UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act	)))	**Docket No. RM20-10-000**

REPLY COMMENTS OF THE
ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON)

The Electricity Consumers Resource Council (ELCON) respectfully submits these reply comments on the April 15, 2021 Supplemental Notice of Proposed Rulemaking (Supplemental NOPR)[1] in the above-captioned docket, in which the Federal Energy Regulatory Commission (FERC or Commission) proposes and seeks comment on a revised incentive for transmitting and electric utilities that join Transmission Organizations (Transmission Organization Incentive) under Section 219 of the Federal Power Act (FPA).[2] The Supplemental NOPR follows a March 20, 2020 Notice of Proposed Rulemaking (March NOPR).[3] ELCON filed joint comments on the March NOPR on July 1, 2020,[4] and we filed initial comments on the Supplemental NOPR on June 25, 2021.[5]

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies create a wide range of products from virtually every segment of the industrial community—we own and operate hundreds of major

---

[1] *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Supplemental Notice of Proposed Rulemaking, 175 FERC ¶ 61,035 (2021).

[2] 16 U.S.C. § 824s.

[3] *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Notice of Proposed Rulemaking, 170 FERC ¶ 61,204, errata notice, 171 FERC ¶ 61,072 (2020).

[4] Comments of the Electricity Consumers Resource Council, American Chemistry Council, and American Forest & Paper Association, Docket No. RM20-10-000 (July 1, 2020) (March NOPR Joint Comments).

[5] Comments of the Electricity Consumers Resource Council, Docket No. RM20-10-000 (June 25, 2021) (Initial Comments).

facilities and are significant consumers of electricity in the footprints of all organized markets and other regions throughout the United States. Reliable electricity supply at just and reasonable rates is essential to our members' operations. Further, ELCON members rely upon the transmission of electricity by FERC-jurisdictional utilities. Accordingly, any changes to the Commission's transmission incentives policy will have a direct financial impact on ELCON members.

INTRODUCTION

In our Initial Comments, ELCON supported the proposals in the Supplemental NOPR to limit the size and duration of the Transmission Organization Incentive. ELCON also urged the Commission to consider further empirical analysis to support its proposals, as Section 219 requires. These reply comments respond to the numerous comments filed in this proceeding that reference the various estimates of the economic benefits to consumers of utility regional transmission organization (RTO) participation and, in turn, the consumer benefits of the Transmission Organization Incentive. Although ELCON supports electricity competition, we find these comments lacking in material support, and we again urge the Commission to consider performing an independent, empirical analysis to establish a Transmission Organization Incentive that benefits consumers by reducing the cost of delivered power.

I. ELCON SEEKS FURTHER EMPIRICAL ANALYSIS OF THE BENEFITS TO CONSUMERS FROM UTILITY RTO PARTICIPATION

ELCON's Initial Comments noted that there is evidence (in addition to firsthand experience among ELCON members) that consumers have benefitted from "efficiencies in the dispatch of generation, the orderly entry and exit of resources based on price signals, as well as enhanced transparency of planning processes and the wider availability of buying and selling arrangements."[6] However, the Commission has not independently analyzed and substantiated the various estimates of RTO savings at the

[6] Initial Comments, pp. 4-6.

wholesale level. We urge the Commission to perform such an analysis as part of its rulemaking process in this docket.

The record at this stage of the proceeding contains little information regarding the central issue presented in Section 219. To reiterate, Section 219(a) states that the Commission shall establish a transmission incentive rule "for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion."[7] The Commission has yet to address—in the March NOPR or the Supplemental NOPR—the basic question of whether the Transmission Organization Incentive achieves the purpose of Section 219 as laid out in Section 219(a). Rather, much of FERC's and Commissioners' attention has been devoted to the language in Section 219(c).[8] Arguments over Section 219(c) are important and relevant; however, the Supplemental NOPR and initial comments continue to ignore the fundamental purpose of Section 219.

A. Section 219 Requires an Independent Analysis of Wholesale Market Benefits to End-Use Customers

In support of the assertion that RTO participation benefits consumers, numerous parties filed initial comments referencing common sources: (1) the Supplemental NOPR, (2) qualitative projections originating from FERC Order No. 2000, (3) cost saving estimates in RTO-developed value propositions, and (4) to a lesser extent, the academic literature regarding production cost savings from RTOs.[9] While ELCON does not dispute the fact that RTOs provide some benefits at the wholesale level, an objective

---

[7] 16 U.S.C. § 824s(a).

