

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

Carbon Pricing in FERC-Jurisdictional) **Docket No. AD20-14-000**
Organized Regional Wholesale Electric)
Energy Markets)

**COMMENTS OF THE INSTITUTE FOR POLICY
INTEGRITY AT NEW YORK UNIVERSITY SCHOOL OF LAW**

Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s Rules of Practice and Procedure,¹ the Institute for Policy Integrity at NYU School of Law (Policy Integrity)² respectfully submits these comments to express support for the Request for a Technical Conference or Workshop filed on April 13, 2020 by Advanced Energy Economy, the Electric Power Suppliers Association, and a diverse group of other stakeholders.³

Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity staff have published a comprehensive report and several academic articles on carbon pricing in organized wholesale markets,⁴ and have participated in Independent Service Operator (ISO) and Regional Transmission Organization (RTO) stakeholder proceedings on the subject as well.⁵ In addition, Policy Integrity recently co-

¹ 18 CFR 385.211 (2019).

² These comments do not reflect the views of NYU School of Law.

³ The other requesters include: the American Council on Renewable Energy; the American Wind Energy Association; Brookfield Renewable; Calpine Corporation; Competitive Power Ventures, Inc.; 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.

⁴ See, e.g., MATT BUTNER ET AL., CARBON PRICING IN WHOLESALE ELECTRICITY MARKETS: AN ECONOMIC AND LEGAL GUIDE (2020), <https://policyintegrity.org/publications/detail/carbon-pricing-in-wholesale-electricity-markets>; Bethany A. Davis Noll & Burcin Unel, *Markets, Externalities, and the Federal Power Act: The Federal Energy Regulatory Commission's Authority to Price Carbon*, 27 NYU ENVTL. L.J. 1 (2019); Justin Gundlach & Romany Webb, *Carbon Pricing in New York ISO Markets: Federal and State Issues*, 35 PACE ENVTL. L. REV. 1 (2017).

⁵ See, e.g., Avi Zevin, Inst. for Pol'y Integrity, *Carbon Pricing in RTO Markets: Jurisdictional Considerations* (Nov. 15, 2019), <https://www.pjm.com/-/media/committees-groups/task-forces/cpstf/20191115/20191115-item-03a->

hosted a conference titled “Carbon Pricing in Wholesale Electricity Markets” with Duke University’s Nicholas Institute for Environmental Policy Solutions at which experts and stakeholders discussed some of the legal, economic, and policy questions surrounding carbon pricing in organized wholesale markets.⁶ Policy Integrity remains actively engaged in state- and RTO-level efforts to establish carbon pricing mechanisms that can complement organized wholesale markets’ operation or themselves become integral features of those markets.

Carbon pricing in organized wholesale electricity markets can provide the right price signals to cost-effectively reduce emissions, drive investment in clean energy resources, and provide regulatory certainty and uniformity.⁷ In addition, whether imposed by state authorities or an RTO, it can help to harmonize state policy goals with wholesale market operations, and do so in a way that maintains the wholesale market’s integrity. These benefits of carbon pricing were recognized widely in 2017, when FERC convened a technical conference to consider how state policy and wholesale markets interact.⁸

Several developments since then have made a discussion focused on the potential of carbon pricing in organized wholesale markets even more important and urgent. To begin, state-level policymaking with respect to energy and greenhouse gas emissions has become more ambitious and assertive.⁹ The Commission, in response, has put significant pressure on states to

[carbon-pricing-in-rto-markets-jurisdictional-considerations.ashx](#); Comments on the Notice on Process, Soliciting Proposals and Comments, and Announcing Technical Conference, In the Matter of Carbon Pricing in New York Wholesale Markets NYISO/DPS Integrating Public Policy Task Force, Matter No. 17-01821 (Nov. 30, 2017), https://policyintegrity.org/documents/Comments_NYISO_Carbon_Pricing_DPS.pdf.

⁶ See *Events: Carbon Pricing in Wholesale Energy Markets* (Mar. 3, 2020, Washington, DC), INST. FOR POL’Y INTEGRITY, <https://policyintegrity.org/news/event/carbon-pricing-in-wholesale-energy-markets> (providing access to video recordings of keynote, presentations, and panel discussions).

⁷ BUTNER ET AL., *supra* note 3, at 11–16.

⁸ See Request at 4 n.4 (collecting post-technical conference comments indicating openness on the part of diverse participants to carbon pricing in wholesale markets).

