

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Modernizing Wholesale Electricity
Market Design**)

Docket No. AD21-10-000

COMMENTS OF THE ELECTRICITY CONSUMERS RESOURCE COUNCIL

The Electricity Consumers Resource Council (ELCON) appreciates the opportunity to provide comments in the above-captioned docket on modernizing wholesale electricity market design in response to the April 21, 2022 Order Directing Reports¹ issued by the Federal Energy Regulatory Commission (FERC or Commission) and the October 18, 2022 responses by each of the FERC-jurisdictional Regional Transmission Organizations and Independent System Operators (RTOs/ISOs). The Commission and the RTOs/ISOs identify many significant and timely policy questions related to wholesale electricity market design, and ELCON supports the Commission’s renewed interest in examining wholesale electricity markets.

I. ELCON’s Interest in this Proceeding

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 manufacturing community. ELCON members own and operate hundreds of major facilities and are significant consumers of electricity within the footprints of all organized markets and other regions throughout the United States. Reliable electricity supply at just and reasonable rates is essential to the operations of ELCON’s members. ELCON members therefore have a strong interest in the ongoing work of the Commission in modernizing wholesale electricity market design.

ELCON members are extremely sensitive to the cost and reliability of electricity service. Last year, ELCON joined with organizations representing residential customers and public policy research organizations in calling for Congress to undertake a detailed and objective study

¹ *Modernizing Wholesale Electricity Market Design*, Order Directing Reports, 179 FERC ¶ 61,029 (2022) (“Order Directing Reports”).

of the cost and reliability of electricity nationwide.² A comprehensive study of the cost and reliability of electricity would necessarily entail an assessment of whether—at the wholesale level—the Commission’s policies are ensuring reliable electricity *at least cost*, which is critical to keeping American industry competitive in domestic and international markets. ELCON reiterates the need for such an assessment, which should also address the impacts of federal subsidies on FERC-jurisdictional markets and the cost and reliability issues associated with achieving the policy objectives of state resource requirements.

II. Summary of ELCON Comments

Below, ELCON responds to the questions posed by the Commission in the Order Directing Reports and the answers provided by RTOs/ISOs that are most pertinent to the interests of industrial consumers. We have identified the relevant numbered question from the Order Directing Reports where applicable.

ELCON agrees that the changing resource mix raises concerns regarding electricity market design and that further work in this area is needed. Managing the increased penetration of variable energy resources will require increases in system flexibility—and perhaps new categories of products in Energy and Ancillary Service (E&AS) markets—if we are to maintain an adequate level of system reliability.

At the same time, the Commission and the industry will need to address the costs associated with procurement of these services, not just to contain overall costs on behalf of consumers but to ensure the justness and reasonableness of the allocation of those costs. The Commission and RTOs/ISOs should consider system needs through the ratemaking lens of *cost causation*. In the case of each new product or service, the proximate causer of the system need (such as flexibility, ramping, increases in operating reserves, etc.) should bear the cost of the product or service designed to address that need.

III. The Electricity Industry Is at a Crossroads

Regarding the transition underway in the US electricity industry, we find ourselves at a critical juncture, and there appear to be two distinct paths policymakers could take. One

² See ELCON, *et al.*, *Letter to Leadership of the U.S. Senate Committee on Energy and Natural Resources and the U.S. House of Representatives Committee on Energy and Commerce* (July 8, 2021), available at <https://elcon.org/independent-study-of-the-cost-of-electricity/> (requesting independent study of electricity cost).

involves embracing open-ended market competition and allowing the free interactions of buyers and sellers to chart our course. The other involves heavy intervention in market competition, either by rejecting electricity markets altogether (and returning to cost-of-service ratemaking) or by centrally planning “market” outcomes—through mandates, subsidies, or both—to achieve results that would not materialize in a voluntary market setting.