[8] *See, e.g.*, Supplemental NOPR at PP 6-8, 10, 16-17; Danly *dissenting* at PP 1-9.

[9] *See, e.g.,* Comments of ITC Holdings Corp., Docket No. RM20-10-000, p. 3 (June 22, 2021) "There is substantial record evidence that the benefits derived by customers and market participants from transmission owner participation in Transmission Organizations far exceeds the costs of the incentive," (ITC Comments); Comments of American Electric Power Service Corporation, Docket No. RM20-10-000, p. 12 (June 25, 2021) "As the record in this proceeding demonstrates, RTOs provide substantial benefits to customers," (AEP Comments); Comments of Ameren Services Company, Docket No. RM20-20-000, pp. 27-28 (June 25, 2021) "transmitting utilities are not the primary beneficiary of optimization of the transmission system or regional planning. Customers are." (Ameren Comments). *See also* Comments of the American Clean Power Association, Docket No. RM20-10-000, pp. 5-6, note 22 (June 25, 2021).

analysis is necessary to weigh all benefits against all costs and determine whether RTO participation—and, by extension, the Transmission Organization Incentive—provides net benefits to the end-use consumer, as Section 219 requires.[10]

To support utility participation in RTOs, the Commission has often cited its central assertion in Order No. 2000 "that appropriate RTOs *could* successfully address the existing impediments to efficient grid operation and competition and *could* consequently benefit consumers through lower electricity rates resulting from a wider choice of services and service providers. In addition, substantial cost savings are *likely* to result from the formation of RTOs."[11] Later, in presenting its quantitative estimation of the benefits of RTOs, Order No. 2000 admits that the value "of the benefits of RTOs to improve market performance cannot be known with precision before their development, and we do not yet have a sufficiently long track record with existing institutions with which to measure."[12] Moreover, the analysis did not address the extent to which any cost savings would flow through to consumers.

The Commission, as well as a number of commenters, also relies on RTO-developed value propositions to demonstrate the value and costs savings from RTO participation.[13] However, such reports and estimates should be eyed with some

[10] As an illustrative example of the need for new data regarding RTO performance, note that the Midcontinent Independent System Operator, Inc. (MISO) and Southwest Power Pool, Inc. (SPP) argue in their initial comments that "in Order No. 679, the Commission confirmed its initial expectations, stating that '[t]he consumer benefits, including reliability and cost benefits, provided by Transmission Organizations are well documented.'" Joint Comments of MISO and SPP, Docket No. RM20-10-000, pp. 5-6 (June 25, 2021) (Joint MISO/SPP Comments). However, the citation in the Joint MISO/SPP Comments points to paragraph 86 of Order No. 679-A, which repeats the assertion that "[t]he consumer benefits, including reliability and cost benefits, provided by Transmission Organizations are well documented." The citation in paragraph 86 of Order No. 679-A in turn points to Order No. 2000, which was issued in 1999.

[11] *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285, pp. 3-4 (emphasis added), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish Cty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[12] Order No. 2000 at pp 93-96.

[13] Supplemental NOPR at P 14, fn. 29.; *see also, e.g.,* ITC Comments, p. 22; Ameren Comments, pp. 27-28; AEP Comments, p. 14; Comments of the New England Transmission Owners in Opposition to Elimination of the RTO Participation Incentive, Docket No. RM20-10-000, p. 29, fn. 71 (June 25, 2021);

skepticism as self-serving. As ELCON noted in our initial comments, as a rule, FERC should not take interested parties' estimates of their own alleged benefits at face value. Instead, "the Commission should carefully assess claims about costs and benefits before making decisions that rely on them."[14]

In an effort to verify the projections and estimates made by the Commission itself as well as interested parties, ELCON recently led a coalition comprised of industrial consumers of electricity, residential customers, and public policy research organizations in asking Congress to direct an independent oversight organization to perform a comprehensive study on the cost of electricity in the United States. The requested study would investigate, among other things, the impacts of wholesale electricity policies—including RTO formation—on the cost and reliability of delivered power.[15]

