

COUNTERFLOW

BY STEVE HUNTOON

Please Feel Free to Surprise Us

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As bailout hour approaches for coal and nuclear units — Rick Perry doesn't want to be the next Jeff Sessions — let's recap highlights from the Department of Energy's leaked memo and a Trump official's comments.



As all of us in the industry know, the 40-page memo is a ludicrous attempt to put lipstick on a \$65 billion pig.¹ I'm not going to waste your time on how ludicrous the substance is — if you don't know already you can go to my prior columns² and to the informed commentary of just about every unbought person in the industry (like former FERC chairs and commissioners, the RTOs themselves and, indeed, *The Wall Street Journal* in a lead editorial).

I will offer a couple comments on the supposed legal support. Defense Production Act Section 101b says that power under Section 101 can only be exercised when the subject material is "scarce," and of course electric generation resources aren't scarce at all.³ Federal Power Act 202c applies only to emergency, shortage and temporary situations, so invoking it here would require lying about all three prerequisites.

The DOE memo's authors are presumably lawyers (maybe DOE lawyers, maybe not) and know that these legal requirements can't be met, so the memo relies on what might be called the spaghetti approach — throw everything against the wall and hope something sticks. And if it doesn't stick in court Trump can always blame evil judges and the nefarious Deep State. But meanwhile, creating massive chaos and distracting us from serious matters. Sad.

Let me turn to DOE Undersecretary Mark Menezes' remarks to reporters at a conference the other day.⁴ I'll quote the remarks and offer some thoughts in italics.

"It is the premature closing of baseload that is really upsetting the industry," Menezes said. *This short sentence has three total untruths. First, the retiring units are not retiring "prematurely" — they are old. Second,*

the retiring coal units are not baseload (high capacity factor) units — they are inefficient, low capacity factor units. My prior column discussing the rampant abuse of the words "premature" and "baseload" is posted.⁵ Trump officials are simply parroting FirstEnergy and Robert Murray untruths.

The third untruth is a claim that the industry is "upset" by retirements. Nothing could be further from the truth. Clunkers are retiring as part of a natural, orderly, market-driven process that has been going on for decades. The retiring units are three times less reliable than new units, which means that keeping the old ones, and thus keeping out new units, actually makes the grid less reliable.

The industry is upset, but only about the prospect of a Trump bailout that has no legitimate basis whatsoever and would cause major if not permanent damage to the electricity markets that have served us so well.

"We are not talking about disrupting the markets." Of course Trump and his acolytes are talking about disrupting the markets — that's the whole idea. This is universally understood, even by those who want a bailout.

"It is more than the markets. The markets don't exist everywhere in the country. These markets have not been mandated by Congress. They are voluntary. They are approved by FERC." His point seems to be that utilities can leave RTOs, perhaps if states are not happy with an RTO. This is legally true but apropos of nothing. And no utility that

joined an RTO has left an RTO except for a couple Kentucky utilities more than 10 years ago. These remarks are vacuous on multiple levels.

"The RTOs ... are not natural markets. In fact, electricity is a natural monopoly." Electric generation is not a natural monopoly, which is why an RTO like PJM has dozens of competing electric generation suppliers and has had for decades.

There's no legal justification or public policy justification for the Trump bailout. We all know that.

"Profiles in Courage During the Trump Administration" is the world's shortest book. Perry could contribute a first chapter by reprising his vital role in the development of Texas' electric market and just say no to a bailout (and nationwide \$65 billion rate increase).

If Trump insists, Perry could invoke Davy Crockett's immortal words: "You may all go to hell and I will go [back] to Texas."

We're not holding our collective breaths but, hey, please feel free to surprise us.

¹ Industry expert Rob Gramlich provided this annual cost estimate in Capitol Hill testimony June 7, based on an analysis by PJM's Independent Market Monitor. <https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-115-SY20-WState-RGramlich-20180607.pdf> (page 12).

² <http://energy-counsel.com/recent-publications.html>.

³ As Gramlich testified, "Each region already has a Strategic Generation Reserve. It's called a reserve margin."

⁴ See [FERC Blindsided by Half-Baked Trump Order](#).

⁵ <http://energy-counsel.com/docs/Clunker-Poster-Child.pdf>.



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