ELCON favors the voluntary, and perhaps slower but more durable, transition that would emerge if policymakers chose the first path because such a transition would be manageable in terms of ensuring reliable system operations, less costly, and more directly guided by consumer preference. To be clear, there is a very real transition happening, and it will take place whether by market forces or by government dictate. Corporate buyers are investing in an enormous amount of clean energy resources—more than 30 GW in the past three years³—and will continue to make such investments. But in a voluntary transition, private actors are also afforded the optionality to achieve environmental goals at their own pace and at a cost they find reasonable. Such decisions cannot be made unilaterally and equitably for an entire population and should not be forced on any unwilling consumer.

ELCON is concerned about the compulsory, and perhaps faster but more erratic, transition that would occur if policymakers chose the second path and embraced the central planning of the electricity sector, whether by command-and-control regulation or by outcome-oriented mandates and subsidies within an ostensible “market” context. Far from easing regulatory uncertainty or driving durable outcomes, this second path is subject to all the same fundamental market uncertainties as the first path, but, in observable practice, adds a significant layer of policy uncertainty.⁴

As the Hogan/Harvey Paper⁵ correctly points out, many of these policy decisions fall outside the Commission’s purview. However, the Commission could help policymakers embrace a market-oriented future in several ways. First, the Commission should continue to

³ See Clean Energy Buyers Association, *Deal Tracker*, available at <https://cebuyers.org/deal-tracker/>.

⁴ As we have seen with the last two Presidential administrations, short-term and single-party policies generate enormous policy uncertainty. For example, contrast the coal-sector bailout schemes devised by the Trump administration against the \$370 billion in subsidies for preferred energy sources in the Inflation Reduction Act. The energy policy pendulum can swing aggressively in either direction.

⁵ See Response of the New York Independent System Operator, Inc. to Order Directing Reports, Docket No. AD21-10-000 at Attachment A (filed Oct. 18, 2022). The Hogan/Harvey Paper was attached to the New York Independent System Operator’s submission in this docket.

champion consumer choice (as it has with rulemakings that enable increased market participation⁶) and ensure that the costs of policy decisions outside its jurisdiction (or the environmental goals of private companies) are not socialized to all consumers. Second, FERC should use its direct interactions with federal and state policymakers to emphasize a pro-market and consumer-driven approach.⁷ Finally, the Commission should sharpen its public-facing messaging to reinforce its historic role as a resource-neutral consumer protection agency.⁸ These changes would help FERC reestablish itself as an impartial electricity market referee working on behalf of consumers, as required by the Federal Power Act (FPA).⁹

IV. The Commission Should Broaden the Scope of its Inquiry

The Commission's Order Directing Reports required that each RTO/ISO submit a report that describes current and future RTO/ISO system needs given changing resource mixes and load profiles. ELCON commends the Commission on its inquiry; however, we note that the framing of the questions does not adequately represent the consumer perspective and does not provide a sufficiently wide scope of analysis to consider consumer impacts.

It is important to remember why we are here. The Commission exists to carry out the statutory duties assigned to it by Congress,¹⁰ and in the case of RTO/ISO market design, to implement the FPA. Notably absent from the Order Directing Reports is any discussion of the

⁶ See *Electricity Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018); *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020).

⁷ Many states are increasing their mandatory renewable portfolio or clean energy standards, which are at odds with an open-ended market approach. The National Conference of State Legislatures states, "Since 2018, 15 states, two territories, and Washington, D.C., have passed legislation to increase or expand their renewable or clean energy targets." See National Conference of State Legislatures *State Renewable Portfolio Standards and Goals* (Aug. 13, 2021), available at <https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx>.

⁸ As one tangible example, the Commission should reconsider its choice to welcome viewers of its website homepage to the text "Shaping the Grid of the Future" and, instead, limit its self-description to the text that follows: "FERC ensures reliable, safe, secure & economically efficient energy for consumers at a reasonable cost."

