UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Carbon Pricing in FERC-Jurisdictional Organized Regional Wholesale Electricity Markets	Docket No. AD20-14-000

COMMENTS OF THE ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON)

On October 15, 2020, following a September 30, 2020 Technical Conference on Carbon[1] Pricing in FERC-Jurisdictional Organized Wholesale Electricity Markets (Technical Conference),[2] the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Proposed Policy Statement on the same topic (Policy Statement).[3] The Electricity Consumers Resource Council (ELCON) hereby submits comments on the Technical Conference and Policy Statement in the above-captioned proceeding.[4]

I. EXECUTIVE SUMMARY

ELCON supported the request to hold the Technical Conference and generally supports the Commission's efforts to build the administrative record on carbon pricing in FERC-jurisdictional wholesale electricity markets. However, in previous comments, ELCON requested that FERC not issue a policy statement or initiate a rulemaking or other formal process beyond providing a forum for continued discussion and debate.

ELCON therefore disagrees with the Commission's decision to move forward with the Policy Statement, particularly given the lack of involvement from key

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[1] In direct contravention of our chemistry teachers' lessons, in these comments ELCON, like the Commission, uses "carbon," "carbon dioxide," and "CO2" interchangeably for the purposes of discussing the pricing, capping, or taxation of carbon dioxide emissions. Chemistry teachers, please forgive us.
[2] *See* https://ferc.gov/news-events/events/technical-conference-regarding-carbon-pricing-organized-wholesale-electricity
[3] *See* https://www.ferc.gov/news-events/news/ferc-proposes-policy-statement-state-determined-carbon-pricing-wholesale-markets
[4] ELCON May 21, 2020 Comments at 2.

stakeholders, namely consumers and state policymakers. A premature policy document that is not based on a full consideration of all perspectives threatens to derail a much-needed policy conversation about the proper role of the Commission in the mitigation of carbon dioxide emissions in the electricity sector. If the Commission chooses to move forward in this docket, it should remedy the shortcomings of the Policy Statement by listening to the stakeholders that have been left out so far, which are the ones with the most at stake: consumers and state policymakers.

Accordingly, ELCON requests that, prior to acting on a party's application via Section 205 of the Federal Power Act (FPA) to implement a carbon price or cap, the Commission first address the following concerns with the Technical Conference and the Policy Statement:

- Lack of consumer involvement. The Technical Conference featured heavy involvement from the supply side of the electricity industry, but lacked input from the demand side, i.e., consumer interests. The only exception among the 32 panelists was Michael Mager, who represents industrial electricity consumers in a single state (New York) and thus cannot comprehensively represent the broad interests of consumers.
- Costs associated with intervention. The Policy Statement referenced the potential benefits of carbon pricing but ignored the potential costs. Any evenhanded evaluation of a new realm of policy (as carbon pricing would be for FERC) should include both the costs and the benefits of the proposed action (and of no action).
- Lack of a limiting principle. The Policy Statement appears to pre-judge any state-determined carbon price as *per se* just and reasonable and not unduly discriminatory. If a state chooses to implement a very high carbon price, is there any principle that would limit or narrow the Commission's ability to accept such a proposal? What if a state chooses to subsidize carbon-emitting resources by implementing a *negative* carbon price?

- Economic efficiency. If employed, carbon pricing should be used as an instrument to harmonize environmental and energy policies at the local, state, and federal level that address carbon dioxide emissions. Adding a carbon price or cap on top of existing policies will be cost-additive and will harm consumers. In other words, carbon pricing would only improve economic efficiency if it were to effectively replace the carbon-related subsidies, mandates, and regulations that apply to the electricity sector.
- Distribution of revenues. The Commission should only accept a carbon pricing or cap and trade proposal that explicitly states that revenues derived from such a proposal will be returned in full to consumers. Consumers will be harmed if revenues are not distributed back to them.

II. STATEMENT OF INTEREST

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products and services from virtually every segment of the industrial community. ELCON members own and operate hundreds of major facilities and are 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. ELCON has a longstanding interest in promoting well-functioning wholesale electricity markets to the benefit of its members and consumers generally. ELCON has a direct interest in this proceeding both on behalf of its members and on behalf of the organization. Further, ELCON's interests are not adequately represented by any other party to this proceeding.

