TOP ARTICLES

The Trump administration just snuck through its most devious coal subsidy yet

How a new FERC order will help old, polluting power plants stay alive.

By David Roberts | @drvox | david@vox.com | Dec 23, 2019, 9:40am EST

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Neil Chatterjee, chair of the Federal Energy Regulatory Commission and lover of coal. | Photo by Riccardo Savi/Getty Images for Concordia Summit

On the campaign trail, Donald Trump repeatedly promised to save American coal, and when he first came into office, he made several rather theatrical attempts to do so. He had the Department of Energy (DOE) instruct the Federal Energy Regulatory Commission (FERC) to bail out coal based on its supposed resiliency benefits, and when FERC wisely rejected that idea, he threatened to use DOE emergency powers to bail out coal plants on national-security grounds. That widely mocked proposal never got off the ground either.

Since then, Trump has become distracted by other matters and doesn’t talk about coal as much. But the administration has continued to find ways to help coal, from rolling back pollution regulations to killing Congress’s attempt to extend clean energy tax credits.

Still, coal plants are closing faster than ever — for the simple reason that energy markets are turning against coal. There are cheaper, cleaner, better alternatives. So the coal boosters have turned to the lodestone strategy to rig markets, to exclude coal’s social and environmental costs and include phantom benefits like “fuel security.”

Now the Trump administration has found a clever new way to do that. Last week, the administration secured what might be its biggest victory yet on coal’s behalf.

On Thursday, FERC approved the expanded use of the Minimum Offer Price Rule (MOPR) for a regional transmission organization called PJM.

We’ll get into exactly what that means, but the primary takeaway is this: Federal regulators are now actively working to counteract the effects of state-level clean energy policy, despite opposition from virtually everyone except the fossil fuel generators that directly stand to benefit. And by doing so, they will crank up costs on 65 million consumers (as a start).

If you want the full background on what this means and how all these acronyms fit together, I wrote a long post last year explaining the whole thing top to bottom. Here I will just summarize the decision FERC recently made and ponder the grim implications for future federal policy.

Ryan McKnight, via Flickr

The origin of the MOPR

Here’s how things work in deregulated electricity markets (which cover about 70 percent of Americans): Power generation companies or “gencos,” bid to sell their power into wholesale energy markets via open auctions; distribution utilities buy power from those markets and deliver it to customers. The markets are run and monitored by regional transmission organizations (RTOs) and independent system operators (ISOs).

The Federal Power Act (which goes all the way back to 1935 but has been amended several times since) is clear about who has jurisdiction over what parts of the electricity system. The parts that cross state lines — interstate transmission of power and multi-state wholesale power markets — are regulated by the federal government, specifically FERC. It is FERC’s job to make sure that

power markets reliably provide power at rates that are "just and reasonable."

The parts of the electricity system that operate within state borders are governed by the states themselves, through legislatures and public utility commissions (PUCs). That includes distribution utilities, the power they buy, and the distribution systems involved in retail electricity. States are responsible for "resource decision making," i.e., deciding what resources generate their power and what rules govern the distribution utilities that carry power to customers. (This jurisdictional split is important in what follows.)

Another key bit of background: most RTOs/ISOs run not only electricity markets, where power is bought and sold, but also capacity markets. In capacity markets, gencos don't bid to provide power, they bid to provide availability — a contract to be available at particular times. The idea is to ensure sufficient investment in capacity and to build a buffer, a "reserve margin" of extra generating capacity, in case demand unexpectedly spikes or a power plant unexpectedly shuts down. (Capacity markets are increasingly large and increasingly problematic, as this report from research consultancy Grid Strategies explains.)

Now, the final piece of the puzzle. A decade ago, worries were raised about utility holding companies, which are both sellers and buyers of capacity, selling artificially cheap capacity into markets in order to drive down prices, from which they would then benefit. To remedy this potential use of buyer-side (monopsony) power, FERC added a tool to its kit: the Minimum Offer Price Rule (MOPR), which forces resources owned by the holding companies in question to meet at least a certain minimum bid price in capacity markets.

