November 16, 2020

Federal Energy Regulatory Commission (FERC)
Secretary of the Commission
888 First Street, NE
Washington, DC 20426

Re: FERC Docket No. AD20-14-000; 173 FERC ¶ 61,062; Carbon Pricing in Organized Wholesale Electricity Markets

We write in strong opposition to FERC's proposed policy statement, Carbon Pricing in Organized Wholesale Electricity Markets, as an unnecessary abdication of the Commission's responsibilities under the Federal Power Act (FPA). FERC should not rush forward with a blanket endorsement of ill-conceived, top-down climate policies that have been demonstrated to be costly, ineffective, regressive, and consistently rejected by the American people. Ignoring the perspectives of consumers[1] and states,[2] the proposed statement puts its thumb on the scales, conflating a wide variety of anti-consumer policy mechanisms and rejecting any limiting principles for evaluating whether these policies are just, reasonable and not unduly discriminatory or preferential.

Instead, the Commission should withdraw this proposed statement and focus its energy on utilizing its authorities under the FPA and the Energy Policy Act of 2005 to investigate the network of market-distorting subsidies, credits, mandates, taxes, and unrealistic climatic goals that have established a hidden, de facto carbon price for ratepayers and taxpayers.

The Policy Statement is Unnecessary and Prejudicial

We share Chairman Danly's concerns in his partial dissent that the "wholly discretionary act" of issuing a policy statement is "unnecessary and unwise." Similarly, FERC prejudges "the issue based on unstated assumptions about how such programs might work," ignoring "any number of RTO/ISO carbon-pricing proposals that would violate the Federal Power Act by impermissibly invading the authorities reserved to the States." Making a policy determination before a concrete proposal was brought to the Commission can only be interpreted as the work of the Commission undertaking an extra-statutory advocacy role to endorse policies that will leave the American people worse off. The policy statement, through its superficial consideration of the cost and efficacy of state carbon pricing, ignores established legal principles that there is no single formula for determining if policies affecting rates are just and reasonable, risking entitlement to judicial deference.[3]

FERC's Action Lacks Key Perspectives

In the technical conference as well as in the questions posed in the policy statement, FERC has failed to seek the perspectives of, or consider the impact on, consumers, low-income households, workers, or states (especially those whose rates will be increased by neighboring state's top-down policy). By advocating market rules expressly designed to favor low-carbon energy sources, the

[1] Jordan McGillis, "Carbon Tax Update, November 2020," Institute for Energy Research, November 4, 2020.
[2] Catherine Morehouse, "Chatterjee says exclusion of state regulators from carbon pricing conference was a 'mistake'," *Utility Dive*, November 12, 2020.
[3] FPC v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944).

Commission is contravening its resource neutrality and, in the process, further eroding the benefits consumers get from competitive electricity markets. FPA and FERC's oversight of organized markets are designed to serve the goal of consumer benefits. This oversight is especially egregious as the Commission previously admonished the U.S. Environmental Protection Agency that "the comments of entities that will bear the burden… should be accorded due consideration by the Agency in formulating" top-down climate policy like the Clean Power Plan.[4] The absence of consumer voices in the technical conference or policy statement is even starker as rent-seeking firms, monopoly utilities, RTOs, environmental groups, and others were well represented.

The Policy Statement Ignores FERC's Appropriate Role in Environmental Regulation

FERC ignores questions about its authority to address environmental consequences in setting just and reasonable rates under FPA Section 205.[5] FERC acknowledges that it "is not an environmental regulator," then mistakenly assumes the effectiveness and transparency of a wide variety of top-down carbon policies adopted by public utilities and RTOs/ISOs, which are also not environmental regulators. When federal environmental statutes like the Clean Air Act mandate emission controls for certain facilities, FERC has enabled state regulators and utilities to incorporate those costs in rates. The same federal mandate does not exist for greenhouse gases.

FERC's footnoting of this issue in the policy statement demonstrates its misunderstanding of environmental law and cooperative federalism. This policy statement's failure to identify statutory authority or a limiting principle is also directly at odds with the then- Chairman's 2018 admonition on the U.S. Environmental Protection Agency's (EPA) Clean Power Plan that federal agencies should not adopt sweeping, top-down climate policy "through administrative action without a clear statutory directive or limiting principle."[6] EPA has not found any requirement for carbon pricing or greenhouse gas cap-and-trade schemes in the Act, including multiple versions of power plant standards under Section 111.

FERC Should Focus on Investigating and Auditing Existing, Hidden Carbon Taxes

Moreover, FERC has failed to acknowledge the hundreds of subsidies, tax credits, and mandates for different energy sources at all levels government which already create a hidden, de facto carbon price, adding hundreds of dollars to the electricity or tax bills of every American family. Adding a carbon price on top of the mélange of subsidies would further erode the concept of competition in a level playing field for all generation resources.