Importantly, in the context of the Transmission Organization Incentive, any such study should also evaluate costs associated with RTO participation that would not be incurred in bilateral markets. While it appears—based on the limited data we have—that the benefits of RTO participation likely outweigh such costs, a comprehensive study must incorporate these costs. For example, commenters asked in initial comments whether other market structures "may provide many of the same benefits with *less costs* and less restrictions?"[16] Unintended cost shifts may also impose costs on customers that were not caused by their transmission provider.[17]

Initial Comments of the Indicated PJM Transmission Owners, Docket No. RM20-10-000, p. 25 (June 25, 2021); Comments of Exelon Corporation, Docket No. RM20-10-000, p. 24, fn. 43 (June 25, 2021); and Comments of PJM Interconnection, L.L.C., Docket No. RM20-10-000, p. 1 (June 25, 2021).

[14] Initial Comments, p. 6.

[15] *See* Attachment A.

[16] ITC Comments, p. 14 (emphasis added).

[17] Initial Comments of Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Indiana, LLC, Docket No. RM20-10-000, p. 12 (June 25, 2021) ("[a]nother complexity of RTO membership is regional cost allocation – costs get spread far and wide to all in the RTO, thus creating complexities of paying costs for facilities that are distant. RTO members are unable to protect retail customers from increased costs and cost shifts associated with such cost allocation issues." (Duke Comments). In the case of GreenHat Energy in PJM, the energy trader defaulted on 890 million MWh of financial transmission rights which resulted in approximately $180 million in losses allocated to PJM members and its consumers; Michael Yoder, *GreenHat Energy, Owners Face $229M FERC Fine*, RTO Insider (May 20, 2021).

Regulatory requirements can also disproportionately affect RTO participants and thus impose Commission-jurisdictional costs that consumers in bilateral market regions do not face. For instance, FERC Order No. 841 and Order No. 2222 require RTOs to incorporate market rules, tariff changes, data requirements, and implementation costs to allow storage facilities and other distributed energy resources to participate in wholesale markets.[18] Further, in coordinated transmission planning under Order No. 1000, a utility can also be required to construct a project that it would not have otherwise needed to serve its customers.[19]

Therefore, not only should the Commission verify that the estimates of the savings stemming from RTOs are accurate, but it should also account for the above-cited costs, which are unique to RTO markets. Even if the Commission intends to limit the scope of its analysis in this proceeding to wholesale markets, it should examine *all* costs and *all* benefits created by wholesale rules and regulations—including costs imposed on and benefits conferred to the distribution system by FERC policy, including RTOs.[20] After 22 years of the RTO experiment initiated by Order No. 2000 in December 1999, a comprehensive and independent analysis of RTO net benefits is essential.

B. Section 219 Requires the Commission to Examine the Cost of Delivered Power

Any analysis of the costs and benefits to RTO participation must address the nexus between wholesale and retail rates. No entity (to our knowledge) has studied the extent to which wholesale savings flow through to end-use consumers. FERC must do so in order to comply with Section 219's requirement that transmission incentives "benefit[] consumers by . . . reducing the cost of delivered power …."[21] ELCON initially made this case in our July 2020 comments on the March NOPR:

---

[18] *See* Duke Comments, p. 12.

[19] *See* Ameren Comments, pp. 29-30; PJM TO Comments, pp. 16-17.

[20] *See* Comments of the Electricity Consumers Resource Council, Docket No. RM21-14-000, pp. 10-15 (July 23, 2021).

[21] 16 U.S.C. § 824s(a).

> Congress, in enacting Section 219, issued to the Commission a difficult but essential task—to understand the cost of delivered power and drive it down with the use of transmission incentives. The 2006 and 2012 transmission incentive policies did not meet the challenge. What should have been the first step—to understand how to use transmission incentives to reduce the cost of delivered power—remains outstanding.[22]

To date, there has been little evaluation of the gap between electric wholesale rates and consumer retail rates, which is unfortunate, because understanding the wholesale-retail disconnect is an essential part of any effort at the wholesale level to reduce the cost of delivered power.