It was meant to be a surgical tool, used in clear cases of buyer-side market manipulation, almost entirely limited to natural gas plants. In 2011, FERC specifically said that renewable resources are not good examples of buyer-side attempts to suppress prices.

But recently, FERC has given the green light to a massive expansion of the MOPR's use.

The MOPR is being used to counteract state clean energy policy

Here's the thing: a lot of big, old, dirty fossil fuel plants, especially coal plants in the Midwest, have had the crap kicked out of them in energy markets and now rely on revenue from capacity markets to stay in operation. But just as they have been reducing energy prices, natural gas and renewables — along with demand response, which is also now permitted in wholesale markets — have been reducing capacity prices, pushing a lot of old plants into retirement.

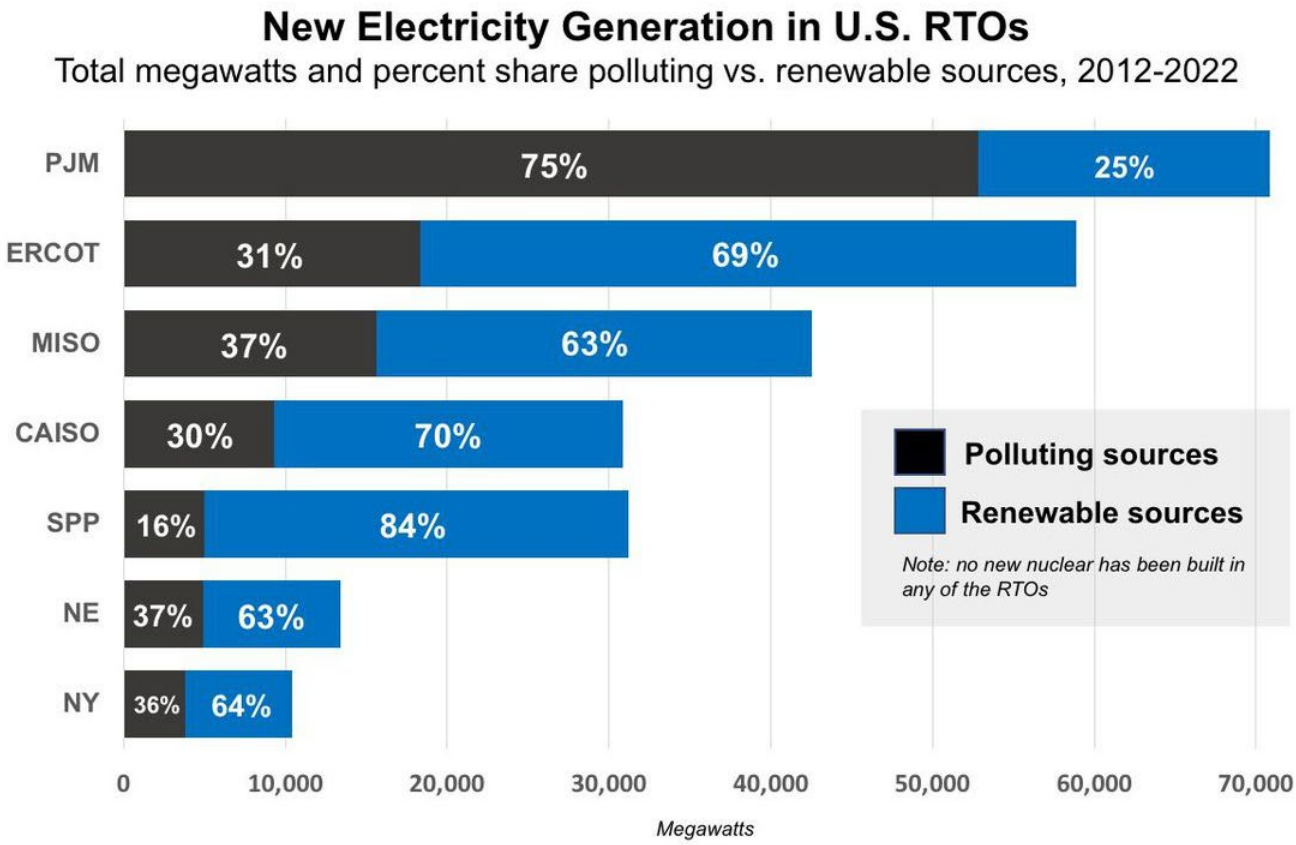
This is a good thing for everyone except the owners of those plants. But those gencos, and the utility holding companies that own them, have lots of influence over RTOs and ISOs. And they have been complaining to market administrators that they are being beat in capacity auctions because clean energy has an unfair advantage. Both renewables and nuclear power are

