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May 14, 2018

The Honorable Rick Perry
Secretary
U.S. Department of Energy
1000 Independence Ave, SW
Washington, DC 20585

Dear Secretary Perry:

Recent reports indicate that you may be considering the use of obscure provisions of law in an effort to move forward with policies designed to, in effect, bail out coal plants on the backs of American consumers. A previous Department of Energy (DOE) proposal with a similar aim, under the guise of preventing a grid reliability emergency, was already unanimously rejected by the Federal Energy Regulatory Commission (FERC).

In September of 2017, DOE tried to direct FERC to take “immediate action...to require organized power markets to value fuel security” by invoking Section 403 of the Department of Energy Organization Act. FERC unanimously concluded DOE’s proposal, which would have led to direct federal support for companies that own merchant coal plants, was not necessary and would harm markets and consumers.¹ FERC made clear that ratepayers should not be forced to subsidize generators that can no longer compete in the electricity market. FERC specifically said, “[T]he Proposed Rule would allow all eligible resources to receive a cost-of-service rate regardless of need or cost to the system. The record, however, does not demonstrate that such an outcome would be just and reasonable.” FERC went on, “It also has not been shown that the remedy in the Proposed Rule would not be unduly discriminatory or preferential.” FERC’s decision to reject DOE’s proposal was supported by a broad range of stakeholders, including former commissioners, free-market think tanks, environmental law groups, and the natural gas and oil industries.

However, recent reports indicate DOE is considering an emergency rulemaking under Section 202(c) of the Federal Power Act, Section 215A of the Federal Power Act, or the Defense Production Act of 1950, to support coal and nuclear generators. In your hearing before the House Science Committee on Wednesday, May 9th you said that the Department of Energy is “looking very closely at [a] number of ways to approach this.” Attempting to move forward with an emergency rulemaking under Section 202(c) of the Federal Power Act, Section 215A of the

¹ Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures, 162 FERC ¶ 61,012 (Jan. 8, 2018)

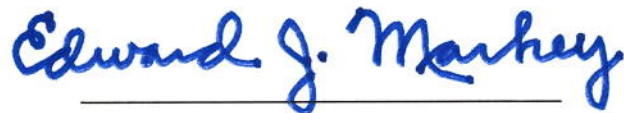
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Federal Power Act, or the Defense Production Act of 1950 to support coal and nuclear generators would not be a proper use of these authorities.

Yet again, a diverse group of stakeholders has urged you to reject these options, including representatives of the natural gas, renewable energy, petroleum oil, independent power plants, and energy efficiency sectors. FERC has already determined that out-of-market payments or subsidies are not appropriate for generators that are not competitive, and the orderly retirement of numerous power plants due to economic reasons does not constitute an “emergency” threat to national security.

I urge you to follow the law and respect the Federal Power Act, and not to attempt to proceed with misusing obscure provisions of law to issue rules to artificially and unnecessarily prop up generators that are no longer competitive.

Sincerely,



Edward J. Markey
United States Senator