III. BACKGROUND

On April 13, 2020, a group of interested parties[5] (notably, no consumer representatives among them) filed a request asking the Commission to hold a technical

[5] Advanced Energy Economy, the American Council on Renewable Energy, the American Wind Energy Association, Brookfield Renewable, Calpine Corporation, Competitive Power Ventures, Inc., the Electric

conference or workshop to discuss integrating state, regional, and national carbon pricing in FERC-jurisdictional organized regional wholesale electric energy markets.[6] On September 30, 2020, the Commission held the requested Technical Conference. On October 15, 2020, without requesting further comment, the Commission issued the Policy Statement.

IV. COMMENTS

A. The Technical Conference and Policy Statement Lack Consumer Input

Industrial, commercial, and residential consumers should be closely involved in any proceeding regarding carbon prices or caps because consumers will ultimately bear the cost of those policies. To date, consumer interests have not been adequately represented in the Commission's discussion of carbon pricing. In our initial comments in this docket, ELCON asked the Commission to consider adding a dedicated place on the Technical Conference agenda to discuss consumer interests. The Commission declined.

Consumers deserve a platform—we should not be asked to compete with producers, among others, for time and attention before the Commission and its stakeholders because producer and consumer interests are most often not aligned. FERC should consider withdrawing the Policy Statement and convening another technical conference to balance the record with input from state policymakers and consumers. Given the extensive discussion among suppliers and others during the Technical Conference about the justness and reasonableness of carbon pricing, ELCON asks the Commission: How likely is it that a carbon pricing proposal (or any novel proposal for that matter) will be just and reasonable if it is devised by suppliers and imposed upon consumers without their input?

Power Supply Association, the Independent Power Producers of New York, Inc., LS Power Associates, L.P., the Natural Gas Supply Association, NextEra Energy, Inc., PJM Power Providers Group, R Street Institute, and Vistra Energy Corp.

[6] *See* https://www.aee.net/articles/power-generators-industry-groups-and-think-tanks-ask-ferc-to-examine-carbon-pricing-to-reduce-emissions

The only consumer advocate invited to the Technical Conference was Michael Mager, who represents industrial electricity consumers in New York.[7] Mr. Mager's testimony was thoughtful and raised many of the points we raise in these comments. However, Mr. Mager was just one of 32 panelists, and he represented industrial consumer interests in just one state. That means consumer interests were given approximately 3 percent of the floor time during the Technical Conference. The Commission should remedy the lack of input from consumers by 1) giving the written comments by consumer groups its full attention and consideration and 2) revising the proposed Policy Statement accordingly or withdrawing it and drafting a new policy statement that reflects consumer interests.

In addition to the omission of consumer voices from the Technical Conference, the Policy Statement posed just five questions, none of which addressed consumer interests. For the sake of sound policy, ELCON asks the Commission to revise or withdraw the Policy Statement and reexamine the important issue of carbon pricing with fresh eyes and a healthy dose of input from consumers.

B. The Technical Conference and Policy Statement Overlook Costs

The Policy Statement referenced the potential benefits of carbon pricing—which may or may not be substantial—but categorically ignored potential costs. Executive Order 12866 (Regulatory Planning and Review), issued by President Clinton in 1993, outlined a better-informed approach: "In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating."[8] Any agency evaluating a new realm of policy (as carbon pricing would be for FERC) should examine both the costs and the benefits of the proposed action and should be willing to terminate a proposal that turns out to be unwise.

[7] State policymakers have also been under-represented in this proceeding.
[8] *See* https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf

Unfortunately, the Policy Statement did not offer an evenhanded analysis because it ignored costs. Specifically, the Policy Statement said it "encourage[s] RTO/ISO efforts to explore and consider the *benefits* of potential Federal Power Act (FPA) section 205 filings to establish" carbon pricing.[9] Before encouraging or discouraging any particular regulation, the Commission should first take an unbiased look at the facts (benefits, costs, distributional effects, etc.). Such an examination should include input from the stakeholders who were omitted from the Technical Conference, namely consumers and state policymakers.