subsidized in various ways by state energy policies that, for instance, require utilities to procure a certain amount of their power from renewables. Those policies suppress prices, they argue, and thus subsidized renewables and nuclear ought to be subject to the MOPR.

Some RTOs and ISOs have found this argument convincing and have appealed to FERC to be allowed to apply the MOPR to clean energy resources supported by state policies. Last year, when ISO New England made the request, FERC granted it, and endorsed the broader use of MOPRs: “Absent a showing that a different method would appropriately address particular state policies, we intend to use the MOPR to address the impacts of state policies on the wholesale capacity markets.” (Note here: FERC’s explicit intent is to “address particular state policies.”)

That brings us to PJM, administrator of wholesale markets that cover some or all of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Washington, DC. PJM runs the biggest power auctions in the world; its capacity auctions run around $8.5 billion a year.

Of all the RTOs/ISOs, PJM has the dirtiest power mix and has added more fossil fuel resources in recent years, mostly new gas. Between 2012 and 2022, it is on track to add 52,830 MW of non-renewable generation, almost entirely natural gas.



NRDC

In fact, as a recent series of S&P stories revealed, PJM has been artificially inflating its demand forecasts for years to justify a natural gas building binge. It currently has 29,000 MW of new natural gas planned or under development, at a cost to customers of around $25 billion. (See this Rocky Mountain Institute report on the danger of stranded natural gas assets.)

As a result, PJM has loads of old legacy plants threatened by falling capacity prices — for instance, around 18,000 MW of its old coal plants are only economic because of capacity payments.

So PJM petitioned FERC to allow it to expand its use of MOPRs as well. Last year, FERC returned PJM’s first attempt, saying that it hadn’t subjected enough resources to MOPRs. That docket has been sitting at FERC for 18 months and everyone in the energy world (except the gencos with the old plants) has been begging FERC not to set this precedent. Ten Democratic senators recently sent FERC a letter about it.

Part of the delay is explained by the fact that FERC, which is supposed to have five commissioners (by law, no more than three from one party), was down to four for most of the last year after commissioner Kevin McIntyre

died in January. It’s been an even split — Republicans Neil Chatterjee (the new chair) and Bernard McNamee, Democrats Richard Glick and Cheryl LaFleur — which means neither side can get a quorum.

But this summer, LaFleur retired, giving Republicans a 2-1 majority, and they wasted no time. Sure enough, the MOPR decision was 2-1, with Glick writing a blistering dissent.

The order, issued Thursday night, is expansion of MOPRs in PJM with almost no limits — a change “of kind and not just degree,” Glick writes — using the broadest, vaguest definition of state subsidies. Like so much in the Trump era, it’s not just bad, it is the worst.