⁹ See generally *In re FirstEnergy Sols. Corp.*, 945 F.3d 431 (6th Cir. 2019) ("Under the FPA, Congress sought to protect energy markets and consumers (principally from monopolistic public utilities) . . ."); *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016) (It is long-established that the "primary aim [of the FPA] is the protection of consumers from excessive rates and charges.") (citing *Mun. Light Bds. of Reading & Wakefield v. FPC*, 450 F.2d 1341, 1348 (D.C. Cir. 1971)).

¹⁰ See *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002) ("As a federal agency, FERC is a 'creature of statute,' having 'no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress.'") (citing *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001)).

stated goals of the RTO/ISO reforms enacted in Order No. 2000, which were originally designed to satisfy the FPA by using market competition to achieve an adequate level of reliability at least cost to consumers. Specifically, as the Commission clearly stated in the summary of Order No. 2000, “The Commission’s goal is to promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service.”¹¹

This proceeding is a perfect opportunity to explore whether—and if so, how—the policy goals outlined by the Commission 23 years ago in Order No. 2000 have been achieved. As the Commission noted in Order No. 2000, “The full 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 At this point, the track record with existing institutions is nothing if not sufficiently long. FERC has employees on staff who were born, raised, and earned graduate degrees in the time since Order No. 2000 was issued.

ELCON agrees with Commissioner Danly that “What is needed here is a sincere effort to take the lessons learned in our markets and reevaluate whether and how those markets work.”¹³

Commissioner Danly states:

A single, basic set of questions must be at the heart of our examination: are price signals providing the proper incentives for the orderly entry and exit of the correct type and quantity of generation to ensure resource adequacy and reliability? If not, why not, and what needs to change?¹⁴

Although ELCON appreciates the parsimony of Commissioner Danly’s statement, we note that the concept of cost is absent. The Commission’s task is not merely to ensure resource adequacy and reliability. If reliability were the Commission’s only concern, it could establish markets that vastly over-procure resources and guarantee electric reliability at very high cost to consumers. But the Commission’s task is more difficult and profound—it is to ensure an

¹¹ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809, 810 (January 6, 2000) (“Order No. 2000”); *see also id.* at 811 (“Competition 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.”); *id.* at 829 (“[T]he widespread development of RTOs will improve the performance of electricity markets in several ways and consequently lower prices to the Nation’s electricity consumers.”).

¹² *Id.* at 829.

¹³ Order Directing Reports (Danly, Comm’r, concurring at P 2).

¹⁴ *Id.*

adequate level of reliability *at least cost to consumers*. We urge the Commission to remain grounded in the least-cost, consumer-focused framework that motivated its reforms in Order No. 2000.

ELCON supports the Commission’s decision not to apply a “one size fits all” solution to market reforms. Each region faces different resource and policy environments and should be afforded deference in addressing their own market dynamics. By the same token, the multitude of approaches taken by the different states and regions across the country offers a natural experiment by which we can analyze diverse market constructs and judge which elements have proven most beneficial to consumers. Indeed, the much-maligned “patchwork”¹⁵ of jurisdictions and federal, regional, and state policies that make up the US power sector—despite its frustrating complexity—offers a tremendous opportunity to study the real-world impacts of different policy approaches and determine which have achieved the best results for consumers. ELCON encourages FERC to perform the type of ex-post analysis that could highlight a set of best (or worst) practices when it comes to ensuring an adequate level of reliability at least cost to consumers.¹⁶

As the Commission advances its inquiry in this docket, ELCON urges it to broaden its scope and consider fundamental policy questions, such as:

- (1) What external conditions are needed to support wholesale electricity markets?
 - a. What degree of out-of-market intervention would render wholesale electricity markets unjust and unreasonable?
 - b. In the future, if most revenues for supply resources are derived from subsidies rather than the market, will wholesale electricity markets still yield socially beneficial results?¹⁷

¹⁵ See Infrastructure Report Card, *Energy* (2021), available at <https://infrastructurereportcard.org/wp-content/uploads/2020/12/Energy-2021.pdf>.