According to a study by the Lawrence Berkeley National Laboratory in 2019, retail rates have declined by an annual average of 0.8% between 2007 and 2016 with a divergence between wholesale rates and retail rates growing from 5.4 cents/kWh in 2007 to 8.8 cents/kWh in 2016.[23] Since 2019, there has not been a comprehensive study of whether this trend has continued, and if so, what is driving the growing divergence between wholesale rates and retail rates.

The wholesale-retail disconnect raises a significant question as to how RTO benefits convey to consumers or whether the Transmission Organization Incentive only compensates RTO participants for activities they would have undertaken regardless, without similar compensation to end-use customers. As Chairman Glick noted in his partial dissent to the March NOPR "[b]y piling an additional ROE on top of the already compelling RTO value proposition, we are forcing customers to pay extra for benefits that they would get anyway. That is not just and reasonable."[24]

Commissioner Christie echoed this sentiment in his concurrence to the Supplemental NOPR adding "when transmission costs are already a significant and rising part of consumers' retail bills, ROE adders needlessly burden consumers with

---

[22] March NOPR Joint Comments, p. 10.

[23] Peter Cappers and Sean Murphy, Lawrence Berkeley National Laboratory, "Unpacking the Disconnect Between Wholesale and Retail Electric Rates" (Aug. 2019), https://eta-publications.lbl.gov/sites/default/files/wholesale-retail_price_trends_results_20190822_finalv4.pdf.

[24] March NOPR, Glick *dissenting in part* at P 21 (citation omitted).

substantial additional costs without demonstrable evidence that they actually incentivize the particular action they are aimed at incentivizing."[25] Further, "[i]n addition to the obvious impact on consumer costs, the broader reason for this need for reassessment goes to the very purpose of utility regulation. Utility regulation developed for one primary purpose: to protect captive customers of utility monopolies from the exercise of market power… ."[26]

Without a clear understanding of the nexus between wholesale and retail rates and utility benefits and customer costs, customers may face unjust, unreasonable, or unduly discriminatory rates when required to compensate a utility for incentives that are already accounted for in RTO participation. "[T]o the extent regional transmission planning is a benefit of RTO membership, customers already pay for that benefit through wholesale transmission rates. Requiring ratepayers to pay again via an RTO Participation Adder would require customers to pay excessive, unjust and unreasonable rates… [in asking] the Commission to analyze these issues… the Commission would be compelled to find that there is no basis for authorizing an RTO Participation Adder in addition to the costs that customers currently pay for the benefits of RTO membership."[27]

With transmission investment increasing and generation production costs reportedly decreasing, how do these two factors affect the rate that customers pay? If an independent analysis confirms the savings cited by the Commission or the RTOs themselves, why haven't such savings translated to reduced customer bills? Further, if the conventional wisdom is that the benefits of RTO participation pass through unencumbered to consumers, does it stand to reason that the associated costs, referenced in Section A above, pass through to consumers as well?

II. PERPETUAL ROE ADDERS DO NOT BENEFIT CONSUMERS

---

[25] Supplemental NOPR, Christie *concurring* at P 2 (citation omitted).

[26] *Id*. at P 6.

[27] Supplemental Comments of the Kansas Corporation Commission, Docket No. RM20-10-000, p. 4 (June 25, 2021) (citation omitted).

Regardless of whether an independent study confirms that cost savings from RTO participation is passed down to consumers, a perpetual ROE adder to utilities for simply maintaining business as usual is duplicative and costly for consumers. Incentives should be used on a case-by-case basis to support individual business decisions or specific performance outcomes. As noted in the comments of the State Entities, an additional 50 basis points on top of a return on a rate base that has tripled over the last 15 years, results in an incentive that has tripled as well.[28] If such Transmission Organization Incentives continue in perpetuity, especially during a period when enormous amounts of transmission investment is needed to modernize the grid and transition to politically favored energy resources, consumers will pay even more as utility rate bases continue to expand exponentially. Thus, for example, in a recent advance notice of proposed rulemaking, the Commission emphasized that new policies may be needed in view of the potential for a significant investment in the transmission system in the coming years that will be needed to accommodate anticipated new deployment of renewables and other generation.[29]

In many cases, tailored non-ROE adders are sufficient to protect utilities from business risk while also protecting consumers from unwarranted costs. However, even non-ROE incentives can cost consumers. For example, a utility in an RTO can seek a 50-basis point adder while also seeking an abandonment incentive for any projects canceled at the direction of an RTO. In this situation, a consumer would pay once for the utility's participation and again if a project is abandoned at the sole discretion of that same RTO. Here again, it would appear that RTO participation may introduce costs to consumers that are not present in bilateral markets.

