

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Proposed Rulemaking)

Docket RM18-1-000

Grid Resiliency Pricing Rule)

COMMENTS OF THE BIPARTISAN FORMER FERC COMMISSIONERS

WHO WE ARE AND WHY WE CARE

The Commission’s mission is to “assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means.”¹ Over the last twenty-five years the Commission has advanced that mission by enabling competitive wholesale markets to promote lower costs and greater efficiencies in the electric utility sector, just as it did in the natural gas sector. Our² common

¹ FERC Website: <https://www.ferc.gov/about/strat-docs/strat-plan.asp>

² Elizabeth Anne (Betsy) Moler, Commissioner 1988-1997, Chair 1993-1997; James J. Hoecker, Commissioner 1993-2001, Chairman 1997-2001; Donald F. Santa, Jr., Commissioner, 1993-1997; Linda Key Breathitt, Commissioner 1997-2002; Pat Wood, III, Chairman 2001-2005; Nora Mead Brownell, Commissioner 2001-2006; Joseph T. Kelliher; Commissioner 2003-2009, Chairman 2005-2009; Jon Wellinghoff, Commissioner 2006-2013, Chairman 2009-2013 (“the Bipartisan Former FERC Commissioners”). We were appointed to the Commission by every President since Ronald Reagan.

goal has been to encourage competition in the electricity sector in order to benefit customers, enhance reliability and facilitate construction of the infrastructure necessary to allow our great nation to grow and prosper.

Over this quarter century, we have each been intimately involved in leading this effort to achieve efficient, reliable energy service through market forces. We believed – with conviction borne of experience -- that requiring nondiscriminatory access to the nation’s electric transmission grids, and fostering open, wholesale competitive markets for the sale of electricity over those grids is the most cost-effective way to deliver energy services to customers, and is therefore in the public interest. Order No. 888, establishing transmission open access, and Order No. 2000, defining the responsibilities of regional transmission organizations (RTOs) are the key mileposts of this era. In addition, we issued hundreds of orders and adopted numerous other rules providing detailed guidance to these markets as they developed. We substantially expanded our market oversight and enforcement capabilities to protect customers from market fraud and abuse. And with those expanded capabilities we engaged in numerous significant enforcement actions to maintain order in these markets and protect customers’ interests. We also worked

tirelessly with market participants and state regulators to achieve balance in our decisions. This shared collaborative mission across party lines and Presidential Administrations has been a model of good government.

This effort to develop organized markets has been successful by almost any measure, reaching over two-thirds of all customers in the nation's economy. Widely diverse interests have invested tens of billions of dollars in both competitive and regulated infrastructure. Customers and the industry have benefitted from lower costs and better, more reliable services. Technological innovation has swept the entire value chain. The Commission's initiative has been supported by virtually all of the participants in this vitally important sector of our economy. It has drawn support from officials in every Presidential Administration over the last three decades, from every relevant committee of the Congress, and from courts at all levels of the Judiciary, including landmark opinions by the United States Supreme Court upholding the Commission's key orders.

OUR VIEW OF THE PROPOSAL

The published proposal in this Docket would be a significant step backward from the Commission's long and bipartisan

evolution to transparent, open, competitive wholesale markets. Pursuing the worthy goal of a resilient power system, the Commission's adoption of the published proposal would instead disrupt decades of substantial investment made in the modern electric power system, raise costs for customers, and do so in a manner directly counter to the Commission's long experience.

In the competitive wholesale markets, many states have elected to separate historic utility-owned power generating facilities from regulated operations, much as the Commission did with natural gas production operations and natural gas pipeline companies in the preceding decade. In the power sector, these separation proceedings were often contentious, and eventually gave rise to many billions of dollars of utility cost recovery for the excess book cost of generating plant over the then-market cost ("stranded costs"). Varying transition periods were set to recover those costs and make the utilities whole for their historic plant investments. It is a subset of these power plants that are the focus of this inquiry.

One critical aspect of competitive wholesale markets is that the risk of these generation investments has been shifted away from captive customers to market participants who could better manage risk (and some who have not been successful doing so).

Another achievement is that competitive wholesale markets have delivered lower-cost electric power and improved the efficiency of the generation fleet. And not just of the original power plants. This revolution stimulated tens of billions of dollars of investment in newer and cleaner power technologies, more efficient plant operations, competitive fuel procurement, efficient dispatch over large regions, more restrained prices, and more competitive (lower) margins. Power prices have tracked fuel prices, particularly that of natural gas, which is, in most hours and in most markets, the marginal unit fuel. New entrants to the competitive wholesale marketplace have included combined-cycle natural gas plants, renewable energy technologies, storage, distributed generation and demand response. It was entirely foreseeable that competition and technological innovation would result in the exit of high-cost generators. Wholesale competition, indeed, has forced existing resources to become more reliable or to exit the market, and many noncompetitive generating units have exited.³

³ This is not just a feature of competitive wholesale markets. Over half of the retirements of coal, gas and nuclear plants since 2002 have been from regulated status. A map depicting these retirements is shown on the Department of Energy's web page introducing the 2017 Staff Report to the Secretary on Electricity Markets and Reliability at <https://energy.gov/downloads/download-staff-report-secretary-electricity-markets-and-reliability>. It is also found in the Staff Report at page 15.

