

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Third-Party Provision of Ancillary  
Services; Accounting and Financial  
Reporting for New Electric Storage  
Technologies

Docket Nos. RM11-24-000 and AD10-13-  
000

**COMMENTS OF THE  
ELECTRICITY CONSUMERS RESOURCE COUNCIL  
(ELCON)**

The Electricity Consumers Resource Council (ELCON) appreciates the opportunity to comment on the Commission's June 22, 2012 *Notice of Proposed Rulemaking* (NOPR) to (i) revise Commission policies governing the sale of ancillary services at market-based rates, (ii) require transmission providers outside of the organized energy markets to explain in their tariffs how they will determine regulation and frequency response reserve requirements, taking into account the speed and accuracy of the resources, and (iii) amend FERC's Uniform System of Accounts and its annual and quarterly forms, statements and reports to revise accounting for and reporting transactions involving energy storage technologies.

ELCON supports the proposed changes relating to ancillary services and anticipates that they will help lower barriers to the sale of these services outside of the organized markets and will increase transparency for regulation and frequency response reserve requirements. The NOPR represents an incremental step, but a useful one, toward the overall objective of ensuring that all resources providing service have access to competitive markets and are compensated in a just and reasonable and not unduly discriminatory manner.

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all organized markets and other regions throughout the United States. ELCON previously participated in this docket, submitting comments on FERC's June 2011 Notice of Inquiry (NOI).

### **ELCON COMMENTS**

ELCON broadly supports the NOPR's proposed reforms respecting ancillary services. ELCON agrees that the proposed revisions to the market based rate policies should provide greater opportunities for sellers of ancillary services to have access to bilateral markets and in particular public utility transmission providers. Further, the proposed obligations on transmission providers to identify how they will account for the speed and accuracy of resources used to provide regulation and frequency response when establishing ancillary services requirements for customers should facilitate efforts by transmission customers who choose to self-supply ancillary services. This essential step will extend the principles of Order 755 – compensating frequency regulation for the true value it provides.

These comments do not address the proposed accounting and reporting requirements for energy storage devices.

#### **I. MARKET POWER FOR ANCILLARY SERVICES**

FERC is proposing to revise its policies for analysis of market power in the context of the sale of ancillary services at market based rates to public utility transmission providers. The Commission's *Avista* policy authorizes the sale of certain ancillary services at market-based rates without the showing of a lack of market power except under specified circumstances. For example, a third-party may not sell ancillary services at market-based rates to a public utility that is purchasing ancillary services to

satisfy its own OATT requirements to offer ancillary services to its own customers. In that situation, a potential seller must provide a market power study demonstrating a lack of market power for the particular ancillary service in the particular geographic market.

The Commission notes in the NOPR that comments on the NOI revealed that certain information needed to perform such a market power study often is not available. In such cases, the effect of the *Avista* policy is to constrain sales of ancillary services to public utility transmission providers outside of the RTO and ISO markets. ELCON agrees that the *Avista* policy can constrain and complicate opportunities for competitive sales of ancillary services.

The Commission consequently proposes to revise its regulations to provide that sellers passing existing market-based rate analyses in a given geographic market should be granted a rebuttable presumption that they lack horizontal market power for sales of Energy Imbalance and Generator Imbalance ancillary services in that market. As a result, sellers who pass the existing market power screens would not be subject to the sales restrictions otherwise required under the *Avista* policy. In addition, there will be a rebuttable presumption that a seller of Operating Reserve-Spinning, Operating Reserve-Supplemental, Reactive Supply and Voltage Control, or Regulation and Frequency Response services lacks horizontal market power with respect to sales of the ancillary service in question if the amount of capacity in MWs (or, as applicable, MVARs) that it can dedicate to providing the ancillary service in the relevant geographic market, taking into account any reported historical locational requirements, is no more than 20 percent of the relevant reported aggregate requirement for that ancillary service as reported pursuant to § 37.6(k) of the Commission's Regulations.

ELCON supports the proposed revisions as they should reduce barriers to ancillary service providers and increase the supply of needed ancillary services in a timely and cost-effective manner. ELCON does not see any technical requirements or limitations associated with ancillary services that would impact the appropriateness of the proposed revisions. ELCON further agrees that the proposed optional market

screen would be consistent with the market power principles traditionally applied by the Commission

The NOPR also proposes alternative mechanisms for cost-based mitigation of any threshold finding of market power in ancillary services. One such mechanism would permit sellers unable or unwilling to perform the market power study for ancillary services to propose price caps at or below which sales of Regulation and Frequency Response, Reactive Supply and Voltage Control, Operating Reserve-Spinning, or Operating Reserve-Supplemental service would be allowed where the purchasing entity is a public utility purchasing ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers. Alternatively, a seller unable to perform a market power study for ancillary services could rely on competitive solicitations meeting certain minimum requirements in order to make sales in geographic markets where the seller has been granted market-based rate authority for sales of energy and capacity. ELCON does not object to the proposed alternatives provided that they in fact are promulgated as alternatives to the proposed revisions to the market power analysis, discussed above, that form the heart of the NOPR. Price caps and competitive solicitation requirements may not be appropriate for all circumstances, but they can serve as an option for mitigating potential market power issues.

## **II. RESOURCE SPEED AND ACCURACY IN DETERMINATION OF REGULATION AND FREQUENCY RESPONSE RESERVE REQUIREMENTS**

The NOPR proposes to require each public utility transmission provider to include provisions in its OATT explaining how it will determine Regulation and Frequency Response reserve requirements in a manner that takes into account the speed and accuracy of resources used and include a description of how the transmission provider would make adjustments to the capacity requirement when a customer opts to purchase from third-parties or self-supply its requirements using resources with speed and accuracy characteristics that differ from the set of resources otherwise being used

for Regulation and Frequency Response Service. The NOPR makes a preliminary finding that a requirement on transmission providers to account for resource speed and accuracy in determining regulation and frequency response reserve requirements is needed to prevent potential undue discrimination against customers that choose to meet their own needs for that ancillary service. It does not mandate a method for meeting this requirement, but proposes that FERC evaluate those determinations on a case-specific basis.

ELCON also supports this aspect of the NOPR. It will help address, in regions outside of the current organized markets, a key issue that led to the issuance of Order 755 – that faster-responding resources have the potential to lower frequency regulation capacity requirements, thereby improving market efficiencies. The information that transmission providers will release should help protect against the risk that they could engage in undue discrimination by requiring customers to procure a different amount of regulation reserves than the particular speed and accuracy characteristics of the resources in question justify.

NOTICES AND COMMUNICATIONS

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Respectfully submitted,

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Dated: September 7, 2012

**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.:            September 7, 2012

/s/ W. RICHARD BIDSTRUP  
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