

**Opening Statement of James R. Dauphinais of Brubaker & Associates, Inc.
on Behalf of Electricity Consumers Resource Council for
FERC SMD NOPR Congestion Revenue Rights Technical Conference
Docket No. RM01-12-000
December 3, 2002**

Good afternoon. On behalf of the Electricity Consumers Resource Council (or “ELCON”), I would like to thank the Commission for the opportunity to speak on the transition to and allocation of Congestion Revenue Rights (or “CRRs”). I would also note my comments today for ELCON are preliminary and we hope to learn as much as we contribute to today’s discussions.

ELCON supports the Commission’s move to a Standard Market Design. However, we are concerned that if the market value of the transmission system is separated from end-use customers who ultimately pay for the transmission system, market participants will unduly profit at the expense of consumers. We are also concerned that if there is not a sufficient amount of CRRs available in the market, end-use customers that are Market-Participating Loads¹ (or their suppliers) may not be able to hedge their transactions against congestion, and power markets will remain unnecessarily unstable and potentially face future reliability problems.

In regard to the allocation of CRRs, ELCON believes CRRs or the market value of those CRRs should be allocated directly to end-use customers based on the historic use of the transmission system by their historic supplier. We also believe it would be reasonable for non-retail access utilities (i.e., non-retail access LSEs) to hold in trust CRRs (or the value of CRRs) that have been allocated to the utility’s end-use customers. We believe this approach would provide a reasonable way to ensure CRRs (or the value of those CRRs) remain with end-use customers when retail choice is made available.

In regard to the issue of ensuring reliable and reasonably stable competitive markets, we believe it is vital that the Commission’s transition to and allocation of CRRs support a liquid and transparent forward market for transmission rights that ultimately reaches out to the horizon of new generation and transmission construction. The forward locational price discovery necessary

¹ In the November 15, 2002 Comments of Industrial Consumers, it was recommended the Commission adopt the term Market-Participating Load (MPL) to differentiate end-use retail access customers from Load-Serving Entities (LSEs). Industrial Consumers proposed a Market-Participating Load to be defined as: “A retail customer load that is eligible for transmission service pursuant to . . . [the SMD] Tariff.” The differentiation is needed to help remove undue discrimination to MPLs that can result from treating them entirely like LSEs.

to provide the lead compensation necessary to make markets stable can only be derived from the forward trading of CRRs to hedge expected LMP charges, not the LMP charges themselves.

To ensure reasonably stable markets and that consumers can adequately hedge against LMP congestion charges, a sufficient number of CRRs must be available to the market by auction or in the secondary markets. This means that ultimately all allocated CRRs must be auctioned and the market value of those CRRs must be allocated rather than the CRRs themselves. It also means in those regions where a substantial amount of the total CRRs have been allocated, a move to mandatory auctions (i.e., the allocation of the value of CRRs rather than the CRRs themselves) will need to happen sooner rather than later. Moreover, in such situations, an allocation of CRRs rather than the value of CRRs will be an impediment to retail access as it will be difficult for Market-Participating Loads (or their suppliers) to obtain the CRRs required to fully hedge their transactions against LMP charges.

As a final note, we recommend that only end-use customers which we refer to as Market-Participating Loads (or "MPLs") and LSEs acting on behalf of end-use customers be able to hold CRRs until such time the Commission has verified that possession of CRRs by other entities will not allow those entities to unduly profit at the expense of end-use customers. We also recommend CRR auctions initially have a short term due to the learning curve that must be climbed by MPLs and LSEs before their future LMP charge expectations approach actual LMP charges. Substantial differences in LMP charge expectations and actual LMP charges could undervalue CRRs and harm consumers being allocated the value of those CRRs.

I look forward to your questions. Thank you.

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