UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Modernizing Electricity Market Design Docket No. AD21-10

**Comments of Public Citizen, Inc.**

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. Public Citizen is active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Financial details about our funding and operations are available at our website.[[1]](#footnote-1)

 U.S. power markets are in the midst of disruptive change triggered by technological revolutions. Large-scale wind and solar are now often the least-cost power option in our markets, and advancements in energy storage can successfully balance renewables’ variability. These innovations are the result of factors far outside the overly-complex and ever-changing rules implemented by the Commission and the various private Regional Transmission Organizations (RTOs): while market design can capture the savings offered by clean technologies, the RTOs have played no role in creating or shaping these efficiencies in renewable fuel generation. Growth of renewables is attributable to: twenty years of state renewable mandates;[[2]](#footnote-2) corporate procurement;[[3]](#footnote-3) retail-level distributed generation incentives; and federal tax policy. These four influences provided the platform for renewable energy gaining a market foothold.

Just as RTO market design strained to offer efficient pricing prior to the post-2007 natural gas fracking boom (expensive gas set punishing high marginal prices, crippling consumers), the incumbent-industry-dominated RTO stakeholder process has increasingly promoted changes (through MOPR, CASPR, etc) to impede, rather than facilitate, renewable energy integration.

To be clear: consumers benefit from a transition to renewable generation when that resource is low-cost and when those low costs are reflected in retail rates. These disruptive changes introduce challenges that can be successfully mitigated with Commission action.

**Disruptive Transitions Can Increase Pricing Volatility**

 Wind and solar provide tremendous benefits for consumers and the climate, and policy should continue to support efforts to deploy these advantageous technologies. But the variability of wind and solar create forecast error deviations between spot, intraday and day-ahead prices, resulting in high induced price volatility. In addition, information asymmetry between futures and spot markets contribute further to volatility, necessitating closer coordination between the U.S. Commodity Futures Trading Commission and FERC. Forecast deviation errors become more pronounced during extreme weather events. In select U.S. markets featuring high levels of non-dispatchable renewable penetration, periods of negative pricing result, further exacerbating price volatility. Indeed, price cannibalization is a feature of very high renewable penetration, limiting the effectiveness of energy prices to deliver necessary incentives.

Enhanced levels of publicly-available, real-time operational data—including electricity production, independently-verified causes of unplanned outages, grid congestion, demand response and system balance—could assist the Commission and market participants in efforts to mitigate price volatility. It is important that such data be made freely available to the public, and not part of yet another commodification and privatization of critical market information locked behind expensive paywalls.

 European power markets, which typically feature larger penetration rates of renewables than the U.S., have experienced record trading volume and significant price volatility, where financial traders are a prominent feature. An increased role in U.S. power markets for financial arbitrage has the possibility of diluting savings for end-users, threatening the efficiency value that rising renewables can offer. The Commission must enhance the role of enforcement to ensure that financial traders do not undermine the promise of lower costs to consumers resulting from higher deployment of renewables.

**Climate Change Price Gouging Violates Just And Reasonable Rates**

Climate change results in more frequent and more disruptive weather events. These climate-induced disasters disorder commodity markets and energy systems, distorting the supply/demand balance, resulting in market dysfunction. It is not just and reasonable to permit unchecked market-based pricing during extreme weather events, as market fundamentals are inoperable. The purpose of market-based pricing is to send coherent price signals to market participants—but market participants cannot rationally respond to price signals if the market is not functioning due to extreme weather. Allowing earth-shattering pricing because equipment has failed in an extreme event will not incent additional capacity to come online.

 It is illegal for supermarkets to increase prices for staple foods like milk and water during weather emergencies. Such price-gouging laws have been on the books for more than a century, but yet we tolerate record electricity and natural gas prices during these same calamities. While the Commission has authority to prohibit market manipulation, price-gouging is not manipulation. Recent climate events have exposed weaknesses in the Commission’s reliance on market-based pricing, but such vulnerabilities can be successfully addressed through an elegant and simple reform: imposition of market-wide soft caps subject to public reporting and seller identification.

 In the wake of the West Coast Deregulation Crisis of 2000-01, the Commission imposed soft offer caps for the entire western power market outside of CAISO.[[4]](#footnote-4) If a one seeks to sell electricity in excess of $1,000/MWh, the transaction is subject to justification and refund. If the seller cannot justify the exorbitant price as just and reasonable, it must be refunded back to consumers. Public Citizen endorses an expansion of this soft cap to every market subject to the Commission’s jurisdiction, with an additional caveat: the justification filings must publicly include the name of the seller, the prices and volumes of the prices they charged, the geographic hub at which the sales occurred, and the date. Section 201 of the Federal Power Act states “that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest.”[[5]](#footnote-5) The public interest should require power sellers who feel the need to charge excessive rates during a climate emergency to, at a minimum, be required to publicly reveal details of such charges. Such price transparency will help ensure just and reasonable rates and satisfy that our power systems are operated for the public interest.