ELCON's 2017 comments on "Path 4" in Docket No. AD17-11 (State Policies and Wholesale Markets…) are relevant here:

> 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.[10]

The last concern—socializing the costs of command-and-control mandates (such as Renewable Portfolio Standards (RPS) or Zero Emission Certificates for nuclear power)—is especially problematic. Carbon pricing should not be used to mask the costs 1) to taxpayers of direct state subsidies to specific generation technologies or 2) to load serving entities (and, ultimately, ratepayers) of clean energy mandates. As we discuss in Section D below, however, the overall costs of state electricity policy could be reduced if states choose to replace command-and-control policies with market-based alternatives such as a just and reasonable carbon price.

C. The Technical Conference and Policy Statement Lack a Limiting Principle

As part of the discussion during Panel 1 of the Technical Conference, multiple panelists expressed their view that the Commission could accept an application under

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[9] Policy Statement at P 1 (notes omitted; emphasis added).
[10] *See* https://elcon.org/state-policies-wholesale-markets-operated-iso-new-england-inc-new-york-independent-system-operator-inc-pjm-interconnection-llc-docket-no-ad17-11-000/

Section 205 of the FPA to implement a carbon price in an organized electricity market without "regulating generation." A question that was not fully explored during the Technical Conference is: What happens if the carbon price is so high (or the carbon cap so low) as to eliminate all carbon-emitting generation resources? Where would FERC draw the line between an acceptable CO2 price or cap and an unacceptable one? Further, how might FERC address a *negative* CO2 price? In other words, will FERC be able to scrutinize a state-determined carbon price before allowing it to flow through wholesale rates?

This question is most immediately relevant in the case of states that have committed to a zero-emission electricity sector by some future year.[11] In order for a carbon price to achieve zero emissions, it would have to be incredibly high and might be interpreted as a *de facto* ban on carbon-emitting generation resources.[12] The same logic would apply to a state-determined carbon cap of zero, which would appear to be necessary for some states to achieve the goal of complete decarbonization of the electricity sector.

ELCON does not support resource-specific mandates or subsidies and does not support a *de facto* ban on carbon-emitting resources. To avoid undue discrimination, any CO2 price or cap included in wholesale rates should be based on economic principles and designed to maximize social welfare. For example, a carbon tax could be derived from a reasonable estimate of the marginal social cost of CO2 emissions (SCC), and a carbon cap could be derived from an emissions reduction plan deemed by policymakers to be socially optimal. Basing a carbon price on the SCC or modest emission reduction targets (as opposed to embracing complete decarbonization) would protect the Commission against complaints that FERC-jurisdictional rates are unduly discriminatory because they implement a *de facto* ban on carbon-emitting resources. It

[11] *See* https://www.americanprogress.org/issues/green/reports/2019/10/16/475863/state-fact-sheet-100-percent-clean-future/

[12] Widespread commercial availability of carbon capture and storage technology at reasonable cost would keep carbon caps of zero from becoming *de facto* bans on carbon-emitting resources.

would also help prevent the Commission from allowing a state to implement a negative carbon price and subsidize carbon-emitting resources via FERC-jurisdictional markets.

In any case, the Commission should outline whether (and, if so, how) it will scrutinize a state-determined carbon price or cap. If the answer is that any CO2 price or cap established by a state for a single-state market is *per se* just, reasonable, and not unduly discriminatory, then what is FERC's role in processing a carbon pricing application? For multi-state markets, how does FERC propose to deal with varying CO2 prices across the states? Does the Commission have the authority to reject or amend proposed CO2 prices it deems unjust, unreasonable, or unduly discriminatory? Does the Commission have a role in ensuring the uniformity of carbon policy across states in the same RTO? Across multiple RTOs? The Commission needs to answer these important questions before it finalizes a carbon pricing policy.