Again, ELCON emphasizes that in order to issue a supportable final rule, the

---

[28] Comments of the State Entities, Docket No. RM20-20-000, p. 16 (June 25, 2021) "The transmission owners in MISO North, for example, had their gross transmission allocated rate base grow from $11.2 billion to $38 billion between 2006 and 2020. As a result, because the rate base tripled over those years, the incentive revenues tripled automatically, as well."

[29] Advance Notice of Proposed Rulemaking on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, Docket No. RM21-17-000, 176 FERC ¶ 61,024 (July 15, 2021).

Commission must make an empirical determination, as required by Section 219(a), that the selected level and duration of the incentives actually benefit consumers "by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion."[30] The Commission must not lose sight of the fundamental purpose behind Section 219. To quote Commissioner Chatterjee, we are concerned the Commission (and, ironically, Commissioner Chatterjee) "has lost sight of the forest for the trees."[31]

CONCLUSION

ELCON appreciates the Commission's efforts to gather information to enable it to more faithfully implement Section 219 of the FPA. As discussed above, ELCON urges the Commission to independently assess the net benefits to end-use consumers of RTO membership as a prerequisite before assigning the level and duration of the Transmission Organization Incentive.

Respectfully submitted,

____

Travis Fisher
President & CEO
Electricity Consumers Resource Council
1101 K Street NW, Suite 700
Washington, DC 20005

Dated: July 26, 2021

[30] 16 U.S.C. § 824s(a).

[31] Supplemental NOPR, Chatterjee *dissenting* at P 6.

Attachment A

July 8, 2021

The Honorable Joe Manchin
Chairman
Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20515

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20510

The Honorable John Barrasso
Ranking Member
Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20510

Re: Independent Study of the Cost of Electricity

Dear Chairmen Manchin and Pallone and Ranking Members Barrasso and Rodgers:

The undersigned organizations respectfully request that you direct the Government Accountability Office (GAO) or other independent oversight organization[1] to undertake a detailed and objective study of the cost of electricity in the United States. Specifically, the policies under the jurisdiction of the Federal Energy Regulatory Commission (FERC)—the federal agency responsible for regulating the nation's wholesale electricity markets—should be evaluated on the basis of their impact on the cost and reliability of delivered power.[2]

We represent a number of America's largest industrial consumers of electricity, as well as residential customers and public policy research organizations. We are concerned that federal regulators have not initiated an independent, empirical study to safeguard a basic

[1] The independence of the analysis is critical. To support an independent process, we recommend that the Independent Market Monitors for each organized market be involved in the analysis.
[2] As part of the Energy Policy Act of 2005, Congress directed FERC to establish a transmission incentive rule "for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power…" See 16 U.S.C. § 824s(a). FERC has not fully addressed this statutory obligation.

element of modern society—reliable and affordable electricity.[3] In order to keep our businesses competitive in both domestic and international markets—and to simply pay our residential electricity bills—we must have reliable, low-cost electricity. To that end, we need regulators who base their policy decisions on objective data and real-world impacts rather than assumptions by advocates.

The study we request should investigate the cost impacts of federal policy regarding market structure, namely the net benefits to retail consumers resulting from the formation of Regional Transmission Organizations (RTOs) and Independent System Operators (collectively "RTOs").[4] At minimum, it should examine how existing RTO market structures have impacted the cost of electricity to retail consumers. We also ask that the study explore the reliability impacts of wholesale market structure and, if resources allow, develop a set of best practices regarding RTO expansion.[5]

More than two decades ago, FERC took ambitious steps to open competitive markets at the wholesale level, with the promise that FERC's promotion of competition would "ensure that electricity consumers pay the lowest price possible for reliable service."[6] Many states also expanded competition at the retail level in search of consumer savings. This was a bold and unprecedented experiment in electricity regulation, but the impacts on customer bills appear to have been mixed.[7] At the wholesale level, the electricity industry now finds itself in a state of limbo[8]—about two-thirds of the country is served by competitive wholesale markets and the rest by traditional, regulated utility monopolies.[9]

[3] We note that FERC commissioned a study of the benefits of wholesale competition in the Entergy region, which was published in a 2010 report. See https://www.ferc.gov/sites/default/files/2020-05/spp-entergy-cba-report.pdf. However, that work was an estimate of *future* benefits, and FERC has not undertaken a study of actual (historical) RTO costs and benefits to consumers. To our knowledge, no one has studied the impact of RTOs on customer bills.