Expanded use of MOPRs is a terrible idea, according to almost everyone

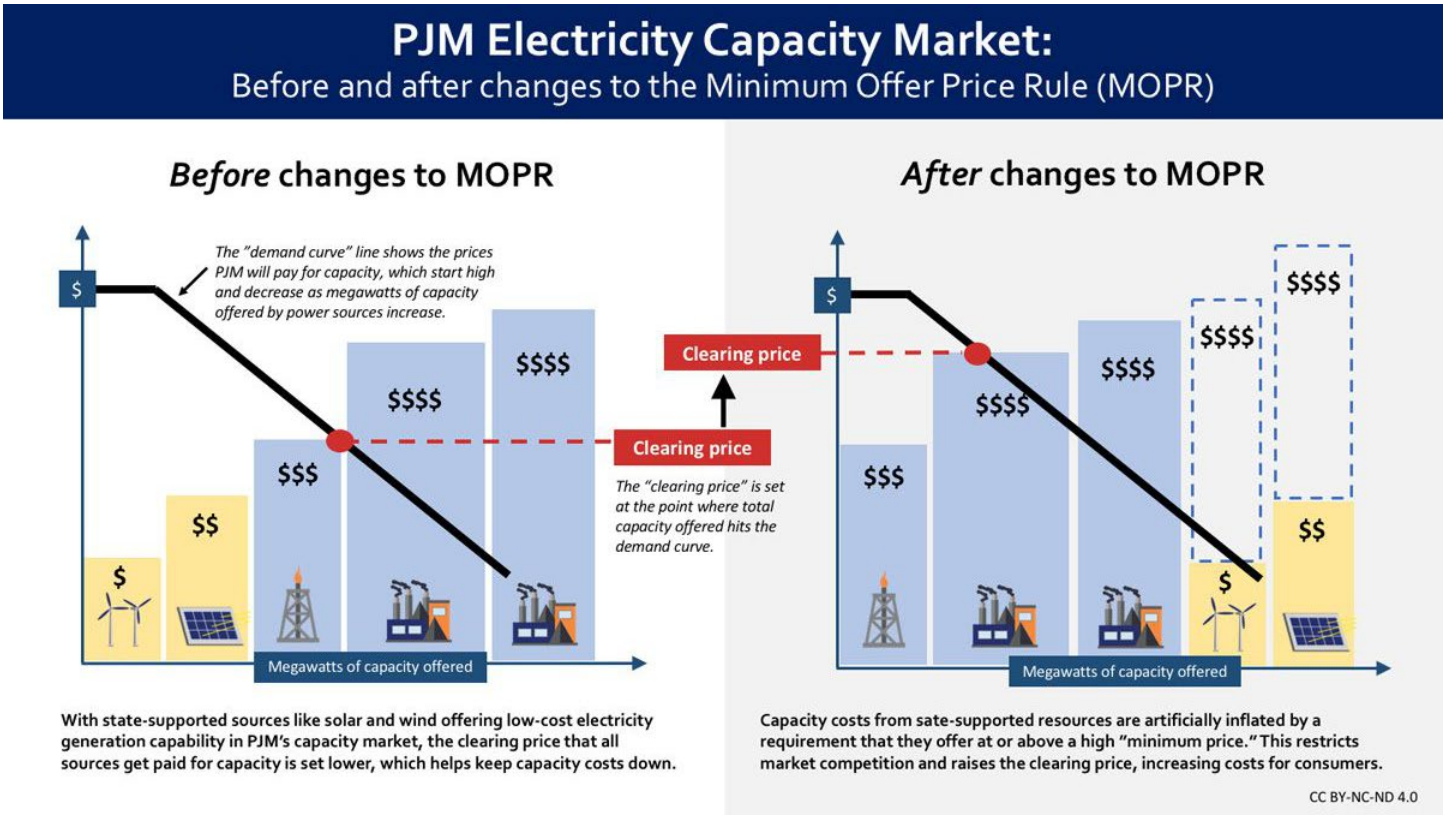
It doesn’t take much thinking to figure out why this is a bad idea. (You can read op-eds against it here, here, and here; just about every clean energy or environmental group has weighed in.)

First, ponder the rationale. Prices are going down in capacity markets, which means consumers are saving money. Gencos say it’s a problem, though. Why? Because, they argue, by receiving distorted price signals, the capacity market could end up producing too little capacity and causing reliability problems.

Is that actually happening? Well, no. None of the RTOS/ISOs are failing to meet their reserve margins. If anything, most are overstocked with capacity. Notably, PJM itself is wildly overstocked — in 2018 it had 24,500 MW of capacity in excess of its reserve margin. That is extra generating capacity, which customers have to pay for, just sitting around.

So PJM wants to jack up capacity market prices, not because of any reliability problem, not because of any plausible forecast of a reliability problem, but because of vague fears that there might one day be a reliability problem.

The MOPR that PJM is contemplating is likely to have the effect of pricing low-carbon resources like renewables, nuclear, and energy storage out of capacity markets entirely, meaning customers will have to buy more of the expensive, dirty stuff.



