

The Massachusetts Attorney General supported and appreciates the Commission's convening of the September 30, 2020 technical conference on state-determined carbon pricing in regions with organized wholesale electricity markets. The conference offered an opportunity for valuable discussion among market participants, regulators, consumer and environmental advocates, and other stakeholders about the role of carbon pricing in facilitating achievement of state policies to reduce greenhouse gas emissions. The conference was helpful in confirming the states' jurisdiction over carbon pricing. The conference also provided a foundation for continued discussion among stakeholders about the Commission's advancement of state policy prerogatives.

As the Commission acknowledges, states are leaders in efforts to reduce greenhouse gas emissions from the power sector.² The Proposed Policy Statement issued by the Commission on October 15, 2020 properly recognizes the authority of states over existing state-created carbon pricing programs such as the Regional Greenhouse Gas Initiative (RGGI).³ RGGI is a cooperative, market based CO₂ cap and trade program to reduce greenhouse gas emissions across New England, New York and the mid-Atlantic states. The program allows generators to recover, through wholesale rates, the cost of RGGI's mandatory allowances for carbon dioxide.

In light of states' authority to determine the role that carbon pricing will play in the realization of their clean energy policies the Commission should expressly recognize in any policy statement that states may elect to administer a carbon pricing program exclusively within the confines of state jurisdiction. The Commission states that RTO/ISO-administered carbon pricing proposals will be considered on a case-by-case basis under Section 205 based on the

² Proposed Policy Statement at ¶ 2.

³ *Id.* at ¶ 3.

particular facts and issues arising in an individual filing.⁴ The Commission’s confirmation that it will review RTO/ISO market designs that incorporate a state-determined carbon price on a case-by-case basis under Section 205, while not seeking to change any existing state practice, is an appropriate recognition of state jurisdictional authority and federal jurisdictional limitations on this issue.

However, the Proposed Policy Statement goes further to *encourage* RTO/ISOs to explore establishing new market rules that incorporate state-determined carbon prices and to outline issues the Commission should consider when reviewing any such proposals. These aspects of the Policy Statement undermine the Commission’s determination to “review any specific FPA section 205 filing based on the facts and circumstances presented in each proceeding.”⁵ A case-by-case approach is necessary given the diversity of approaches that states and RTOs and ISOs could propose. The Commission should not, through the Proposed Policy Statement or otherwise, prejudge section 205 filings outside of a specific filing by an ISO or RTO. The Commission’s adoption of pre-set evaluation criteria that are not broad enough to accommodate varied carbon pricing designs or may not be relevant in the circumstances of a particular filing, could lead to such a result.

In October 2020, the six New England governors issued a Vision Statement detailing the significant changes to wholesale electricity market design, transmission system planning, and ISO-NE governance that will be necessary to achieve a “clean, affordable, and reliable 21st century regional electric grid” in New England.⁶ Concurrently, New England stakeholders, the

⁴ Proposed Policy Statement at ¶15.

⁵ *Id.*

⁶ See New England States’ Vision for a Clean, Affordable, and Reliable 21st Century Regional Electric Grid (Vision Statement), at 2, available at <http://nescoe.com/resource-center/vision-stmt-oct2020/>.

states and ISO-NE have been engaged since last summer in a “Future Grid” process to assess the future state of the regional power system in light of current state energy and environmental policies and to evaluate future wholesale market designs that will achieve those policies. In its initial comments to the Commission in this matter, the New England States Committee on Electricity (NESCOE) unequivocally stated that this Future Grid process is the New England states’ “preferred pathway to inform discussion of the carbon-related requirements of New England state laws and markets and the range of potential solutions.”⁷ That process is on-going, and Massachusetts and the other New England states have yet to decide what wholesale market design changes will best allow New England to achieve its clean energy and climate goals.⁸

Some states may decide that implementation of a state determined carbon price administered through RTO/ISO markets is not the right choice for them. Others may decide that it is. There are a variety of ideas and potential market designs that allow for state clean energy policies and wholesale markets to operate successfully.⁹ Accordingly, the Massachusetts Attorney General urges the Commission to err on the side of restraint in its formulation of any policy regarding RTO/ISO efforts to explore establishment of wholesale market rules that accommodate state-determined carbon pricing. There is no “one size fits all,” and states will choose to take different paths to reduce carbon.

⁷ NESCOE Comments at 2.

⁸ In its Vision Statement, the New England States express support for RGGI and oppose an “additional, separate carbon pricing-style mechanism through the current ISO-NE wholesale markets.” Vision Statement at 3, fn. 5.

⁹ For two such potential designs, *see* Forward Clean Energy Market, available at https://www.iso-ne.com/static-assets/documents/2020/11/2020_08_06_npc_presentation_fgp_spees.pdf; *see also*, The Integrated Clean Capacity Market, available at https://www.iso-ne.com/static-assets/documents/2020/11/2020_10_01_npc_presentation_fgp_spees.pdf

In addition to the fact that state carbon-pricing programs may differ significantly, so do the RTOs/ISOs and the wholesale markets they serve. As a result, wholesale market design proposals that incorporate state carbon pricing could vary greatly. The Commission must show flexibility to accommodate these differences.

Another crucial element of the Commission's focus must be consideration of costs to consumers. "The Commission must 'protect[. . . consumers from excessive rates and charges.'"¹⁰ Thus, in order for the resulting rates to be just and reasonable, a wholesale market design that accommodates a state-determined cost of carbon must be commensurate with benefits to consumers. In its consideration of the appropriate provisions of a policy statement, the Commission must always abide by this guiding principle.

II. CONCLUSION

The Massachusetts Attorney General respectfully requests that the Commission should, if it makes any policy statement at all, confirm the legitimacy of current practice and express confidence that RTOs/ISOs and their stakeholders can develop just and reasonable market rules to accommodate their applicable state policies. Any policy statement the Commission elects to issue must (1) acknowledge and respect the proper boundaries between state and federal authority; (2) be general and flexible enough to accommodate varied ideas and market designs arising out of state policies; and (3) prominently consider ratepayer costs and benefits.

¹⁰ *NextEra Energy Resources, LLC v. FERC*, 898 F.3d 14, 21 (D.C. Cir. 2018) (citing *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016) (quoting *Municipal Light Bds. v. FPC*, 450 F.2d 1341, 1348 (D.C. Cir. 1971))).

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010, 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 in this proceeding.

Dated at Boston, Massachusetts this 16th day of November, 2020.

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