[4] When members of this group asked FERC for a meeting on this issue, FERC staff replied that "the Commission is not inclined at this time to commission that type of broader study."

[5] Nine former FERC Chairmen and Commissioners wrote to FERC recently to push for RTO expansion. See *FERC should expand organized markets across the US, former chairs and commissioners say*, June 3, 2021, available at https://www.utilitydive.com/news/ferc-should-expand-organized-markets-across-the-us-former-chairs-and-commi/601187/.

[6] Order No. 2000, *Regional Transmission Organizations*, 89 FERC ¶ 61,285 (1999), p. 1.

[7] See *The U.S. Electricity Industry After 20 Years of Restructuring*, available at https://www.nber.org/system/files/working_papers/w21113/w21113.pdf. "While electricity restructuring has brought significant efficiency improvements in generation, it has generally been viewed as a disappointment because the price-reduction promises made by some advocates were based on politically-unsustainable rent transfers. In reality, the electricity rate changes since restructuring have been driven more by exogenous factors—such as generation technology advances and natural gas price fluctuations—than by the effects of restructuring."

[8] Retail competition policy is also in a state of limbo; however, the impacts of retail competition are not the focus of this letter.

[9] There are a variety of market structures in the U.S electricity industry. For example, many wholesale markets include utilities subject to traditional monopoly regulation at the state level. Many customers are also served by not-for-profit municipal or cooperative utilities. In some parts of the U.S., federal power

With no guidance from federal regulators, states and regions are independently exploring the impacts of RTOs.[10] Today, battles over wholesale competition are taking place across the country, principally between incumbent utilities and a growing chorus of consumers who want more choice, better access to new technologies, or less exposure to the ratepayer risks associated with monopoly utilities.[11]

Some utilities have responded to consumer efforts to expand wholesale competition by launching campaigns to persuade customers that RTOs are a "Really Terrible Option" and will raise their rates.[12] The RTO debate has become controversial, yet the assertions made by both sides can and should be examined objectively using real-world data. For example, if both sides are right about the economics—that is, if there are substantial production cost savings from RTOs at the wholesale level, yet retail customer bills in RTO regions continue to climb—then Congress, FERC, and the states owe it to consumers to understand the disconnect and address it.[13]

The study we request is long overdue. As GAO reported in 2008, "there is no consensus about whether RTO markets provide benefits to consumers or how they have influenced

marketing administrations perform the wholesale market function. We think the variation among market structures in the U.S. presents a great opportunity to study the pros and cons of different arrangements.

[10] For example, see the ongoing proceedings in:
North Carolina: https://files.nc.gov/ncdeq/climate-change/clean-energy-plan/2020-NERP-Final-Report.pdf
South Carolina: https://www.scstatehouse.gov/sess123_2019-2020/bills/4940.htm
Colorado: https://leg.colorado.gov/bills/sb21-072
Nevada: https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8201/Overview
Missouri: https://psc.mo.gov/Electric/PSC_Opens_Electric_Working_Docket, and
Oregon: https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/12082.

[11] See, e.g., *More Vogtle Delays; Experts Target Mid-2022 Startup at Earliest*, June 8, 2021, available at https://www.powermag.com/more-vogtle-delays-experts-target-mid-2022-startup-at-earliest/. "The [Vogtle] project already is five years beyond its originally forecast startup date of 2016, and analysts estimate its final cost—somewhere between $25 billion and $30 billion—will be twice the originally expected price tag." See also *Ex-SCANA CEO pleads guilty to fraud in SC nuclear fiasco: 'I'm sorry it's come to this'*, June 7, 2021, available at https://www.postandcourier.com/news/local_state_news/ex-scana-ceo-pleads-guilty-to-fraud-in-sc-nuclear-fiasco-im-sorry-its-come/article_6687ce9c-751c-11eb-8678-07d1d205c4db.html. And *Exposing the utility playbook: Ratepayers are stuck paying the bill for utility corruption*, May 27, 2021, available at https://www.utilitydive.com/news/exposing-the-utility-playbook-ratepayers-are-stuck-paying-the-bill-for-uti/600784/.