The independent RTOs that have developed under Order No. 2000 have done a superb job operating the transmission networks and managing markets reliably, safely and efficiently for all wholesale power customers. These new independently-run wholesale markets have also enabled retail customer choice programs across the country, most notably in the states that are most impacted by this inquiry.

The RTOs operate open, transparent markets. The least-cost resources for energy for every hour (accounting for reliability needs and transmission constraints) are purchased. In those RTOs with capacity markets, the least-cost resources for capacity (accounting for transmission constraints) are purchased. Those resources which fail to recover sufficient revenues from these markets, or otherwise from their customers, retire.

Subsidizing resources so they do not retire would fundamentally distort markets. The subsidized resources would inevitably drive out the unsubsidized resources, and the subsidies would inevitably raise prices to customers. Investor confidence would evaporate and markets would tend to collapse. This loss of faith in markets would thereby undermine reliability.

The Commission has always been fuel-agnostic, refraining from favoring one fuel over another. This is, in part, out of

recognition that the last federal effort to do that was quickly shown to be a grossly uneconomic mistake.⁴ We acknowledge that the markets today are not pristine; various kinds of external supports for resources still exist. Federal tax subsidies for wind and solar generation have been approved by Congress, as were less overt benefits for oil, gas and coal extraction. The states of New York and Illinois have also recently moved into this arena with the adoption of subsidies for certain nuclear plants. The Commission cannot ignore these interventions, and in fact, should actively inform legislators how such programs impact market operations. But one step the Commission has never taken is to create or authorize on its own the kind of subsidy proposed here.

We know there is always more to do to make wholesale markets more open, more transparent and more efficient; but moving backward is not the way to go. We strongly encourage the Commission to use this opportunity created by the Secretary to identify attributes of the current competitive market system that need to be improved, to crisply define them and either modify the current published proposal or initiate regional proceedings to examine resilience issues and consider the need for market rule changes.

⁴ The Powerplant and Industrial Fuel Use Act of 1978, repealed in 1987.

Several examples follow. All organized markets procure Black Start resources for restoring a power station or a part of the grid without reliance on external power. These procurement methods range from cost-of-service based tariffs in some of the RTOs to a fully competitive process used in ERCOT outside of FERC's jurisdiction. An outcome-based resiliency service could follow a similar pattern, to the extent current ancillary services are not providing it adequately.

Similarly, Reliability Must-Run (RMR) arrangements have been adopted by the RTOs to ensure that a specific resource, which would otherwise be mothballed or retired, remains available for a specified length of time to provide a base level of energy production needed for local reliability. A cost-based formula is often used to calculate the compensation for the affected unit, and the cost is uplifted to the broader RTO market. The RTOs and the Commission are well aware of the negative impact such out-of-market interventions can have on the marketplace. For that reason, RMR contracts have been used relatively sparingly and to address well-defined, limited local reliability challenges that the market could not address in the short term.

The issues of reliability and resiliency are not new to the Commission. These issues are more likely to be related to utility transmission and distribution systems;⁵ after an emergency, it is the power delivery system recovery timeline that drives the restoration of retail service. To be sure, a more robust transmission and distribution system will add resilience in all markets. While there have been some instances of generation-related customer outages,⁶ fuel supply emergencies have been an insignificant cause of customer outages. To the extent these could become an issue, there are market-based solutions that can be employed; for example, the recently-implemented capacity performance programs in PJM and ISO-NE are intended to incent and reward fuel supply certainty, and to severely penalize the failure to provide power at critical times.

⁵ A memorable example of a power delivery failure, the 2003 Northeastern North American Blackout, originated in Ohio when inadequate vegetation management by a transmission-owning utility triggered multiple transmission outages on a summer afternoon and the tripping of a coal-fired power plant in Cleveland. These incidents, combined with inadequate situational awareness across the region, led to cascading failures across northeastern North America, and over fifty million people were out of power, some for up to seven days. The FERC Staff summary of this incident is found at:

<https://www.ferc.gov/CalendarFiles/20040915141105-blackout.pdf>

⁶ See, e.g., <https://www.ferc.gov/legal/staff-reports/08-16-11-report.pdf> regarding a February 2011 cold weather event in Texas and the Southwest. And the causes of the 2000-2001 power outages in California are well known to the Commission (and to these commenters).

In our years of service on the Commission, we all leaned heavily on the use of broad stakeholder processes in the organized markets to develop balanced rules for all to live under, and we remain supportive of the checks and balances such mechanisms provide. To the extent, however, these processes are unable to address the reliability and/or resilience issues raised in this Docket, the independent Boards of the organized markets should be able to file directly for Commission approval of such changes. That is a principal reason why we insisted in Order No. 2000 on such independent governance.

CONCLUSION

In the end, it is the Commission that has statutory responsibility for just and reasonable rates and for maintaining reliability. This is an extremely challenging responsibility shared by five independent Commissioners and a dedicated staff. We therefore urge the Commission to actively defend and promote reliable, competitive energy markets in all arenas. The injection of uncertainty over the future of efficient, competitive electric markets and the highly capital-intensive and vitally important electric industry impairs critical long-term investment and jeopardizes the delivery of cost-effective energy services to

customers.

Accordingly, we urge you not to move forward with the published proposal, and instead address the issues of power system reliability and resiliency consistent with the Commission's long history and in the transparent, bipartisan, policy-centered manner for which this Commission has long been respected.

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