UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	Docket No. EL18-178-000

COMMENTS OF THE ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON)

The Electricity Consumers Resource Council (ELCON) appreciates the opportunity to submit its views on the matters before the Commission in this proceeding.[1]

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. Reliable electricity supply at just and reasonable rates is essential to our members' operations.

I. INTRODUCTION

On June 29, 2018, FERC issued an order soliciting comments on reforms to PJM's capacity market to accommodate "actionable subsidies" by state and federal government agencies. FERC identified two specific concepts as preferred options to

[1] ELCON submitted its intervention filing in this docket on July 5, 2018.

respond to subsidies: expansion of the Minimum Offer Price Rule (MOPR) to all new and existing resources and, alternatively, create a Resource-Specific Fixed Resource Requirement (RSFRR). MOPR administratively "corrects" capacity offers to the unsubsidized level in an attempt to counteract the suppressive price effects of subsidies; thus, consumers paying for subsidies would not receive any price relief, which prompted a debate on consumers paying twice for capacity. Under RSFRR, resources receiving subsidies would remain on PJM's system but outside the capacity market (the resources can still participate in energy and ancillary service markets), while removing an accompanying amount of load.

ELCON is concerned that both options are likely to harm consumers – the MOPR expansion would result in off-market administrative price increases, and that bifurcating the capacity market and implementing procedures for market carve-outs is ripe for unintended consequences that deter efficient market operations.

ELCON generally supports the filing of the PJM Industrial Customer Coalition (PJMICC). In these comments, ELCON focuses on the items that affect broader policy precedent on accommodating or mitigating state policies (*e.g.,* principles for what constitutes an "actionable subsidy").

II. COMMENTS OF ELCON

If the Commission believes certain subsidies cause capacity market prices to become unjust and unreasonable, the correct response is for the Commission to exercise its authority under the Federal Power Act to protect the integrity of interstate commerce by precluding these particular subsidies. However, ELCON acknowledges the

Commission's intent to use administrative interventions – expanded MOPR and RSFRR - in an attempt to correct for the adverse effects of subsidies.

On this basis, ELCON conditionally supports PJMICC's position with an added emphasis on aspects that set precedent (*i.e.*, how FERC policy "accommodates" or "mitigates" state public policy). The precedent priority is to avoid excessive application of administrative mechanisms intended to "correct" for subsidies but actually leave consumers worse off. Broad application of administrative fixes will undermine efficient resource entry and exit – a core purpose of capacity markets – and unnecessarily raise costs to consumers while deterring innovation and encouraging gaming. ELCON stresses the need for the Commission to 1) acknowledge that administrative interventions are poorly suited to "correct" for subsidies and 2) adopt a clear, strict definition for "actionable subsidy" to limit the application of administrative fixes to only those subsidies that fundamentally compromise market performance.

A. Expanded Administrative Mechanisms Invite Large Unintended Consequences

ELCON highlights the poor track record of administrative mechanisms as evidence that the Commission is unlikely to remedy the adverse effects of subsidies in an economically efficient fashion via administrative fixes. This refers to either administrative approach through the accommodation of state policies (*e.g.*, capacity repricing mechanisms) or mitigation via MOPR. ELCON agrees with former Chairman Norman Bay that no route exists for FERC to efficiently mitigate the effects of subsidies, as "the MOPR has turned out to be unsound in principle and unworkable in practice."[2] In colloquial terms, the medicine of administrative corrections is harsher than the subsidy disease. Plus administrative action merely addresses the symptoms, not the underlying disease.

Methods to administratively estimate competitive capacity offers to-date have had clear flaws, which portend economically inefficient outcomes for their application to attempt to correct for subsidy effects. For example, within PJM, many competitive capacity offers exempt from MOPR have come in at half or less the cost of new entry estimates in recent Base Residual Auctions (BRA). In addition, general flaws with capacity market power mitigation indicate the limited ability to expand administrative pricing corrections in an economically efficient manner. Administrative estimates cannot accurately reflect competitive offers based on resource owners' varying expectations of future market fundamentals. Expanding MOPR will elevate offers above competitive levels, resulting in inflated market prices that elevate costs to load above competitive levels.