¹⁶ This inquiry could also be performed by an independent federal oversight organization, such as the Government Accountability Office or the Congressional Research Service.

¹⁷ See Kenneth Anderson, et al., *Handbook on Electricity Markets*, Chapter 8 at 24 (2021), available at <https://www.e-elgar.com/shop/usd/handbook-on-electricity-markets-9781788979948.html> (“Another critical assumption underlying the economic theory supporting the invisible hand principle of competitive markets is convexity. The fundamental theorems of welfare economics set out conditions under which competitive markets are efficient. With convex operating costs functions then, *under competitive conditions*, market prices would equate marginal costs and marginal benefits ensuring that each consumer’s surplus and each producer’s surplus is maximized, and that the maximum social welfare is attained at market equilibrium.”) (Emphasis added.) We ask:

(2) To what extent does underlying resource availability (or other energy policy) inform the justness and reasonableness of wholesale electricity market outcomes?

- a. A shortage of natural gas in Europe has forced policymakers there to reconsider the appropriateness of allowing the high cost of natural gas (as the marginal resource) to establish wholesale prices for all resources and for consumers.¹⁸ Would sufficiently high natural gas prices in the US—particularly if driven by artificially limited supply—render wholesale electricity market prices unjust and unreasonable?¹⁹

(3) What information would be necessary for the Commission to find that RTOs/ISOs are the only just and reasonable wholesale market structure?

- a. When Order No. 2000 was issued, the expectation was that every region in the US would form an organized wholesale electricity market.²⁰ That has not happened. What information would the Commission need to deem non-organized market (vertically integrated) regions in violation of the FPA?
- b. Alternatively, how would the Commission establish that RTOs/ISOs are superior to the alternative—that is, reject the hypothesis that there is no difference in consumer outcomes between market structures?²¹

Can market prices reflect true marginal costs if subsidies like production tax credits are embedded in the marginal cost-based offers of a variety of generators, including intermittent and nuclear resources?

¹⁸ See Bloomberg, *Europe's Benchmark Power Price Breaks 1,000 Euros for First Time* (Aug. 29, 2022), available at <https://www.bloomberg.com/news/articles/2022-08-29/europe-s-benchmark-power-price-breaks-1-000-euros-for-first-time>.

¹⁹ For further discussion of the potential impact of the Commission's draft certification policy on electric reliability and prices, see ELCON, *Comments of the Electricity Consumers Resource Council* (Apr. 25, 2022), available at <https://elcon.org/comments-of-the-electricity-consumers-resource-council-elcon-docket-no-pl18-1-000-certification-of-new-interstate-natural-gas-facilities-and-docket-no-pl21-3-000-consideration-of-greenhouse-ga/>.

²⁰ Specifically, the Commission stated, "As a result of this voluntary approach, we expect jurisdictional utilities to form RTOs. If the industry fails to form RTOs under this approach, the Commission will reconsider what further regulatory steps are in the public interest." Order No. 2000, 65 Fed. Reg at 811. Further, "to facilitate RTO formation in all regions of the Nation, the Commission will sponsor and support a collaborative process to take place in the Spring of 2000. Under this process, we expect that public utilities and non-public utilities, in coordination with state officials, Commission staff, and all affected interest groups, will actively work toward the voluntary development of RTOs." *Id.* at 812.

²¹ As a 2005 ELCON report noted, "Once conditions for true competition have been established, market prices should reflect the interaction between suppliers and the demand side. But in the future competitive market, if the sum of prices of the unbundled elements of electric service is higher than the bundled price, or if market clearing prices exceed rates based on cost of service over the long term, then the promise of competition has failed." See ELCON, *Problems in the Organized Markets* (Apr. 2005), available at <https://elcon.org/wp->

- c. What metrics could the Commission use to justify approving one type of market structure over another (with or without a mandatory capacity market, with or without an Operating Reserve Demand Curve (ORDC), etc.)?