There is no evidence to suggest that the carbon pricing schemes identified by FERC in the policy statement have been – or will be - accompanied by the elimination of inefficient, market-distorting government interventions that constitute a significant, nontransparent price in the status quo. We agree with the Electricity Consumers Resource Council's motion to intervene ahead of the technical conference that “adding a carbon price in FERC-jurisdictional electricity markets may increase costs and leave consumers worse off."[7]

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[4] Letter from Neil Chatterjee, Federal Energy Regulatory Commission (Docket ID No. EPA-HQ-OAR-2017-0355).

[5] See Council of the Crees (Quebec) v. FERC 198 F.3d 950, 957 (D.C. Cir. 2000).

[6] Letter from Neil Chatterjee, Federal Energy Regulatory Commission (Docket ID No. EPA-HQ-OAR-2017-0355).

[7] https://elcon.org/motion-to-intervene-and-comments-of-the-electricity-consumers-resource-council-elcon-docket-no-ad20-14-000-carbon-pricing-in-ferc-jurisdictional-organized-regional-wholesale-electricity-energy-ma/.

Policy Statement is False Federalism and Lacks a Limiting Principle

Based on recent Court decisions, FERC has largely blurred distinctions between retail and wholesale rates, and state and federal jurisdiction. However, this policy statement represents a false form of federalism. The Commission is well aware that wholesale customers in non-carbon-pricing states will pay higher rates if a carbon price is integrated into an RTO/ISO. Blanket embrace of any state carbon pricing scheme ignores FERC's role in evaluating filings to determine if they are just, reasonable, nondiscriminatory, and non-preferential. For example, FERC has established no principles that would allow it to carry out its FPA obligations, including in scenarios where a carbon pricing scheme would: have the opposite of its intended effect; counteract environmental goals in the pricing states or others in its organized markets; represent unreasonable or imprudent production costs; reduce competition; or create environmental compliance costs. The track record of top-down state and regional carbon pricing, including the undemocratic and legally dubious adoption of these nontransparent carbon taxes, casts doubt on the assumptions made in the policy statement.

FERC's Policy Statement Will Exacerbate Energy Poverty with Negligible Environmental Benefit

FERC's mission is to improve the competitiveness, efficiency, and reliability of the wholesale markets to deliver benefits to customers in the form of lower electricity prices. We are worried about the proposal bias toward "potential benefits" while offering no mention of actual costs.

One of the principles of sound policymaking is to evaluate the costs and benefits of policy proposals to determine if said policy intervention is worth pursuing. Precautionary policymaking might be the personal preference of members of the Commission; however, that does not preclude a thorough and transparent evaluation of the costs associated with aggressively taxing greenhouse gases in our electricity supply.

Before moving forward, and in the interest of its determination of whether policies affecting rates are just, the Commission should consider seriously evaluating the effects of rapid decarbonization efforts, whether through cap-and-trade, sectoral greenhouse gas regulation, or carbon taxes in U.S. households that are already experiencing challenges in paying energy bills, which according to the latest Residential Energy Consumption Survey is almost a third.[8] A 2020 analysis from the Massachusetts Institute of Technology shows that top-down decarbonization efforts, whether through cap-and-trade, sectoral greenhouse gas regulation, or carbon taxes, will cost the lowest income American families hundreds of dollars per year on their electricity bills.[9] Even before the pandemic, surveys showed that less than one-third of Americans said they would be willing to spend $10 more on their electricity bills to address climate change.[10]

There is no need for this heavy-handed approach FERC is endorsing in the policy statement because top-down carbon policy has proven ineffective. From 2007 to 2019, U.S. energy-related carbon dioxide emissions have fallen by roughly 15 percent, while global emissions have increased by more than 20 percent.[11] The International Energy Agency recognizes that the U.S. saw the

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[8] U.S. Energy Information Administration, "One in three U.S. households faces a challenge in meeting energy needs," September 19, 2018.

[9] Tomas W. Green and Christopher R. Knittel, "Distributed Effects of Climate Policy: A Machine Learning Approach," MIT Center for Energy and Environmental Policy Research (CEEPR), September 2020.

[10] Emily Ekins, "68% of Americans Wouldn't Pay $10 a Month in Higher Electric Bills to Combat Climate Change," CATO Institute, March 8, 2019.

[11] U.S. Energy Information Administration, *Short-Term Energy Outlook*, November 10, 2020.

largest reduction of energy-related carbon dioxide emissions of any country between 2018 and 2019 and the largest absolute decline since 2000. These trends have been accomplished without top-down energy policies that pick winners and losers.

