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Maryland People's Counsel protests NRG's FERC request to foist its power plant costs on utility customers

BALTIMORE – The Maryland Office of People's Counsel today filed a protest of the request of NRG Energy, Inc.'s affiliate for Federal Energy Regulatory Commission approval of a plan under which utility customers would pay in their rates more than $315 million in costs for an NRG generation plant that has operated in the competitive regional wholesale generation market, called PJM, for nearly two decades. NRG is asking FERC for an unlawful windfall to continue operating the polluting coal-fired electric power plant, OPC's filing states.

"NRG is a company that has heralded its commitment to competitive markets, and it has reaped the benefits of market rates for Indian River's power for almost two decades," said Maryland People's Counsel David S. Lapp. "Now it wants to be paid for the plant's past costs in what amounts to hundreds of millions of dollars in subsidies that would come from captive utility customers—the exact opposite of what a competitive market would allow. Its proposal is the antithesis of competition."

NRG's request seeks to exploit a targeted exception to competitive market treatment of power plant energy sales in PJM, OPC's filing explains. That exception allows the owner of a generation company to announce plans to retire a generating plant with just 90 days notice, triggering a review by PJM of whether the plant must be available to maintain system reliability, in which case certain costs of keeping the plant running are assigned to customers, regardless of the market price.

NRG recently notified PJM that on June 1 it wants to retire its coal plant located in Delaware just across the Maryland border, called Indian River Unit 4. That notification triggered a PJM expedited review as to whether the plant is needed for system reliability.

NRG's request is especially egregious because the cost of building additional transmission facilities sufficient to maintain reliability is estimated at just $40 million, when the cost to utility customers of relying on the coal plant will cost over $315 million, OPC's filing says. Under PJM's reliability requirements, the coal plant must be available to run until the transmission line is built, which will take several years.

NRG's request violates the law in two important ways, OPC's filing points out. First, despite the company's pro-competition rhetoric, NRG is asking customers to pay for the coal plant's historic costs, as if NRG were a utility that recovered all of its costs in rates. NRG bought the plant—and all the risks and benefits associated with—almost two decades ago in order to compete in the PJM market. It is now seeking to exploit the plant's "must-run" status to recover its original capital investment as if it were a regulated utility. That recovery is not lawful or consistent with FERC precedent, OPC explains.

Second, its filing fails to justify the costs it seeks to impose on customers. OPC's filing points to numerous gaps in NRG's supporting cost-of-service study and to procedural deficiencies that could mean customers pay more than once for some of the costs.

"NRG's plan puts Maryland customers in the unfair position of being asked to pay exorbitant amounts to fund its coal plant when it would have been possible and far less costly to build a transmission line before, but now customers are being asked to pay for both," Lapp said. "That result is unfair to utility customers. While payments to NRG should cover the costs necessary to keep the plant open to maintain reliability, FERC should deny NRG's request for recovery of the historical investment costs of Indian River Unit 4 and set for hearing the appropriate treatment of the plant to ensure NRG doesn't obtain a windfall on the backs of captive utility customers."

The Maryland Office of People's Counsel is an independent state agency that represents Maryland's residential consumers of electric, natural gas, telecommunications, private water and certain transportation matters before the Public Service Commission, federal regulatory agencies and the courts.

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