V. Issues Raised in the Order Directing Reports

The Commission asks in Question 1, “What system needs (type and magnitude) has the RTO/ISO experienced that are attributable to changes in the resource mix and customer load profiles?” ELCON supports a full exploration of this question. In particular, the Commission and RTOs/ISOs should attempt to parse the two drivers listed—changes in the resource mix and changes in customer load profiles—to gauge how each has impacted system needs. Pursuant to the bedrock ratemaking principle of cost causation, such analysis will be necessary to allocate equitably the costs of any new RTO/ISO products needed to address changing system needs.

Put differently, load should not be allocated the costs of new energy and ancillary service products created to accommodate the changing resource mix. Instead, the costs should be allocated fairly among producers. For example, regarding the cost of operating reserves, ELCON has argued: “the responsibility of each unit to provide operating reserves should depend directly on its forced outage rate. In other words, the units with low outage rates would be required to provide or pay much less for operating reserves than would the units that have very high outage rates.”²² Resource-neutral market rules should require producers with high forced outage rates (or lower effective load carrying capability) to bear more of the cost of reserves.²³

content/uploads/ELCONSpecialReportApril20051.pdf. ELCON reiterates this point in the form of a question: How does the Commission know whether it’s delivering on the promise of competition?

²² ELCON, *Competition Can Enhance Bulk-Power Reliability*, 1997 <https://elcon.org/profiles-electricity-issues-number-19-competition-can-enhance-bulk-power-reliability/>.

²³ A recent paper prepared for Advanced Energy Economy highlights this point: “A common assumption is that the Equivalent Forced Outage Rate Demand (EFORD) is a reasonable proxy for the impact that these generators will have on the need for reserves. A system with homogeneous resources with EFORD of 10% would presumably need to carry reserves of 10% to compensate for that level of performance. However, that is only true if the system has perfect outage characteristics of 10% of the fleet offline in all hours of need. Random forced outages will lead to some hours having many more megawatts offline and some hours with less. Reserves of 10% would not protect reliability in hours with more outages. Generally reserve margin studies account for this, but the impact does not get assessed to the thermal fleet directly; it gets socialized by load on the demand side.” The same analysis applies to the availability of all resources on the system—less availability implies more responsibility for the cost of carrying higher levels of reserves. See Advanced Energy Economy, *Accrediting Resource Adequacy Value to Thermal Generation* (March 30, 2022), available at <https://info.aee.net/hubfs/Accrediting%20Resource%20Adequacy%20Value%20to%20Thermal%20Generation-1.pdf>.

Questions 2 and 3 deal with anticipating system needs 5 to 10 years out. Question 2.2 asks, “What time horizons, such as times of day (e.g., minutes, hours), days, or seasons, are expected to present the biggest challenges with respect to net load variability and uncertainty? Why?” This relates in part to Question 9, which concerns capacity markets. ELCON notes that only one respondent cited the phenomenon known as dunkelflaute—“a prolonged period of high sky cover and low wind...”²⁴ Dunkelflaute could also be considered an energy adequacy²⁵ problem when there is ample installed capacity but the weather is not cooperating. The need to address the issue of dunkelflaute stands out to ELCON as by far the most important system need introduced by high penetrations of variable energy resources.²⁶ The challenges posed by the changing resource mix may not be solvable in E&AS markets alone—there appears to be a need to remunerate on-demand capacity to cover the days or weeks characterized by dunkelflaute.

The Commission asks in Question 3, “What new system needs not already described, if any, does the RTO/ISO expect to emerge over the next five years? Over the next 10 years? What are the drivers of those new system needs? Are those new system needs quantifiable, and if so, please provide information on how you have quantified those needs.” ELCON underscores this question and encourages each RTO and ISO to quantify the drivers of system needs for the purposes of equitable cost allocation. In fact, industrial customers’ support for the E&AS reforms discussed in this docket likely will hinge on whether (and how) the costs of the reforms will be allocated to load.

