UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

COMMENTS OF DYNEGY INC.

Dynegy Inc. ("Dynegy") hereby submits its initial comments on the notice of proposed rulemaking issued by the Secretary of Energy (the "Secretary") on September 28, 2017,[1] and noticed by the Federal Energy Regulatory Commission (the "Commission") in the above-captioned proceeding on October 2, 2017.[2]

I.

OVERVIEW OF DYNEGY'S OPERATIONS

Dynegy generates reliable, environmentally responsible and affordable energy primarily in the Northeast, Mid-Atlantic, Midwest, and Texas. Dynegy owns a fleet of approximately 45 power plants in 12 states totalling approximately 27,000 MW of generating capacity. Dynegy's generating fleet primarily consists of natural gas- and coal-fueled facilities, with approximately 65 percent of Dynegy's wholesale generation capacity coming from natural gas-fueled facilities, and approximately 35 percent coming from coal-fueled facilities.

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1 *Grid Reliability Pricing Rule*, Notice of Proposed Rulemaking, 82 Fed. Reg. 46,940 (Oct. 10, 2017) (the "NOPR").

2 *Grid Reliability and Resilience Pricing*, Notice Inviting Comments, Docket No. RM18-1-000 (Oct. 2, 2017).

Through its retail electricity brands, Homefield Energy and Dynegy Energy Services, Dynegy also serves residential, municipal, business, and industrial customers in Illinois, Ohio, Pennsylvania, and Massachusetts.

II.

COMMENTS

As an initial matter, Dynegy supports the comments filed in this proceeding by the Electric Power Supply Association ("EPSA"), of which Dynegy is a member. As EPSA correctly explains, the Commission cannot lawfully adopt the NOPR's proposal to provide full cost recovery for "fuel-secure" resources (*i.e.*, coal and nuclear facilities with a 90-day fuel supply on site). As discussed in detail in the EPSA Comments, the NOPR does not satisfy the requirements of Section 206 of the Federal Power Act, or of the Administrative Procedure Act, because it fails to provide the substantial evidence necessary to demonstrate that the existing market rules of independent system operators ("ISOs") and regional transmission organizations ("RTOs") are unjust and unreasonable or, conversely, that the proposed rule to provide recovery of "operating and fuel expenses, costs of capital and debt, and a fair return on equity and investment" for a subset of generators,[3] is just and reasonable.

While not repeating each of the concerns raised by EPSA regarding the NOPR, Dynegy submits these comments to emphasize that, even from the perspective of a coal generator, the proposed rule should not be adopted because it would substantially, and potentially irreversibly, harm the nation's competitive electricity markets. Dynegy is well qualified to address this issue. Specifically, Dynegy owns approximately 9,500 MW of coal generation, most of which is

3 NOPR at 46,948.

located in the PJM Interconnection, L.L.C. ("PJM") and Midcontinent Independent System Operator, Inc. ("MISO") markets.[4] Dynegy has conducted an initial analysis, which confirmed that a majority of its coal-fueled plants would meet the 90-day on-site fuel supply requirement set forth in the NOPR based on estimated usage, while those facilities that do not currently meet that requirement could acquire the additional fuel required in order to come into compliance with the framework set out in the NOPR, particularly given the incentive of guaranteed cost recovery under the NOPR. Accordingly, Dynegy could potentially reap substantial benefits from the NOPR's proposal to fully subsidize facilities with 90-days of on-site fuel supply.

The potential benefits to Dynegy from the NOPR would be especially helpful in the MISO market, where MISO has already acknowledged that its capacity market is not providing the compensation necessary to allow for investment in new facilities or the retention of existing facilities.[5] The problems with the MISO capacity market have become so pressing that Michigan, one of two states in MISO with competitive retail choice, adopted a new law designed "to ensure all electric providers are planning to adequately meet their customers' needs for electricity," and to "give[] more lead time for providers to build or buy resources to serve customers."[6] With respect to the other MISO state with competitive retail choice, John Bear, the Chief Executive Officer of MISO, recently sent a letter to Illinois Governor Bruce Rauner stating that "MISO continues to believe that additional action is needed in downstate Illinois to maintain

4 Dynegy also owns coal-fueled facilities in the Electric Reliability Council of Texas.

5 *See generally* Proposed Competitive Retail Solution in New Module E-3 and Corresponding Revisions to Existing Tariff Sections in Modules A, D, and E-1, Docket No. ER17-284-000 (filed Nov. 1, 2016).

6 Michigan Public Service Commission Issue Brief, Michigan's New Resource Adequacy Law at 1 (Sept. 15, 2017), http://www.michigan.gov/documents/mpsc/MPSC_Issue_Brief__Michigans_New_Resource_Adequacy_Law_600898_7.pdf.

reliability,"[7] and that "[g]iven MISO's preference for state-based Resource Adequacy solutions, we would like to work closely with state officials and Illinois stakeholders to support efforts to develop a resource adequacy mechanism that will ensure there are sufficient electric resources available to meet customer needs."[8] However, it is not certain that Illinois will heed MISO's warnings and pass legislation to address these issues. The NOPR would, by contrast, give Dynegy a guarantee that it would be able to fully recover the costs of its coal facilities, rather than having to rely on historically inadequate revenues from the MISO markets.

The rule proposed in the NOPR would also provide additional upside by shielding Dynegy's coal-fueled fleet from the effects of recent legislation enacted by the State of Illinois that will provide significant subsidies for uneconomic nuclear facilities through "zero emissions credits" ("ZECs").[9] As EPSA and others have warned, this program represents a serious threat to the PJM markets, as it will allow subsidized nuclear generation to displace more efficient generation, including the more cost-effective plants owned by Dynegy, and result in the continued suppression of capacity and energy prices.[10] The rule proposed in the NOPR could therefore help ensure that Dynegy's coal-fueled facilities remain economic notwithstanding the pressures from the Illinois ZECs legislation.

