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FERC CARBON PRICING POLICY

Here are six key items to be aware of today concerning FERC Carbon Pricing Policy:

1. **FERC issues Policy Statement on carbon pricing.** On October 15, 2020, during a FERC webcast technical conference on "Carbon Pricing in Organized Wholesale Electricity Markets," FERC issued a Policy Statement signaling its authority to review and approve ISO and RTO incorporation of carbon pricing programs into their rate structures.

2. **Commissioners have expressed mixed views on carbon pricing.** Following on this October conference, former FERC Chairman Neil Chatterjee (a Republican) indicated his view that there was "consensus and enthusiasm" for carbon pricing as a market-driven solution to climate change. Commissioner James Danly outlined a more conservative response, especially concerning whether FERC has the authority and jurisdiction to review and comment on grid operators' carbon pricing measures under the Federal Power Act. At that time, Commissioner Glick noted that, "if finalized, the policy statement would provide states with the confidence that FERC would not deny state-led efforts to price carbon"; that said, Glick at that time also rejected the idea of focusing solely on "byzantine administrative pricing."

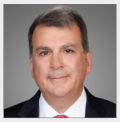
3. **Commissioner Glick has previously signaled that carbon pricing alone must be balanced with broader goals on climate.** Commissioner Glick has noted that carbon pricing could have the effect of wiping out state-level decisions in wholesale markets, that price-setting could be an issue as, on the one hand, "obviously some states might react negatively" to a price that is too high, and on the other, if the price were too low it would not cause any changes to state level decisions as states would view it as "a carbon price that [they] don't think is going to have a significant impact." Notably, Commissioner Glick has espoused support for transmission line construction and grid modernization as key in concert with carbon pricing: "Even with carbon pricing, and maybe because of carbon pricing, you're going to have to figure out a way to access areas where we have significant and very efficient clean energy resources."

4. **The Biden Administration has made climate change and decarbonization a central part of its initial policy actions.** These include rejoining the Paris Agreement, signaling a regulatory review of Trump-era policies to ensure consistency with the Biden Administration's climate policies, and issuing an executive order that calls for a "carbon pollution-free electricity sector no later than 2035." And FERC alumni are pushing for change as well — on January 28, 2021, bipartisan group of nine former FERC commissioners released a statement encouraging transmission reform as part of President Biden's push for decarbonization and climate change mitigation.

5. **Eleven states have adopted carbon pricing in some form, and regional transmission organizations are moving in that direction as well.** For example, NYISO is advancing a plan to set a carbon price, and PJM Interconnection is studying whether carbon pricing could work in its markets. If any carbon pricing proposals were approved by FERC during Chairman Glick's tenure, such proposals likely will begin in RTOs/ISOs that do not cover multiple state regulatory jurisdictions, ones like NYISO. ISOs like PJM that cover multiple states will confront more difficult coordination issues when endeavoring to set a price on carbon.

6. **Any FERC action on carbon pricing will likely be part of a broader set of regulatory actions.** Given the prior statements of Commissioner Glick, the fact that Commissioner Glick will still need to work within a Republican-majority at FERC for at least the next six months, and the Biden Administration's broader push on climate and decarbonization policies, if FERC further develops carbon pricing, it likely will be in the context of a broader set of regulatory actions, including most notably transmission build-out and a revisiting of the Minimum Offer Price Rule, to which Commissioner Glick has indicated strong opposition in the past, including with respect to its interaction with carbon pricing.

Key Contacts - FERC Carbon Pricing Policy



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Paul has been an energy lawyer since 1984. Over a career of almost 30 years, he has negotiated all manner of project contracts, including power purchase agreements, hedges, interconnection and transmission agreements and equipment procurement and construction contracts. He represents parties in M&A transactions involving development and operating wind and solar generating projects. He works with renewable energy technologies, including on large wind, solar and biomass projects, and on conventional power plants using fossil fuels, as well as gas storage projects. In addition, he negotiates joint ventures, development agreements and precedent agreements for renewable energy project investors and developers and represented lenders in the review and analysis of project agreements for renewable generation projects in Central America, the U.S. and the Caribbean.

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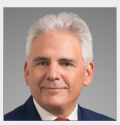
Bill represents clients in the natural gas, electric and oil/liquids industries in commercial transactions and before federal agencies, including the Federal Energy Regulatory Commission (FERC), state utility commissions and appellate courts. Bill often represents natural gas pipelines and storage providers, electric generators, power marketing and trading companies, commercial class electric customers, electric utilities, independent electric transmission providers and oil/liquids pipelines and storage providers. He has worked across the renewable energy sector, including on wind, solar and biomass projects, and on electric battery storage projects.



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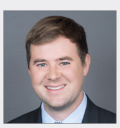
Nicholas has more than 25 years of environmental counseling and litigation experience. His environmental compliance counseling practice focuses on climate change, Brownfields redevelopment, sustainability and other regulatory and transactional matters. His climate change practice encompasses California's Cap-and-Trade Program (compliance, rulemaking, enforcement and emission trading contracts) and other aspects of AB 32, as well as related state, federal and international programs and international offset projects. His climate finance practice includes handling complex offset transactions, market advice, and ESG counseling (environmental, social and governance risks and opportunities).



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Daniel's practice focuses on renewable energy and infrastructure project finance, especially of wind, solar and transportation projects. He represents lenders and sponsors at all stages of project development, from offtake agreements and procurement and construction contracts to debt and tax equity financing. Daniel also advises clients in the buying and selling of project portfolios and development assets.

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Nick is an associate in the Finance and Bankruptcy Practice Group and a member of the firm's Energy, Infrastructure, and Project Finance Team. Nick has represented clients from the maritime, energy, and aviation industries including lenders and borrowers, issuers, lessors and lessees, sellers and buyers, and equity investors in a range of sale, lease, and financing transactions.

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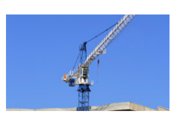

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