Since MOPR expansion is a major concern for consumers, RSFRR is a potentially desirable alternative. However, RSFRR does not clearly present a superior alternative to the distortionary effects of subsidies under business as usual. Removing load commensurate with subsidized resources introduces demand-side uncertainty in the capacity market, while supply-side distortions remain as RSFRR resources participate in

[2] Concurring statement of Commissioner Norman Bay in *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 158 FERC ¶ 61,137 (Feb. 3, 2017) at p. 1.

energy and ancillary service markets. The nuanced mechanics involved with implementing RSFRR is a recipe for unintended consequences that constrain organic market activity. Altogether, administrative subsidy fixes via MOPR or RSFRR create problems that stress the need to limit their application through a strict definition of "actionable subsidy."

B. A Strict Definition of "Actionable Subsidy"

ELCON emphasizes that PJM and other RTO/ISO markets have always functioned with subsidies. Certain types and/or degrees of subsidies have indeed escalated the distortionary effects of subsidies on competitive wholesale markets. In particular, ad hoc payment guarantees for large capacity resources (*e.g.,* nuclear retention, new offshore wind) can severely undermine investor confidence and result in political preferences fully substituting for competitive forces in determining resource entry and exit. In contrast, investors adjust their expectations to predictable, long-term programmatic subsidies that give eligible resources an opportunity to compete to receive program payments (*e.g.,* renewable portfolio standards). These permit political preferences to distort efficient market outcomes but keep competitive forces as the ultimate determinants of resource entry and exit.

If the Commission remains committed to administrative interventions to attempt to correct for subsidies, it should limit the qualifying characteristics of an actionable subsidy only to the types and degrees of subsidization that fundamentally compromise competitive markets. ELCON suggests the criteria for actionable subsidy include all of the following:

1) government-sanctioned payments funded by compulsory charges on electricity consumers;

2) the monetary value of the subsidy must be known at the time administrative remedies apply;

3) guaranteed payments (*i.e.,* not obtained through a competitive program);

4) resource- or company-specific payments; and

5) exceed an impact threshold, as subsidized *de minimis* resources do not materially affect market outcomes.

A general precedent for FERC to correct for an expansive array of subsidies must be avoided. Narrow application of the "actionable subsidy" definition is paramount to limit the creep of inherently flawed administrative processes. This requires a clear distinction for actionable and non-actionable subsidies. Actionable subsidies provide a government-backed contractual guarantee for the operation of specific resources above an impact threshold, which fundamentally contradicts the ability of competitive forces to determine resource entry and exit. For example, large guaranteed contracts for specific units at fixed prices or rates tethered to wholesale prices create the type of market disruption the Commission seeks to avoid.

Non-actionable subsidies are programs that provide opportunities but no guaranteed payments to specific resources, which preserves a role for competitive forces to determine resource entry and exit. While non-actionable subsidies distort market outcomes, they do not fundamentally compromise investor confidence, and they maintain some incentive for resource developers and owners to exercise economic discipline in order to remain profitable in a competitive environment. For example, retail programs that establish markets for characteristics states deem desirable – such as a proportion of load served by zero emission resources – but create no subsidy guarantees for specific units, would not constitute an actionable subsidy.

Many capacity payments outside the capacity market should not be considered "out of market" subsidies; the legitimate market for capacity is bigger than PJM's Reliability Pricing Model. In particular, private capital that pursues voluntary capacity contracts in bilateral markets should not face administrative corrections. For example, corporate consumers are increasingly deploying their own capital to voluntarily purchase power through the bilateral market or procure renewable energy credits, which do not constitute subsidies. Voluntary payments received outside of the capacity market should receive categorical exclusion. Categorical exclusion should also apply to the self-supply of load serving entities to meet their load obligations.

III. CONCLUSION

ELCON urges the Commission to, as threshold matters, 1) acknowledge that administrative interventions are poorly suited to "correct" for subsidies and 2) adopt a clear, strict definition for "actionable subsidy" to limit the application of administrative fixes to only those subsidies that fundamentally compromise market performance. Once those fundamental principles are established in a notice-and-comment proceeding, there would be a basis for determining whether reforms are needed to the PJM markets, and if so what their scope should be.

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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.: October 2, 2018

/s/ W. RICHARD BIDSTRUP
W. Richard Bidstrup