This dynamic extends to top-down state policy. According to the most recent data from the U.S. Energy Information Administration,[12] since 2007, states that have avoided these policies (including Alabama, Alaska, Indiana, Kentucky, West Virginia, and Wyoming) each have had reductions of per capita energy-related CO2 emissions five times greater than California.

Over that same period, North Dakota, South Carolina, Georgia, and Kentucky have ranked in the top five states for reduced energy intensity. Each of these states reduce energy per dollar of GDP over ten times greater than what New York achieved.

Pennsylvania's Participation in Regional Greenhouse Gas Initiative (RGGI) Demonstrates Carbon Pricing is Ineffective, Undemocratic, and Unjust

The Regional Greenhouse Gas Initiative (RGGI), touted in the Policy Statement, has been monumentally ineffective at reducing greenhouse gas emissions but quite effective at raising billions in revenue for politically connected projects preferred by governors. The nonpartisan Congressional Research Service confirmed in 2019 that RGGI's contribution to reducing greenhouse gases is "arguably negligible."[13] This negligible impact prompted RGGI's 2012 move to reduce its regional cap by 45 percent, and a similar adjustment is expected next year.

The Commission also mischaracterizes and footnotes the nature of Pennsylvania's participation in the pact. In a manner inconsistent with the Commonwealth's Constitution and Air Pollution Control Act as well as the federal Clean Air Act and compact clause, the Governor of Pennsylvania is attempting to join RGGI against the wishes of their General Assembly.[14] The Governor of Pennsylvania's current effort to join the initiative against the wishes of their General Assembly shows how unpopular raising energy prices by government fiat is and how democratic accountability gets diluted in favor of political expediency.

Why are Pennsylvanians opposed to joining this top-down climate policy? Between 2007 and 2017, Pennsylvania reduced coal-related carbon dioxide emissions by more than the 10 RGGI states combined.[15] The scheme is also likely to exacerbate energy poverty for low-income families. In a 2019 report, the Pennsylvania Public Utility Commission found that low-income Pennsylvania households "experience some of the highest energy burdens in the country."[16] And eight of the ten states in RGGI have higher retail electricity rates than Pennsylvania. If the Commonwealth's electricity costs were to grow to the median of RGGI states, an average Pennsylvania family would pay more than $466 more on electricity bills each year.[17]

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[12] U.S. Energy Information Administration, "Energy-Related CO2 Emission Data Tables," May 10, 2020.
[13] Jonathan L. Ramseur, *The Regional Greenhouse Gas Initiative: Background, Impacts, and Selected Issues*, Congresional Research Service, July 16, 2020.
[14] Kevin Mooney, "Pennsylvania governor tramples legislators to impose carbon taxes," *Washington Examiner*, October 16, 2020.
[15] U.S. Energy Information Administration, "Energy-Related CO2 Emission Data Tables," May 10, 2020.
[16] Pennsylvania Public Utility Commission, "Home Energy Affordability For Low-Income Customers in Pennsylvania," January 2019.
[17] U.S. Energy Information Administration, "Household Energy Use in Pennsylvania."

Conclusion

FERC's charter is to promote competitive prices in the wholesale electricity market. Americans deserve transparency against backdoor agendas at this agency as well. The Commission should withdraw this one-sided policy statement–and wait for an actual proposal before making decisions that have an enormous impact on the life of American workers, businesses, and families.

Sincerely,

Americans for Prosperity | Brent Wm. Gardner | Chief Government Affairs Officer

Alliance for Wise Energy Decisions (AWED) | John Droz, Jr. | Founder

Americans for Tax Reform | Grover Norquist | President

Caesar Rodney Institute | David T. Stevenson | Director, Center for Energy and Environment

Citizens Against Government Waste | Thomas Schatz | President

Committee for a Constructive Tomorrow (CFACT) | Craig Rucker | President

Competitive Enterprise Institute | Myron Ebell | Director, Center for Energy and Environment

Energy & Environment Legal Institute (E&E Legal) | Craig Richardson | President

Heritage Action for America | Garrett Bess | Vice President of Government Relations and Communications

Mississippi Center for Public Policy | Jameson Taylor, Ph.D. | Senior Vice President

National Center for Public Policy Research | Right Reverend Council Nedd II, Ph.D., TOSF | Co-Chairman, Project 21 National Advisory Board || Stacy Washington | Co-Chairman, Project 21 National Advisory Board || Horace Cooper | Co-Chairman, Project 21 National Advisory Board

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Texas Public Policy Foundation | The Hon. Jason Isaac | Director, Life:Powered

The Heartland Institute | James Taylor | President

60 Plus Association | James L. Martin | Founder/Chairman || Saulius “Saul” Anuzis | President