

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

State Policies and Wholesale Markets  
Operated by ISO New England Inc., New  
York Independent System Operator, Inc.,  
and PJM Interconnection, L.L.C.

Docket No. AD17-11-000

POST-TECHNICAL CONFERENCE COMMENTS OF THE  
ELECTRICITY CONSUMERS RESOURCE COUNCIL  
(ELCON)

ELCON appreciates the opportunity to provide the Commission and its staff with post-technical conference comments in the indicated docket. The problem before the Commission is quite serious and unless the Commission is vigilant, we believe the competitive wholesale electricity markets (the “organized markets”) are in danger of disruption such that their fundamental objectives risk being completely negated.

It is not without some irony that the very reason the organized markets were created in the first place—to mitigate the anti-consumer effects inherent in the regulatory policies of certain states—is now undermining the noble objectives to benefit consumers by efficiently establishing market prices and sending appropriate investment signals. The Commission determined in Order No. 2000 that “[c]ompetition in wholesale electricity markets is the best way to protect the public interest and ensure that electricity consumers pay the lowest price possible for reliable service.”<sup>1</sup> The threshold issue as we see it is how can the ISOs and RTOs accommodate state policies affecting resource adequacy and costs while preserving the values of the competitive

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<sup>1</sup> Order No. 2000 at 3.

wholesale markets and the intended objective that consumers pay the lowest possible price for reliable service. Simply put, we believe this cannot be done. ELCON believes that the state policies at issue cannot be reconciled with the competitive wholesale market framework.

### **Summary of ELCON’s Position**

ELCON’s position is to preserve the full competitiveness of the wholesale markets operated by the ISOs and RTOs—specifically in regard to their market-based, least-cost operation. We strongly urge the Commission to reaffirm the principles that underlay the formation of the RTOs as stated in Order No. 2000. Our position is that each state should use the ISO/RTO platform as is, and tailor its policies to accommodate the market design. If a state wants to force its citizens to pay for higher, out-of-market costs (e.g., off-shore wind farms or subsidies for uneconomic power plants), FERC must not allow an organized market to be used to socialize those costs or otherwise distort those markets.<sup>2</sup> States may resort to other methods of cost recovery that do not interfere with the competitive pricing mechanisms and technology neutrality of the organized markets.

### **Responses to Issues Raised in the Notice**

#### **A. The Five Paths**

Of the five “paths” identified in the Notice, only Path 3—the *status quo*—is tenable. Threshold legal issues are pending before the courts, and the resolution of these issues should be allowed to play out before any further action is taken at the federal level. Under the status quo, the principles of Order No. 2000 remain in full force.

Regarding Path 2 (“Accommodation of State Actions”), it is not clear how this would actually work other than as a kluge in which the organized market structure is

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<sup>2</sup> See John P. Hughes, Regulatory Treatment of Uneconomic Power Plants, *The Electricity Journal* 29 (2016) 28-32.

used for cost recovery purposes and not for market discipline. We fear that this path would result in further complications to existing capacity constructs with no real value for short-term economic dispatch or long-term decision-making.

Of all the paths, Path 4 (“Pricing State Policy Choices”) is the one most likely to be prone to abuse. It would fail in real world conditions because some states would not respect market-based solutions. They would concoct attributes that are not realistically fungible or tradable for the purpose of selectively internalizing externalities or for socializing the costs of command-and-control mandates. Path 4 would require complex centralized changes—changes that may be mutually exclusive—to the organized markets to facilitate the integration of each attribute resulting in a throwback to the costly regulatory schemes that predated the creation of organized markets. The organized markets are far from perfect, but they are superior to the state of affairs that they replaced.

Paths 1 (“Limited or No Minimum Offer Price Rule”) and 5 (“Expanded Minimum Offer Price Rule”) are both too extreme to merit further consideration. Hence, Path 3 becomes the default position should the Commission decide not to otherwise take concerted action.

## **B. Principles and Objectives That Guide Path Selection and Any Necessary Rule Changes**

The key principles that should give rise to any Commission action are the preservation and enhancement of the fully competitive, efficient, reliable, least-cost, market-based operation of the ISOs and RTOs. ELCON also supports the principle of technology neutrality consistent with existing environmental laws and regulations. States should be discouraged from implementing policies that do not accommodate and support the competitive wholesale market design. We are not convinced that threats to “re-regulate” are feasible given the hugely complex, costly and time-consuming effort necessary to disassemble an ISO or RTO. We also question the political feasibility of

any re-regulation scenario because the states would be sacrificing a lot of benefits their constituents currently receive by participation in the organized markets.

### **C. The Degree of Urgency for Reconciling Wholesale Markets and State Policies**

ELCON discourages a two-phase process (*i.e.*, a solution that includes both a short-term fix followed by a different longer-term approach). We fear that any hastily implemented fix may do more harm than good and discourage consideration of a more viable and sustainable solution. The problem at hand is too important to be rushed.

### **D. Long-term Expectations Regarding the Relative Roles of Wholesale Energy and Capacity Markets and State Policies**

The organized markets were not designed to provide the same long-term investment security as traditional rate-based treatment with regard to the quantity and composition of resources needed to cost-effectively meet future reliability and operational needs. None of the paths suggested so far change that fact. The capacity market constructs in the relevant ISOs and RTOs do not. What is necessary is greater consistency, more transparency in market operation, and freedom from the endless changes in the market design. Only then will investors be comfortable with long-term investments. The changes that some states are seeking undermine that from happening and can only add to the uncertainties that inhibit sound and efficient investment decision making.

### **E. Procedural Steps the Commission Should Take**

ELCON opposes the use of ISO or RTO stakeholder processes for reconciling the competitive wholesale market framework with state policies. This would only lead to greater inter-regional seams problems and promote the inclusion of parochial interests in each solution. If the Commission decides to further pursue this issue, we encourage initiation of a formal Notice of Inquiry (NOI) followed by a Notice of Rulemaking (NOPR) that creates a common solution applicable to all affected ISOs and RTOs.

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Respectfully submitted,

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Dated: June 22, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.:            June 22, 2017

/s/ W. RICHARD BIDSTRUP

W. Richard Bidstrup

*Counsel for ELCON*