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7 Letter from John R. Bear to Governor Bruce Rauner dated May 1, 2017 at 1.

8 *Id.* at 2.

9 *See* SB 2814, Public Act 099-0906, 99th Gen. Assemb. (Ill. 2016), http://www.ilga.gov/legislation/99/SB/PDF/09900SB2814enr.pdf. The New York Public Service Commission has implemented a similar program with respect to nuclear facilities in New York. *See* Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard, Case Nos. 15-E-0302, *et al.* (Aug. 1, 2016), http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?Mattercaseno=15-E-0302.

10 *See* Motion to Lodge and Request for Expedited Action on Amended Complaint, Docket No. EL16-49-000 (filed Aug. 30, 2017).

Finally, the NOPR rule could also provide a significant potential upside to Dynegy's retail business by effectively providing full cost recovery, as well as a return on Dynegy's investment, on the coal-fueled facilities that Dynegy uses to satisfy its retail supply obligations. That is, the rule could give Dynegy a significant pricing advantage over other retail providers, because Dynegy would not have to rely on its retail rates to cover the costs of its generation facilities.

But notwithstanding the significant potential financial upside to Dynegy from the NOPR discussed above, Dynegy emphasizes that it remains opposed to the proposed rule, which amounts to a re-regulation of coal and nuclear facilities that would severely harm, and potentially represent a death blow to the competitive markets that the Commission has worked hard to develop, and which have delivered substantial benefits to ratepayers, over the past decades.

Significantly, a report prepared by the Staff of the Department of Energy warned against the market distortions resulting from subsidies that are targeted at limited types of resources.[11] In fact, the DOE Staff Report expressly cautioned that—

> Interventions to promote specific fuel types—such as bailouts for coal and nuclear or mandates and subsidies for renewables—skew investment risk and can undermine incentives for reliability-enhancing behavior (e.g., a public intervention to finance pipeline expansion removes incentives for the private sector to invest in fuel security). Fuel-specific subsidies and mandates replace individual choice with collective choice. This one-size-fits-all approach to risk mitigation ignores variances in individuals' risk tolerances, results in high-cost risk mitigation, and creates perverse incentives for market participants by transferring risk and costs from the private to the public sector.[12]

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11 *See* Department of Energy, Staff Report to the Secretary on Electricity Markets and Reliability (Aug. 2017) ("DOE Staff Report"), https://energy.gov/downloads/download-staff-report-secretary-electricity-markets-and-reliability.

12 *Id.* at 90-91.

Nonetheless, the NOPR proposes to take exactly the action that the DOE Staff Report warned against, recommending that the Commission require RTOs and ISOs to subsidize specific fuel types. The proposed rule will result in the retention of thousands of megawatts of uneconomic generation, which would then crowd out other generators that are more efficient but do not have the benefits of the same out-of-market subsidies and that would be forced to compete on a skewed playing field. It is therefore foreseeable that this type of program will only lead to a perverse "subsidy race," as each other segment of generation then fights for its own form of subsidies. As Joseph Bowring, the independent market monitor for PJM, presciently observed, "[s]ubsidies are contagious," and these types of programs will mean that "[c]ompetition in the markets could be replaced by competition to receive subsidies."[13]

Politicians and other policymakers may attempt to justify this "subsidy race" by claiming that aspects of energy production are already subsidized, and that "there is no free market in the energy industry…."[14] These claims are unfounded. It is true, for example, that Illinois imposes a sales tax on coal but does not impose a similar tax on uranium. However, this is simply a basic difference in the business models of competing generators that is not, and does not necessarily have to be, fully levelized. At the same time, neither the fact that the Commission sets rules governing the conduct of the markets, or that RTOs/ISOs determine the amount of capacity that must be procured for resource adequacy, means that these markets are not competitive. There is a distinct difference between the existing system, where there may be varying levels of sales tax

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13 Statement of Joseph Bowring at 3, State Policies and Wholesale Markets Operated by ISO New England, Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C., Docket No. AD17-11-000 (filed Apr. 25, 2017). *See also* DOE Staff Report at 14 (stating that economists have referred to the phrase "subsidies beget subsidies").

14 The Hill, *Perry: 'There is no free market in the energy industry'* (Oct. 6, 2017), http://thehill.com/policy/energy-environment/354270-perry-there-is-no-free-market-in-the-energy-industry.

liabilities and where certain market parameters may be administratively defined, and the proposal in the NOPR to pay an uneconomic energy provider to produce electricity irrespective of basic market fundamentals.

While the NOPR proposal would be disastrous for the competitive wholesale electric markets, it would also represent a substantial step backwards for retail choice, which has afforded customers in competitive states with various advantages, including lower costs and the right to choose their suppliers and the types of resources they wish to utilize. Under the NOPR, however, retail providers with subsidized resources will likely be able to significantly undercut their competition, which could result in unsubsidized retail providers being put out of business, and limit any real "choice" on the part of consumers.

Given the profound flaws in the NOPR and the serious harm that will be inflicted by the proposed rule, the Commission should terminate this proceeding without adopting the Secretary's proposal. Instead, the Commission should work with RTOs, ISOs, and the North American Electric Reliability Corporation to examine issues regarding grid resiliency and reliability, and continue to focus on the price formation efforts that are already underway.

III.

CONCLUSION

For the reasons set forth herein, Dynegy respectfully requests that the Commission take the concerns raised herein under consideration, and decline to adopt the Secretary's proposal, which would have the unintended effect of destroying competitive markets.

Respectfully submitted,

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Dated: October 23, 2017