

April 12, 2018

Via Electronic Mail

The Honorable James Richard Perry
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**RE: Motion of North Carolina Electric Membership Corporation to Intervene,
Protest and Consultative Comments**

BOSTON

HARTFORD

STAMFORD

NEW YORK

NEWARK

EAST BRUNSWICK

PHILADELPHIA

WILMINGTON

WASHINGTON, DC

Dear Secretary Perry, Assistant Secretary Walker and Deputy Assistant Secretary Jereza:

Attached is North Carolina Electric Membership Corporation's ("NCEMC") Motion to Intervene, Protest and Consultative Comments in the proceeding concerning FirstEnergy Solutions Corporation's Request for Emergency Action Under Section 202(c) of the Federal Power Act. NCEMC is a Generation and Transmission ("G&T") rural electric cooperative, and a participant in the electric markets operated by PJM Interconnection, LLC. It also is a user of critical electric infrastructure within the United States. NCEMC opposes FES' request for emergency action because there is no emergency and no justification for the relief requested. If the Request is not denied outright, the Department should provide all interested parties 60 days to submit comments, as requested by the Electric Power

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Supply Association and other organizations in a request filed on Friday, March 30, 30218.

Sincerely,

/s/Denise C. Goulet
Denise C. Goulet
Sean T. Beeny

Attorneys for North Carolina Electric Membership Corporation

cc: Official Service List

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

Request For Emergency Order)
Pursuant To Federal Power Act Section)
202(c) By FirstEnergy Solutions Corp.) **DOE Docket No. _____**

**MOTION TO INTERVENE, PROTEST AND CONSULTATIVE COMMENTS OF
NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION**

The North Carolina Electric Membership Corporation (“NCEMC”), pursuant to Rules 211, 212 and 214 of the Federal Energy Regulatory Commission (“FERC”) Rules of Practice and Procedure, 18 C.F.R. § 211, 212 and 214 (2018), and the United States Department of Energy’s (“the Department”) regulations, 10 C.F.R. §205.383,¹ submits this Motion to Intervene, Protest and Consultative Comments in the above-captioned proceeding. NCEMC protests the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) submitted by FirstEnergy Solutions Corporation (“FES”) in this matter.

I. PROCEDURAL BACKGROUND

On March 29, 2018, FES submitted a letter (“Request”) to Energy Secretary James Richard Perry requesting that the Secretary invoke emergency authority under Section 202(c) of the Federal Power Act (“FPA”), 16 U.S.C. § 824a, to find that an emergency condition exists in the PJM Interconnection, LLC (“PJM”) region that requires immediate action by the Department.

¹ Federal Power Act Section 202(c) and the Department’s policy and regulations provide that FERC’s Rules of Practice and Procedure should be used for procedural guidance in Emergency Order proceedings. Guidance published on the Department’s website points to the Commission’s rules in situations where the Department’s regulations at 10 C.F.R. § 205.370, *et. seq.*, are silent. *See, e.g.*, DOE Answer to Procedural Questions Concerning Rehearing of DOE Order, *District of Columbia Public Service Commission*, Docket No. E0-05-01 (December 30, 2005) at 2. The plain language of Section 202(c)(5) of the Federal Power Act, enacted in 2016, reinforces this principle. The FES Request is a proceeding under Chapter 12 of the Federal Power Act, and the Commission’s Rules of Practice and Procedure apply. *See* 16 U.S. Code § 825g(b) [FPA Section 308] (“All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission.”).

FES requested that the Secretary order PJM to enter into contracts with “certain existing nuclear and coal-fired generators” located in PJM for the supply of energy, capacity, and ancillary services in order to “maintain the stability of the electric grid.”² FES also requests that the Secretary order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide.”³ In the event PJM and the owners of the resources are unable to reach agreement regarding compensation and other contractual terms, FES requests that “the Secretary step in and determine the just and reasonable compensation and conditions.”⁴

II. COMMUNICATIONS

Service should be made upon and communications should be addressed to:

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III. MOTION TO INTERVENE

NCEMC is a generation and transmission cooperative responsible for the full or partial power supply requirements of its 25 members throughout the state of North Carolina. As such, it is a user of critical electric infrastructure within the United States, within the meaning of 10 C.F.R. §205.383 (a)(5). NCEMC’s 25 distribution cooperatives supply electricity to approximately 1 million homes, farms, and businesses in which more than 2.5 million North

² Request at 1.

³ *Id.*

⁴ Request at 31-32.

Carolínians live and work. NCEMC's distribution cooperative loads are located throughout the service areas of three investor-owned public utilities: Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, both subsidiaries of Duke Energy Corporation, and Virginia Electric and Power Company, doing business as Dominion Virginia Power in Virginia and as Dominion North Carolina Power in North Carolina (hereinafter referred to collectively as "Dominion").

NCEMC is a member of PJM, which operates the transmission systems of several electric utilities, including the transmission facilities owned by Dominion. NCEMC purchases transmission services from PJM over Dominion's transmission facilities to serve the loads of its six member cooperatives that distribute power at retail in the Dominion transmission zone of the PJM region. NCEMC also participates in PJM's energy, ancillary services and capacity markets.

The Department's ruling in this matter may have a significant and adverse effect on the rates paid by NCEMC for wholesale supplies it purchases to serve its member distribution cooperatives and their retail consumers in PJM. The cost of the payments envisioned in FES' Request that are to be provided to the coal and nuclear generating facilities in PJM likely would be recovered from load-serving entities in the PJM region, including NCEMC. As a current PJM Member, a transmission customer in PJM's Dominion Zone, and a participant in PJM's capacity, energy and ancillary services markets, NCEMC has an interest that may be directly affected by the outcome of this proceeding. This interest cannot be adequately represented by any other party, and NCEMC's participation in this case is necessary to adequately protect its interests. NCEMC should be permitted to intervene as its participation would serve the public interest.

IV. PROTEST AND CONSULTATIVE COMMENTS

NCEMC opposes FES' Request because there is no emergency in the PJM region, and no justification for the relief requested. If the Department decides not to reject the Request outright,

it should provide an opportunity for the filing of detailed comments by entities that could be affected by the Department's ruling on this matter. NCEMC reserves the right to supplement this preliminary pleading to explain in detail why granting the Request would result in unjust, unreasonable and unduly discriminatory rates for its North Carolina customers.

V. CONCLUSION

For the foregoing reasons, NCEMC requests that it be permitted to intervene and participate in this proceeding as a PJM market participant and a user of critical electric infrastructure within the United States. If the Department does not reject the FES Request outright, The Department should provide interested parties, by notice published in the Federal Register, 60 days to file comments on the Request.

Respectfully submitted,

By: /s/ Denise C. Goulet

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Attorneys for
North Carolina Electric Membership Corporation

DATED: April 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first-class mail, electronic means, or hand delivery, upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. on this 12th day of April, 2018.

By: /s/ Denise C. Goulet

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