Yorktown Order lacks detailed ordering paragraphs specifying conditions under which Yorktown can operate, any conditions to limit the environmental impacts of that operation, or any indication that the Department will scrutinize and augment the compliance plan submitted by the operator. Insofar as the legislative history underlying the Fixing America's Surface Transportation Act demonstrates a stamp of approval for the Department's action in the Mirant case, as Dominion asserts, Dom. Ans. at 8–9, the unavoidable implication is that the Yorktown Order falls far short of the standard set by Congress.

2. *The Order does not minimize adverse environmental impacts of the operation of Yorktown Units 1 and 2.*

Sierra Club's Petition for Rehearing argued that the Order was deficient because it contained no showing that its terms, to the maximum extent practicable, ensured consistency with the Clean Air Act or that they minimized adverse environmental impacts. Sierra Club Pet. at 10. Indeed, the Order's only reference to environmental impacts read: "[t]o minimize adverse environmental impacts and remain consistent with the approach taken by EPA, this Order authorizes operation of Yorktown Units 1 and 2 only when called upon by PJM for reliability purposes." Order at 2. It

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[6] Order No. 202-05-3 (signed Dec. 20, 2005), available at https://www.energy.gov/sites/prod/files/202%28c%29%20order%20202-05-3%20December%2020%2C%202005%20-%20Mirant%20Corporation.pdf.

contains no restrictions related to environmental concerns at all, either as a substantive or practical matter. It contains no limits on the plant's operation or resulting emissions, nor any means by which the Department could guarantee that harms cause by operation of the units are appropriately minimized. There is no indication that the Department even considered options for minimizing mercury emissions from the units—for example, deploying a portable activated carbon injection unit or co-firing with gas.

Neither Dominion nor PJM dispute the fact that the Order contains no provisions specifically tailored to minimize or mitigate environmental harms caused by the operation of the Yorktown coal units. Instead, both parties hang their hats on the same willful illogic: claiming that, because PJM's dispatch methodology is designed to limit operation of the Yorktown coal units to those hours that PJM and Dominion claim to be necessary to avoid reliability violations, environmental harms caused by such operation have already been minimized. This incoherent reasoning belies a fundamental misreading of the statute.

Section 202 of the Federal Power Act, in relevant part, reads:

> With respect to an order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation, the [Department] shall ensure that such order [1] requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest, and, [2] to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.

16 U.S.C. § 824a(c)(2) (numbering added for emphasis). By any plain reading, this statutory provision sets out two separate requirements that the Department must include in its order. If the limitation on the generation of energy to only those hours necessary to meet the emergency were sufficient to also ensure consistency with environmental laws and regulations and to minimize adverse environmental impacts, then the second requirement of the statute would be rendered superfluous. Basic rules of statutory construction require courts to give meaning to every word and clause in a statute. *United States v. Menasche*, 348 U.S. 528, 538–39 (1955); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Additionally, statutory interpretations that would render portions of a statutory test surplusage should be rejected. *TRW Inc. v. Andrews*, 534 U.S. at 31. Thus, Department orders issued under section 202(c) must—in addition to ensuring that the ordered generation is limited

temporally—ensure that activities sanctioned therein are consistent with environmental laws and that environmental harms are minimized.

In addition to misconstruing the plain meaning of the statute, Dominion fundamentally misinterprets the statute's legislative history. Even the committee report cited by Dominion explicitly calls for the balancing of reliability considerations with environmental interests. *See* Dom. Ans. at 9 (quoting H.R. Rep. No. 112 at 7 ("A legislative solution to the conflict described herein should balance reliability considerations with environmental interests.")). The balancing acknowledged in the legislative history materials reflects the two-part statutory structure: allowing for generation necessary to meet reliability needs and requiring consistency with environmental laws and minimization of environmental harms. While PJM and Dominion point to the dispatch methodology as assurance that environmental concerns have been addressed, the methodology does not include any conditions designed to minimize environmental harms. And, even if it did, the law does not permit the Department to delegate its statutory responsibilities for ensuring the balancing of environmental and reliability concerns to a private entity.

Finally, we note that PJM inaccurately states Sierra Club's position as insisting that the Department require absolute consistency with applicable environmental laws. PJM Ans. at 8. Sierra Club's petition did not call for absolute compliance with environmental laws, only that the Department fulfill its statutory obligation to minimize noncompliance with those laws when it takes extraordinary actions to require generators to run as needed for reliability.

C. The Department Should Direct Dominion and PJM to Pursue Alternative Measures to Ensure Reliability.

Sierra Club does not agree that an emergency, within the meaning of section 202(c), exists in Dominion's service area. Nevertheless, should the Department conclude that circumstances meet the definition of emergency, then the Department's regulations are clear that "the impacted 'entity' will be expected to make firm arrangements to resolve the problem until new facilities become available, so that a continuing emergency order is not needed." 10 C.F.R § 205.371. Sierra Club's petition correctly noted that the Order fails to require Dominion and PJM to pursue measures to "resolve the problem . . . so that a continuing emergency order is not needed."

> The Order, furthermore, fails to include any measures that might reduce the duration of the conditions which, according to the Department, create an emergency. The Department's

> regulations recognize the need for such measures, expressly stating that where an emergency results from "inadequate planning," the statute's requirement for maximum practicable compliance with environmental laws demands "firm arrangements to resolve the problem." 10 C.F.R. § 205.37[1]. The Order does not include any such "firm arrangements," or any other conditions to limit the duration of the reliability-related concerns to which the Order claims to respond (and neither does PJM's dispatch methodology).