The Commission asks in Question 4, in part, “To what extent does the risk of disorderly retirements of resources with capabilities that are needed to address such needs (e.g., fast ramping dispatchable resources) increase if E&AS markets are not reformed?” ELCON notes that relying

²⁴ Report of Southwest Power Pool, Docket No. AD21-10-000 at 37.

²⁵ See North American Electric Reliability Corporation, *Ensuring Energy Adequacy with Energy Constrained Resources* (Dec. 2020), available at <https://www.nerc.com/comm/RSTC/ERATF/ERATF%20Energy%20Adequacy%20White%20Paper.pdf>.

²⁶ See North American Electric Reliability Corporation, 2022 Summer Reliability Assessment (May 2022) (2022 Summer Assessment), at 9-11, available at https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf (describing potential reliability challenges ahead of Summer 2022 within the Western Interconnection). According to the 2022 Summer Assessment, “[t]hroughout the Western Interconnection, [Balancing Authorities] rely on flexible resources to support balancing the increasingly weather-dependent load with the variable energy generation within the resource mix.” *Id.* at 9. NERC explains that transfers of flexible capacity among BAs are used to manage intermittency in normal conditions, but these transfers can be limited during widespread events, such as extreme heat, leading to risks of load interruption. *Id.*

on E&AS markets to stave off retirements of fast ramping dispatchable resources implies that policymakers view E&AS markets as a mechanism to ensure resource adequacy. That is certainly the case in electricity markets outside FERC’s jurisdiction.²⁷ Consequently, if the Commission wants to reform E&AS markets to support resource adequacy, it should do so with careful study of the experience to date in other markets²⁸ while keeping its focus on the well-being of consumers rather than producers.²⁹

Question 5 discusses reforms to stakeholder processes. ELCON emphasizes its support for better representation of the consumer perspective at RTOs/ISOs. As we noted in a recent coalition letter to FERC, “RTO and ISO decision-making processes do not always adequately consider the voices of customers, innovators, and other new entrants to wholesale electricity markets. The processes often favor incumbents, which have resulted in problems with transparency, accountability, and market performance.”³⁰ Here, we reiterate the need for further consideration of the consumer viewpoint in RTO/ISO stakeholder processes.

The Commission asks in Question 6.4, “Regarding E&AS products for which the RTO/ISO is contemplating reforms, to what extent will the reforms ensure that the E&AS products direct compensation to resources that contribute to satisfying the particular system need(s) the product is designed to address and not to resources that do not make such contributions?” ELCON recognizes the difficulty in equitably incentivizing firmness or flexibility in the context of markets based on locational marginal prices (LMP). However, if we want to incentivize firmness and flexibility, we should establish a price or premium for those attributes

²⁷ See The Brattle Group, *ERCOT Investment Incentives and Resource Adequacy*, (June 1, 2012), *available at* https://www.ercot.com/files/docs/2013/01/03/brattle_ercot_resource_adequacy_review_2012_06_01.pdf.

²⁸ See e.g., Public Utility Commission of Texas, *PUC Approves Major Improvements to Electric Grid Reliability*, News Release (Dec. 16, 2021), *available at* https://www.puc.texas.gov/agency/resources/pubs/news/2021/puctx-rel-market-redesign_12162021.pdf; see also Public Utility Commission of Texas, Project No. 52373, *Review of Wholesale Electric Market Design, Approval of Blueprint for Wholesale Market Design and Directives to ERCOT*, at p 4 (Setting the high system-wide offer cap at \$5,000 per MWh and explaining that “[a]fter the extreme weather events of February 2021, the price cap of \$9,000 per MWh has proven to be a liability on market participants and customers of ERCOT.”), *available at* https://interchange.puc.texas.gov/Documents/52373_336_1180125.PDF.