Sierra Club

Grid Strategies ran a study of the impact FERC’s order is likely to have on PJM’s 65 million customers.

“We estimate the total cost of the MOPR to PJM consumers could reach $5.7 billion per year, a 60% increase in cost compared to the current capacity market,” they conclude. “The average residential customer in PJM could see their electric bill increase by over $6 per month.”

The increase in costs will vary across states depending on various factors, including how much of the area PJM serves, but notably, costs will rise in every state, not just the states with clean energy policies, and not just the states with lots of resources subject to the MOPR.

TABLE 1 | *Total annual cost by state of PJM MOPR*

STATE *	TOTAL ANNUAL COST ($ MILLIONS)	$ PER AVERAGE MONTHLY RESIDENTIAL BILL
Ohio	$1,100	$6.01
Pennsylvania	$956	$5.75
Virginia	$927	$7.71
Illinois	$864	$4.95
New Jersey	$711	$4.68
Maryland	$499	$6.72
West Virginia	$167	$7.34
Kentucky	$121	$7.52
Indiana	$91	$6.64
Delaware	$85	$6.52
DC	$70	$5.34
North Carolina	$41	$7.45
Michigan	$25	$4.52
TOTAL/AVERAGE	**$5,658**	**$6.06**

** Note: PJM serves only a portion of the consumers in some of these states, explaining the lower cost impacts in Michigan, North Carolina, Indiana and Kentucky, in particular.*

Grid Strategies

(By way of contrast, power market reforms suggested by the Wind Solar Alliance could save the same customers almost $7 billion a year.)

All of these price hikes will come in service of abstractions like “investor confidence,” “competition,” and market “integrity” that FERC neither defines nor offers any way to measure.

There are too many problems with FERC’s order to do justice in this post, even aside from the fact that it’s going to unnecessarily impose billions in new costs on 65 million people. I’ll just highlight a few.

1. It is sprawling and impracticable and will create years of lawsuits and uncertainty.

FERC’s definition of a state subsidy is so broad and vague that “much — and perhaps the vast majority — of the capacity in PJM” could end up subject to the MOPR, Glick writes in his dissent.

Coal plants that receive tax credits could be hit by the MOPR. Nuclear plants that receive zero-emission credits (as in Illinois) could be, which is why the Nuclear Energy Institute also opposes the MOPR. Any low-carbon resource located in an area subject to a carbon tax or cap-and-trade program could be hit — for instance, participants in the Regional Greenhouse Gas Initiative (RGGI), like low-carbon power plants in Delaware and Maryland, could see their prices hiked. Just about anything a state or city does on energy policy affects the prices of some energy resources to at least some degree.

How exactly will PJM keep track of all these subsidies?

“To implement this scheme, PJM and the Independent Market Monitor will need to become the new subsidy police,” Glick writes, “regularly reviewing the laws and regulations of 13 different states and DC — not to mention hundreds of localities and municipalities — in search of any provision or program that could conceivably fall within the Commission’s definition of State Subsidy.”

FERC offers very little guidance on what will and won’t fall within its potentially enormous subsidy net. “It will likely be years before we have a concrete understanding of how the subsidy definition works in practice or resources know for sure whether they will be subject to mitigation,” Glick says.

In the meantime, a central regulator will be setting prices for most of the market (in the name of competition) while the new rule generates confusion and court challenges (in the name of investor confidence).

Priced out. | (Shutterstock)

2. It threatens existing clean energy business models.

The order has the potential to screw up a number of existing business models.

First, demand response aggregators — the service providers that coordinate dozens or hundreds of devices to shift demand, avoiding the need for new generation — often don’t know exactly what resources will be available to them three years in advance, which is the time scale of the PJM capacity market. Heretofore, they were given an allowance to participate without identifying all resources in advance, but FERC killed that allowance. As a result of that and the MOPR, demand response, one of the cheapest resources available in the region, could be driven out of PJM’s capacity market entirely.