Sierra Club Pet. at 11–12.

Dominion's contention that Sierra Club's "regulatory arguments are misplaced" is based on a misreading of Sierra Club's petition, which clearly and correctly characterizes the Department's regulations as calling for firm arrangements to limit the duration of reliability-related concerns. It is true that the Department's regulations do not mandate that "impacted entit[ies]" pursue measures to reduce the duration of the alleged emergency, but that does not render Sierra Club's urging the Department to conform to the expectations set out in its own regulations misplaced, as Dominion alleges.

PJM also misapprehends Sierra Club's argument that the Order fails to include "any measures that might reduce the duration of the conditions which ... create an emergency." Sierra Club Pet. at 11. Although the Order itself is for a limited time, as required by Federal Power Act section 202(c), the statutory requirements of maximally practicable environmental compliance, minimization of hours of operation to those necessary to meet the current emergency, and adherence to the public interest necessarily require some measures to prevent Dominion from further extending the emergency (an emergency, again, that is entirely the product of Dominion's business decisions). The Department's Order not only fails to provide any such conditions—it even invites applications to renew the Order. Order at 2.

PJM readily offers its view that the duration of the emergency extends beyond the scope of this Order and lasts until the Skiffes Creek transmission project is complete, PJM Ans. at 6, despite the fact that the Department has not concluded that there is an ongoing emergency lasting the duration on transmission construction. In circumstances where a grid reliability issues arising from inadequate planning amounts to an "emergency," the Department's 202(c) order must spur the immediate development and implementation of measures to reduce the overall duration of the underlying "emergency" conditions. For example, in the Mirant Order, the Department stated that it "expects the [D.C. Public Service Commission], having sought an emergency order, will take such actions as are in its authority to provide

adequate and reliable electric service . . . for example, expediting approval of . . . transmission system upgrades and instituting demand response programs" or even "installation of pollution control equipment at the Mirant plant." Mirant Order at 9. The statute requires the Department to circumscribe the use of its section 202(c) powers, and doing so means ensuring that measures are taken to alleviate the cause of the emergency, such as pursuing alternative means to ensure reliability.

D. The Power Marketing Services and Activities Categorical Exclusion Does Not Apply to the Department's Order.

Sierra Club's petition for rehearing challenges the applicability of the categorical exclusion for "power marketing services and activities," which the Department concluded applied to this action. Sierra Club Pet. at 13. Sierra Club also noted that when issuing its 202(c) order regarding the Mirant plant (an action that Dominion elsewhere describes as the gold standard for 202(c) orders), the Department of Energy did not claim that a categorical exemption applied, but rather pursued "alternative arrangements" as required by 40 C.F.R. § 1506.11. Sierra Club Pet. at 12.

The power marketing services and activities categorical exclusion applies only where a generator will remain within normal operating limits. DOE Categorical Exclusion Determination B4.4.[7] Sierra Club's petition argued that authorizing a generator to emit pollution at levels higher than allowed by public health standards that would otherwise cause the generator to cease operation cannot be said to merely perpetuate "normal operation." Sierra Club Pet. at 13. Dominion responds that operating in noncompliance with MATS is not outside normal operating conditions because the Federal Power Act excuses noncompliance with environmental laws or regulations as a result of a section 202(c) order. Dom. Ans. at 15. Dominion argues, in other words, that the Federal Power Act equates "emergency" operation with "normal" operating conditions, and that by recognizing that such emergency operations might result in "noncompliance" with applicable environmental laws, it erases that noncompliance entirely. *See* 16 U.S.C. § 824a(c)(3) (noting that emergencies may result in "noncompliance" with environmental laws, but stating only that such noncompliance may not be "considered" a violation of such laws, and exempting operators from liability for violations). But the

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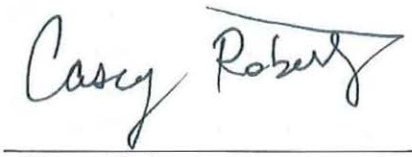
[7] *See* DOE, Existing Regulations, at https://energy.gov/nepa/categorical-exclusion-determinations-b44 ("B4.4: Power marketing services and activities: Power marketing services and power management activities (including, but not limited to, storage, load shaping and balancing, seasonal exchanges, and other similar activities), provided that the operations of generating projects would remain within normal operating limits.").

statute does not transform non-compliance into normal, compliant operation; it merely insulates Dominion from the consequences of such non-compliance.[8]

Dominion's interpretation would effectively allow the Department to bootstrap its action into the categorical exclusion. The categorical exclusion applies only if the Department's action does not require or allow the generator to deviate from normal operating conditions. But if, as is the case here, the Department's action is considered to render an abnormal operating condition (noncompliance) normal, the "normal operating conditions" requirement of the categorical exclusion becomes meaningless. The fact that section 202(c) removes the liability risk for noncompliance does not change the fact that the generator is in non-compliance, which is neither a normal operating condition nor the type of routine circumstance to which the categorical exclusion was intended to apply.

For the foregoing reasons, Sierra Club respectfully requests that the Department revise its Order as described in Sierra Club's petition for rehearing and take immediate steps to comply with the National Environmental Policy Act.

Respectfully submitted on August 18th, 2017 by:



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[8] Put differently, non-compliant operation is not normal, even if the Federal Power Act eliminates the usual consequences of a violation of the law.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served via U.S. Mail on this 18th day of August, 2017 on:

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