[12] See *Duke-supported group launches campaign against North Carolina bill to examine wholesale market reform*, May 24, 2021, available at https://www.utilitydive.com/news/duke-supported-group-launches-campaign-against-north-carolina-bill-to-poten/600636/.

[13] This phenomenon, known as the wholesale-retail disconnect, was identified in the Department of Energy's 2017 *Staff Report to the Secretary on Electricity Markets and Reliability*, available at https://www.energy.gov/sites/default/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf (Section 6.2). See also Lawrence Berkeley National Laboratory, *Unpacking the Disconnect Between Wholesale and Retail Electric Rates* (2019), available at https://emp.lbl.gov/publications/unpacking-disconnect-between.

consumer electricity prices."[14] Despite the facts that (1) there is substantial evidence that RTOs reduce production costs[15] and (2) FERC now tracks "performance metrics"[16] for RTOs, these lines of analysis are incomplete and do not address the central question of the impact of RTOs on customer bills.[17]

Further, this is not a subject of historical trivia. Three trends make it more important than ever that policymakers investigate the impacts of wholesale market policies on retail customers now:

1) RTO expansion (both voluntary and mandatory) is under consideration at the state, regional, and federal level,
2) State and federal policies (as well as private sector demand from individuals and corporations) are driving changes in the resource mix that will require large increases in spending on transmission infrastructure, and
3) Increased electrification of the economy places increasing pressure on the electricity system to satisfy new demand while keeping rates affordable.

With these trends in mind, we respectfully request that you direct the GAO or other independent organization to examine the cost and reliability impacts of wholesale markets. Regulators at FERC and the states cannot fulfill their statutory duties without understanding the fundamental relationship between market structure and the cost and reliability of electricity.

This is not a partisan issue—it is a matter of good governance, regulatory oversight, and, ultimately, the economic health of the nation. America's families and businesses cannot thrive without reliable, low-cost electricity.

Thank you for your consideration.

Most Respectfully,

[14] See GAO, *Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance* (2008), available at https://www.gao.gov/assets/gao-08-987.pdf. A Department of Justice discussion paper, also released in 2008, concluded, "As market institutions develop there is reason to believe that investment decisions will be made efficiently and that consumers will benefit in the form of lower prices in the long run." See *Electricity Restructuring: What Has Worked, What Has Not, and What is Next* (2008), available at https://www.justice.gov/atr/electricity-restructuring-what-has-worked-what-has-not-and-what-next.

[15] See, e.g., *Imperfect Markets versus Imperfect Regulation in U.S. Electricity Generation* (2017), available at https://www.nber.org/system/files/working_papers/w23053/w23053.pdf.

[16] See *RTO/ISO Performance Metrics*, available at https://www.ferc.gov/industries-data/electric/electric-power-markets/rtoiso-performance-metrics. The most recent Common Metrics report was issued in 2016 using data available for a period ending in 2014.

[17] *As 9 Ex-FERC commissioners tout organized markets, we need facts, not propaganda on the benefits*, June 2021, available at https://www.utilitydive.com/news/as-9-ex-ferc-commissioners-tout-organized-markets-we-need-facts-not-propa/601890/.

Attachment A

Electricity Consumers Resource Council
Energy Choice Coalition
Public Citizen
Association of Businesses Advocating for Tariff Equity
Carolina Utility Customers Association
Conservative Coalition for Climate Solutions
Conservative Energy Network
Heritage Action for America
Industrial Energy Consumers of Pennsylvania
Louisiana Energy Users Group
R Street Institute

Cc:
The Honorable Richard Glick, Chairman
The Honorable Neil Chatterjee, Commissioner
The Honorable James Danly, Commissioner
The Honorable Allison Clements, Commissioner
The Honorable Mark Christie, Commissioner
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, D.C. 20426