²⁹ As Adam Smith said in *The Wealth of Nations*, “Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer.” See Online Library of Liberty, *Adam Smith on consumption as the only end and purpose of production*, *available at* <https://oll.libertyfund.org/quote/adam-smith-consumption-only-purpose-production>

³⁰ See ELCON, *Consumer Trades FERC Letter Calls for Competitive Markets and Better RTO Governance* (June 12, 2019), *available at* <https://elcon.org/consumer-trades-ferc-letter-calls-for-competitive-markets-and-better-rto-governance/>.

instead of requiring firm and flexible resources to compete head-to-head in energy markets against non-firm and inflexible resources.³¹ As RTOs/ISOs explore supplementing LMP-based energy markets with separate products or performance adders to incentivize firmness or flexibility, we ask only that the costs of such reforms not be exclusively assigned to load.

The Commission asks in Question 7.1, “How does the RTO/ISO expect to meet challenges related to forecasting customer loads and variable energy resource outputs?” We note that some load profiles are changing due to new resources behind the customer meter, and that changing load profiles are not always cost additive. In fact, many wholesale customers who have installed solar or storage units behind the meter have reduced their peak demand in ways that are simple to forecast. Hence the Commission, RTOs/ISOs, and retail regulators should take care to connect new costs to specific cost-additive actions. Not all changes to load profiles are problematic—some reduce total system cost and should not be subject to the costs of unnecessary over-procurement.³²

Question 8 observes that “existing E&AS market designs might be incentivizing inflexibility.” Although the target of the question seems to be the use of uplift payments for inflexible or block-loaded generators, the critical incentive for inflexibility inherent to all RTOs/ISOs is the comparable treatment in energy markets of dispatchable and non-dispatchable energy. Indeed, the need for the reforms explored in this docket derives from the underlying market design that treats as-available energy the same as on-demand energy for pricing purposes.

ELCON notes the Hogan/Harvey Paper’s passionate defense of nodal LMP—a brilliant construct that should be defended by all policymakers.³³ But we also question, as outlined in

³¹ It is an open question as to whether policymakers will allow the degree of scarcity pricing required to make energy-only markets pencil out for firm and flexible resources. Recent reforms within the Electric Reliability Council of Texas (ERCOT) indicate that policymakers are uncomfortable with extremely volatile energy prices. For example, ERCOT continues to rely on its Reliability Unit Commitment process to maintain a higher reserve, despite the fact that it has adopted ORDC pricing to incentivize investment in dispatchable resources. *See, e.g., Utility Dive, A ‘Conservative’ Approach to Texas Grid Operations is Raising Costs for Consumers: ERCOT Market Monitor* (Mar. 15, 2022), available at: <https://www.utilitydive.com/news/a-conservative-approach-to-texas-grid-operations-is-raising-costs-for-con/620312/>.

³² *See e.g., Duke Energy Progress, LLC*, 178 FERC ¶ 61,145 (2022) (Order establishing hearing and settlement procedures following a filing by Duke Energy Progress to modify the capacity charge for North Carolina Eastern Municipal Power Agency and its members to address certain targeted load reduction activities.), *reh’g and clarification granted in part*, 180 FERC ¶ 61,031 (2022).

³³ Those who advocate for LMP-based markets should reject price-distorting subsidies like production tax credits. *See, e.g., Report of Southwest Power Pool*, Docket No. AD21-10-000 at 18 (production tax credits for solar

Section IV above, at what point non-dispatchable resources might crowd out dispatchable resources and require: (1) reforms in E&AS markets designed to increase revenues for dispatchable resources, such as ORDCs, which can be applied and expanded arbitrarily, (2) new flexibility or ramping products (in practice, nearly all of which are exclusively paid for by load), (3) new capacity markets or new performance requirements within capacity markets, or (4) out-of-market compensation for dispatchable resources, either through actions such as Reliability Unit Commitments and Reliability Must Run contracts or through policymaker interventions such as state or federal subsidies to retain existing generators.