Second, though the order exempts existing public-power

projects (by customer-owned municipal utilities), it “declares the entire public power model to be an impermissible state subsidy,” Glick writes, which means all new such projects will be hit with the MOPR. That could limit the ability of public power entities to form long-term contracts, which are meant to self-serve their own load. It “fundamentally upends the public power model,” Glick writes.

Third, low-carbon power plants generate renewable energy credits (RECs). Some of those are purchased and retired by utilities to satisfy renewable energy mandates, which FERC argues amounts to a state subsidy. (Note: In its comments on the docket, the Advanced Energy Economy group argues that RECs do not actually provide renewables with any out-of-market revenue.)

But some RECs are purchased and retired by ordinary customers, through voluntary REC markets, which are definitely not a state subsidy.

FERC’s solution to this dilemma is to ignore it and simply apply the MOPR to all the power. “Thus,” the Grid Strategies report says, “PJM’s proposal is not only a broad mitigation of all state policy, but also mitigation of voluntary transactions.”

Ask yourself why a federal regulatory body should be canceling out the expressed preferences of consumers in voluntary markets.

3. It forces customers to pay twice for capacity.

In states with clean energy policies, customers will pay, via their utilities, to purchase renewable energy capacity. Then PJM will artificially jack up the prices of that capacity and drive it out of the capacity market. So customers will have to buy that much capacity again, on the market.

The result will be customers in clean energy states paying for capacity twice, once outside the capacity market, once inside it. FERC has acknowledged this problem but done absolutely nothing to address it, likely because the Electric Power Supply Association, a trade group dominated by fossil fuel gencos, views it as a benefit.

4. It usurps state jurisdiction with no coherent justification.

Remember, FERC’s sole jurisdiction here is to keep wholesale markets running smoothly, with just and reasonable rates. Its mandate is to encourage open, competitive markets.

As for what kinds of power are generated and how much — resource decision making — that is left to the states. So says the Federal Power Act.

When a state implements a policy meant to lower the price of a particular kind of resource (solar power, say, or existing nuclear plants), intending to encourage that resource, and then PJM raises the price of that resource in capacity markets, specifically and explicitly to “address” the effect of the state policy ... it’s difficult to see how that isn’t overstepping its jurisdiction.

“The Commission is attempting to establish a set of price signals for determining resource entry and exit that will supersede state resource decisionmaking and better reflect the Commission’s policy priorities,” Glick writes. “It is hard to imagine how the Commission could much more directly target or aim at state authority over resource decision making.”

What’s more, back in its earlier June 2018 ruling, FERC had put forward a novel use for a PJM rule called the Fixed Resource Requirement (FRR), which allows a utility to opt all its resources out of capacity markets entirely. Long story short, the proposed “resource-specific FRR” would have offered particular resources the option to drop out of capacity markets and strike bilateral contracts with utilities for capacity. It was, in Glick’s words, at least a “fig leaf to state authority.”

Now, even the resource-specific FRR is gone from the final order. Resources cannot escape capacity markets unless their entire utility pulls out, per the original FRR, which is an incredibly difficult and onerous process (though Illinois has a bill before the legislature that would do just that). In effect, FERC is trapping resources in a capacity market that will intentionally undo any state efforts to encourage clean energy.

“A theory of jurisdiction that allows the Commission to block any state effort to economically regulate the externalities associated with electricity generation,” Glick writes, “is not a reasonable interpretation of the FPA’s balance between federal and state jurisdiction.”

How do Chatterjee and McNamee defend this?

Their claim is that the MOPR does not disregard or nullify state policies. It merely mitigates the effect of state policies on wholesale markets (thus, they claim, not crossing jurisdictional lines).

But if that claim is taken at face value, their justification for PJM not acting to counteract federal subsidies, offered in the recent order, makes no sense.

After all, if state energy subsidies distort wholesale markets, surely the much more numerous and older federal subsidies do as well. As Glick says, "federal subsidies remain pervasive in PJM," from tax credits to depletion allowances to the ability to expense various costs, and the majority of them benefit fossil fuels.

FERC's order affirms that federal subsidies are in fact market distortions, just like state subsidies, but it says that PJM may not apply the MOPR approach to recipients of federal subsidies because "this Commission may not disregard or nullify the effects of federal legislation."