⁹ See, e.g., Clean Energy Jobs Act, 2019 Md. Laws ch. 757; 2018 N.J. Laws ch. 16 (updating Renewable Energy Standard and codifying offshore wind deployment targets); Climate Leadership and Community Protection Act, 2019 N.Y. Laws ch. 106 (adopting aggressive, economy-wide decarbonization targets); 2019 Ohio Laws File 12 (establishing subsidies for coal and nuclear generators and largely eliminating renewable energy and energy

consider how best to reconcile their policy objectives with tightening rules for resources' participation in capacity markets.¹⁰ Meanwhile, analyses—including some conducted by RTOs—have continued to shed light on interactions between state policy and organized wholesale markets, and on the legal, economic, administrative, and technical elements of actual and proposed carbon pricing programs at the state and RTO-level.¹¹

Policy Integrity therefore respectfully asks that the Commission grant the request to convene a technical conference or workshop on carbon pricing in FERC-jurisdictional organized wholesale markets. A technical conference of this sort would be not only timely, but also potentially crucial for the future of organized energy markets.

Policy Integrity suggests that, in addition to the questions posed in the proposed agenda appended to the April 13, 2020 Request for a Technical Conference or Workshop, FERC ask stakeholders to address two other topics as well. First, as we explain in our March 2020 report, design choices about different aspects of a carbon pricing affect one another. Different economic and legal questions arise depending on how, where, and under what legal authority, carbon pricing is imposed.¹² Similarly, administrative and technical requirements will vary as a result of

efficiency requirements); 2018 Cal. Stat. ch. 312 (adopting aggressive, economy-wide decarbonization targets); Conn. Gen. Stat. § 16a-3d (2018) (adopting “Comprehensive Energy Strategy” that integrates energy and climate policy objectives).

¹⁰ See, e.g., Orders on Rehearing and Clarification, 171 FERC ¶¶ 61,034, 61,035 (2020); see also, e.g., NJ Board of Public Utilities (@NJBPU), TWITTER, (Apr. 20, 2020, 9:40 AM), <https://twitter.com/NJBPU/status/1252230645042028545> (“New Jersey will not be deterred by last week’s @FERC decision. We’re investigating alternatives to the capacity market so #NJ can achieve a #cleanenergy future that will help: ▪ Recover our economy ▪ Create a safer, healthier environment”).

¹¹ See, e.g., PJM Carbon Pricing Senior Task Force, *Expanded Results of PJM Study of Carbon Pricing & Potential Leakage Mitigation Mechanisms* (Mar. 27, 2020); SUSAN F. TIERNEY & PAUL J. HIBBARD, CLEAN ENERGY IN NEW YORK STATE: THE ROLE AND ECONOMIC IMPACTS OF A CARBON PRICE IN NYISO'S WHOLESALE ELECTRICITY MARKETS (2019); DANIEL SHAWHAN, PAUL PICCIANO & KAREN PALMER, RESOURCES FOR THE FUTURE, BENEFITS AND COSTS OF POWER PLANT CARBON EMISSIONS PRICING IN NEW YORK (2019); Kevin B. Jones, Benjamin B. Civiletti & Angela J. Sicker, *Carbon Pricing in US Electricity Markets: Expediting the Low-Carbon Transition While Mitigating the Growing Conflict Between Renewable-Energy Goals and Regional Electricity Markets*, 9 CLIMATE LAW 263 (2019).

¹² BUTNER ET AL., *supra* note 3, at 30–31.

a carbon pricing program’s goals and legal basis. Therefore, in addition to discussing various design choices discretely, we suggest also discussing different potential pathways for carbon pricing in order to get at how design choices could enable or limit one another. This discussion should explore the kinds of evidence and analysis needed to establish an administrative record capable of supporting adoption of different carbon pricing programs.

The second additional topic would consider not only how carbon pricing in organized wholesale markets “interacts with other state carbon reduction policies, both within and outside of the electricity sector,”¹³ but also potentially how it complements them and improves their outcomes.¹⁴ This topic could explore opportunities that carbon pricing makes available to improve the efficiency of organized wholesale markets and other markets and mechanisms that interact with them, and to identify what kinds of coordination would be required among states, ISOs/RTOs, and FERC to realize those opportunities.

Respectfully submitted,

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¹³ Request for Technical Conference or Workshop of Advanced Energy Economy et al., FERC Docket No. AD20-14-000, app’x A § IV.C (Apr. 13, 2020).

¹⁴ Cf. JUSTIN GUNDLACH, RON MINSK & NOAH KAUFMAN, INTERACTIONS BETWEEN A FEDERAL CARBON TAX AND OTHER CLIMATE POLICIES (2019) (identifying policies that complement one another by addressing distinct market failures).

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at New York, New York this 23rd day of April 2020.

Respectfully Submitted,

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