D. The Technical Conference and Policy Statement Do Not Address Economic Efficiency

If carbon pricing is pancaked on top of existing state and federal mandates, subsidies, and regulations, consumers only stand to lose. FERC should not treat a carbon price (or cap) as an economically efficient means of addressing the externalities associated with CO2 emissions without also addressing duplicative policies—and there are a large number of energy and environmental policies that purport to address the negative externalities of CO2 emissions.[13] Carbon pricing, if pursued, should be used as an instrument to harmonize existing environmental and energy policies at the local, state, and federal[14] level that already address carbon dioxide emissions. Simply adding

[13] As C2ES points out, "A wide range of state policies help to reduce greenhouse gas emissions from the power sector. Some were enacted explicitly to address climate change, while others have complementary objectives such as supporting in-state producers of preferred energy sources (typically wind, solar, or nuclear) or reducing customer costs by promoting energy efficiency. One of the most common state policies is a portfolio standard that requires electric utilities to deliver a certain amount of electricity from renewable or clean energy sources." *See* https://www.c2es.org/content/state-climate-policy/

[14] Longstanding federal policies aimed at incentivizing non-carbon-emitting resources in the electricity sector include production tax credits, investment tax credits, direct federal procurement of carbon-free resources, and energy efficiency standards.

a carbon price or cap on top of existing policies[15] will be cost-additive and will harm consumers.[16] To ensure that consumers are not burdened with costly and duplicative emissions policies, the Commission should encourage states to investigate duplicative policies and focus on least-cost pathways to emissions targets.

Further, in order to achieve an economically efficient outcome, a carbon pricing regime should be as broad in scope as possible. The FERC-jurisdictional electricity sector should not be singled out and charged a carbon price. Likewise, a carbon price applied to the electricity sector of a single state or region—or differing carbon prices applied in different states or regions—is also sub-optimal. The Commission should address the question of whether (and, if so, how) it will attempt to make state and regional carbon prices uniform in order to increase economic efficiency.

E. The Technical Conference and Policy Statement Do Not Address the Distribution of Revenues

The Policy Statement is silent on the issue of revenues. The Commission should not advance or accept any carbon pricing proposal that does not explicitly state that revenues derived from a carbon price or trading system will be returned in full to consumers. If revenues are not returned to load, consumers will be unfairly harmed. Further, increasing local or regional electricity costs to address a global problem will cause industrial consumers of electricity to relocate to lower-cost areas.

As Michael Mager wrote in his opening remarks for the Technical Conference:

> From the perspective of large energy consumers, if carbon pricing is implemented and results in higher prices on a per

[15] New York is an important exception, and there may be others. Analyzing the New York Independent System Operator's (NYISO) proposed "carbon adder" policy, Resources for the Future (RFF) found that, because of the design of New York's clean energy standard, the price of renewable energy certificates (RECs) and zero-emission certificates (ZECs) would effectively drop to zero. So, while a carbon price may not directly replace New York's clean energy standard, the RFF analysis indicates a carbon price could improve economic efficiency over the status quo. *See*: https://www.rff.org/publications/reports/benefits-and-costs-of-the-new-york-independent-system-operators-carbon-pricing-initiative/

[16] As ELCON noted in our prior comments, there are many public policies meant to address the need to reduce emissions of carbon dioxide in the electricity sector—most notably RPSs and ZECs at the state level as well as Production and Investment Tax Credits at the federal level.

> MWh basis, all offsetting carbon revenues should be used to moderate those impacts on the same per MWh basis. There also are a myriad of issues related to how carbon revenues should be allocated within an ISO. The NYISO has 11 different load zones, and regions within New York have markedly-different wholesale energy price levels and carbon intensities. The approach utilized to allocate carbon revenues can have material and potentially-disparate impacts on consumers within particular regions.[17]

In its review of any FPA Section 205 filing implementing a carbon price or cap, the Commission should condition approval on the full refunding of revenues back to consumers.

V. CONCLUSION

ELCON supports the Commission's ongoing efforts to develop the administrative record on carbon pricing in FERC-jurisdictional electricity markets. ELCON respectfully asks the Commission to address the above concerns and omissions before moving forward with a final policy statement or accepting a carbon pricing proposal. These concerns are critical, and they risk derailing this important issue.

Respectfully submitted,

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[17] *See* https://www.ferc.gov/media/panel-3-group-2-michael-b-mager-counsel-multiple-intervenors

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be 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.: November 16, 2020

Travis Fisher
President & CEO
Electricity Consumers Resource Council