> 10. We find that we cannot, however, apply this approach to resources that receive out-of-market support through subsidies created by federal statute. That is not because we think that federal subsidies do not distort competitive market outcomes. On the contrary, federal subsidies distort competitive markets in the same manner that State Subsidies do. Nevertheless, the Commission's authority to set just and reasonable rates under the FPA comes from Congress and subsidies that are directed by Congress through federal legislation have the same legal force as the FPA. This Commission may not disregard or nullify the effects of federal legislation.[28]

But ... wait. If applying the MOPR disregards and nullifies federal policies, why doesn't it disregard and nullify state policies?

Conversely, if the MOPR merely addresses the effects of state policies on wholesale markets, why can't it merely address the effects of federal policies on wholesale markets?

There is no coherent justification for FERC intruding on state jurisdiction but not on federal jurisdiction. The reasoning, as is evident again and again in the order, is entirely reverse engineered to produce the desired outcome: tilting capacity markets in favor of existing fossil fuel incumbents.

5. It is implicit climate denialism.

Consider: If it is true that CO2 is a harmful pollutant, then the fact that companies are not being charged for emitting it means that markets are working ineffectively. They are not capturing the full social costs of the products in them.

When a cost is placed on CO2 — either explicitly, through a tax or cap-and-trade system, or implicitly, by subsidizing clean competitors — the result is a more effective market, not a "distorted" one. Externalities have been internalized. It is the companies that *aren't* being

charged for CO2 pollution that are distorting the market. (The Institute for Policy Integrity has a good report on "Capacity Markets and Externalities.")

By defining anti-CO2 and pro-clean energy policies (among all the many state and federal policies that affect the cost of energy) as inherently distorting, Chatterjee and McNamee are effectively denying that CO2 is a harmful pollutant.

It is buried behind a wall of acronyms and obscure technical disputes, but it is the same old climate denialism.

FERC's devolution into a partisan organization is complete

FERC's order is shocking. It is a more extreme and naked bid to help coal plants than even jaded observers expected from what has historically been a fairly reasonable, empirically grounded commission. And the commission seems likely to extend similar use of MOPRs to other RTOs/ISOs, possibly NYISO next.

The order will substantially raise prices on 65 million customers, force them to pay twice for capacity, intrude on state jurisdiction over resource planning, increase capacity spending in a region already oversaturated with capacity, and disrupt several established and emerging clean energy business models.

To what end? "The premise of the MOPR appears to be based on an idealized vision of markets free from the influence of public policies," since-retired FERC commissioner Norman Bay once wrote. "But such a world does not exist, and it is impossible to mitigate our way to its creation."

The justifications the Republican majority has offered for this unprecedented imposition of FERC's preferences on states are either facially absurd, mutually contradictory, or in violation of longstanding law and recent court precedent.

The only real through line that connects the decisions and definitions in the order is that they all serve to advantage fossil fuel incumbents relative to newer, cleaner competitors.

"We all know what is going on here," Glick writes. "The costs imposed by today's order and the ubiquitous preferences given to existing resources are a transparent attempt to handicap [state clean energy policies] and slow — or maybe even stop — the transition to a clean energy future."

"It is a bailout" for fossil fuel power plants, he writes, "plain and simple."

It is no particular surprise to find a crude coal bailout being pushed by the Trump administration. Still, at least when it comes to electricity transmission and wholesale markets, FERC has generally

been seen as an empirically grounded straight shooter, an outpost of old fashioned technocracy.

So there’s a special sort of melancholy that comes in seeing it crank out the same kind of lurching, poorly reasoned, reverse-engineered junk that is so familiar in other parts of the Trump administration.

For now, FERC has given PJM 90 days to submit a revised proposal in line with its order. After that will come various “petitions for rehearing,” which FERC is supposed to address within 30 days but, in practice, rarely does. And then, when it finally hears (and presumably rejects) those petitions, the lawsuits will begin.

This is yet another mess the next administration will have to clean up, one of dozens Trump’s people will have left littering the federal bureaucracy.