Question 9 asks about capacity markets, capacity accreditation mechanisms, and “new products that value flexible attributes” within capacity markets. ELCON notes that each region is working through the issue of capacity accreditation but that capacity markets—as imperfect as they are—offer a deterministic solution to the problem of falling E&AS revenues. In mandatory capacity markets like the Reliability Pricing Model run by the PJM Interconnection, a fall in E&AS revenues leads to an increase in capacity revenues, with no adverse impact on system reliability. Regarding capacity accreditation mechanisms, industrial customers urge accuracy and transparency above all else because we face risks on both sides. Too much credit for resources and we face reliability shortfalls. Too little credit for resources and we face expensive over-procurement. Whatever mechanisms are developed by RTOs/ISOs in the coming years, we ask that accuracy and transparency take center stage.

Question 10.4 asks, “What reforms to other services within the Commission’s jurisdiction, such as natural gas transportation services, should the Commission consider in order to improve operational flexibility in the fuel supply?” A dependable and adequate natural gas supply is critically needed to maintain electric system reliability.³⁴ The North American Electric Reliability Corporation (NERC) observed that “[w]ith increasing levels of variable renewable generation in the resource mix, there is a growing need to have resources available that can be reliably called

generation in the Inflation Reduction Act may decrease prices to the point where “some resources necessary for reliable energy may no longer be available.”).

³⁴ See North American Electric Reliability Corporation, *December 2021 Long-Term Reliability Assessment* (Dec. 2021) at 5–6 (“NERC 2021 LTRA”), available at https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2021.pdf (explaining that “[n]atural gas is the reliability ‘fuel that keeps the lights on,’ and natural gas policy must reflect this reality”).

upon on short notice to balance electricity supply and demand if shortfall conditions occur.”³⁵ NERC also explained, “[u]ntil storage technology is fully developed and deployed at scale, . . . natural gas-fired generation will remain a necessary balancing resource to provide increasing flexibility needs.”³⁶

ELCON supports FERC’s efforts to enhance coordination between the natural gas and electricity sectors. In addition to the acute need for natural gas to maintain the reliability of our Bulk Power System, an adequate and dependable supply of natural gas is critically needed for industrial cogeneration of electricity and industrial consumption.³⁷ As we have outlined in other dockets, however, ELCON is concerned that the Commission may reinstate the natural gas certification policy statements it issued earlier this year, thereby limiting the long-term availability of natural gas.³⁸

³⁵ North American Electric Reliability Corporation, *2021 State of Reliability: An Assessment of 2020 Bulk Power System Performance* (Aug. 2021) at 52, available at https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/NERC_SOR_2021.pdf.

³⁶ NERC 2021 LTRA at 6.

³⁷ U.S. Department of Energy National Renewable Energy Laboratory, *2018 Industrial Energy Data Book* at 66, available at: https://www.energy.gov/sites/default/files/2020/02/f71/2018%20Industrial%20data%20book_0.pdf.

³⁸ Comments of the Electricity Consumers Resource Council, Docket Nos. PL18-1-000 and PL21-3-000 (filed Apr. 25, 2022), available at: <https://elcon.org/comments-of-the-electricity-consumers-resource-council-elcon-docket-no-pl18-1-000-certification-of-new-interstate-natural-gas-facilities-and-docket-no-pl21-3-000-consideration-of-greenhouse-ga/>

VII. Conclusion

ELCON and its members thank the Commission for its attention to the important policy questions raised in this proceeding regarding wholesale electricity market design, and we look forward to continued engagement on these issues. As the Commission moves forward with its work regarding changing system needs, ELCON urges it to elevate the goal of ensuring reliability at least cost to consumers and adhere to the cost causation principle in decisions about cost allocation.

Respectfully Submitted,

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