 Such price transparency must extend to spot natural gas markets as well. As Public Citizen informed the Commission last year, spot natural gas price indices are structurally non-competitive and the voluntary nature of reporting trades renders them susceptible to market manipulation.[[6]](#footnote-6) The Commission has clear legal authority to establish an electronic exchange that publicly reveals sellers and prices for physical gas trading, so that the public and policy makers have clear, transparent understanding of who and what is driving changes in natural gas prices. Gas price volatility has been exacerbated by a dramatic rise of exports, leaving gas markets more vulnerable to extreme weather events.

 Nonexistent federal regulation of spot prices, and FERC's permissiveness of allowing financial speculators control over limited pipeline capacity necessitates greater coordination between power sellers and entities controlling gas pipeline capacity. The increase of financial traders in securing capacity on FERC-jurisdictional pipelines often correlates with their financial trading in power markets. Such collusive speculation occurring in physical gas and power markets threatens effective competition and just and reasonable rates. The Commission must amend market power rules to formally and comprehensively include disclosure of power sellers’ contractual interests in physical gas supplies.

**Market Design Cannot Be Modernized When RTO Stakeholder Processes Are Stuck In the Stone Age**

In December 1999, FERC Order 2000 encouraged the voluntary creation of ISOs/RTOs to “facilitate lighter handed regulation” and “reduce the need for Commission oversight and scrutiny.”[[7]](#footnote-7) Twenty years later, it’s obvious that reducing Commission scrutiny over RTO stakeholder operations fails the public interest and results in the disenfranchisement of communities impacted by RTOs. Some RTOs ban the ability of the general public to participate at all, while others erect all sort of barriers for the public interest to meaningfully contribute. FERC has delegated the heavy lifting of designing energy markets to the private RTOs. The RTOs administer internal stakeholder processes where lobbyists for utilities, power plants and Wall Street energy traders are free to not only offer their market design proposals but are granted voting rights by the RTO—opportunities often denied to public interest representatives.

It is therefore unsurprising that RTOs often pursue market designs that are hostile to renewables and the public interest. RTOs are responsive to their transmission owning members and other powerful industry stakeholders, and not the public interest. *NRG Power Marketing, LLC v. FERC* (2017) limits FERC’s ability to alter RTOs § 205 filings, thereby vastly empowering the ability of RTOs to dictate the direction of market reforms.

FERC cannot enact meaningful market design reforms when it relies on an RTO stakeholder process stuck in the Stone Age. Efforts to modernize market reforms begin and end with revamping a stakeholder process that is no longer controlled by private RTOs. The Commission must revisit Order 719 to ensure that the public interest—and not transmission owners, incumbent generators or financial traders—determine outcomes of the stakeholder process.

**Conclusions**

* Limit climate change price gouging through nationwide soft cap transparency reporting.
* Closer coordination between FERC and the CFTC to alleviate information asymmetry between futures and spot markets.
* Enhanced levels of publicly available, real-time operational data.
* Boost enforcement over the increasing role of financial traders, including strengthening oversight and reporting of the interconnection of gas and power traders.
* Improve spot natural gas transparency through 15 USC § 717t–2(a)(4).
* Reform RTOs control over stakeholder processes.

 Respectfully submitted,

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1. www.citizen.org/about/annual-report/ [↑](#footnote-ref-1)
2. U.S. Renewables Portfolio Standards 2021 Status Update, Berkeley Lab, https://emp.lbl.gov/publications/us-renewables-portfolio-standards-3 [↑](#footnote-ref-2)
3. Corporate procurement rivals policy in driving growth of renewable energy, Deloitte, www2.deloitte.com/content/dam/Deloitte/us/Documents/energy-resources/us-er-corporate-procurement-renewable-energy-report.pdf [↑](#footnote-ref-3)
4. www.ferc.gov/industries-data/electric/power-sales-and-markets/staff-guidance-wecc-soft-offer-caps [↑](#footnote-ref-4)
5. 16 U.S.C. § 824(a). [↑](#footnote-ref-5)
6. FERC Docket RM20-7, www.citizen.org/article/natural-gas-spot-prices-in-need-of-reform/ [↑](#footnote-ref-6)
7. At pages 3 and 96, www.ferc.gov/sites/default/files/2020-06/RM99-2-00K\_1.pdf [↑](#footnote-ref-7)