The New York Independent System Operator (NYISO) operates the state's electric grid and conducts wholesale power markets. The New York Department of Public Service regulates the state's investor-owned electricity providers. Together, they have issued a report concluding that the state, ratepayers, and the environment would benefit from placing a charge on wholesale electric power to reflect the social cost of greenhouse gas emissions.

It would have been hard to imagine many public officials offering such a proposal as little as three years ago. That's when Berkeley Law's Center for Law, Energy and the Environment (CLEE) and the Berkeley Energy and Climate Institute (BECI) first offered a legal justification for including a carbon adder in the wholesale price for power.

At the time, then-Congressman Henry Waxman held a hearing imploring federal regulators to consider adopting a carbon adder. It is the Federal Energy Regulatory Commission (FERC) that regulates wholesale power rates in most of the country. In order to approve rates, FERC has to find that the resulting charges are just and reasonable. In the CLEE/BECI report, Romany Webb and I argued that rates cannot be just and reasonable when clean power providers must compete with dirtier sources that can avoid the cost of the pollution they create. Congressman Waxman gave all five FERC commissioners copies of the CLEE report and urged them to consider its findings.

Although FERC did not leap into action, the idea began to bubble up elsewhere. Other scholars began to write about and expand upon the concept, and strong corporate support emerged in the form of the Exelon Corporation which, among other things, owns and operates nuclear power plants in various parts of the country. Exelon has successfully argued that nuclear plants serving states with competitive wholesale power markets were in great danger of going out of business in the absence of additional economic support.

The phenomenon Exelon talks about is the result of the dramatic growth in renewable and natural gas power, and the way that organized power markets in the U.S. work. Competitive wholesale markets favor power sources with the lowest variable cost, with the final market price reflecting the cost of the most expensive source needed to meet demand. Gas is cheap and the variable cost of most renewables is at or near zero. Unless a generator can afford to compete with those low-cost providers, it may not have its bid accepted and could lack an opportunity to collect revenue to cover its fixed cost. Exelon was able to persuade regulators in some states (most conspicuously New York and Illinois) to adopt schemes to ensure nuclear operators enough revenue to keep the doors open. The rationale was that

the nuclear operators should be rewarded for providing carbon-free power. These actions prompted legal change, worthy of discussion at another time. They also represent efforts to work around the constraints of current market structures and raise more fundamental questions about the viability of those markets.

Although the Exelon proposal rewarded nuclear generators rather than charging carbon emitters, it served to legitimize the concept of including the cost of carbon in power transactions. Lately, there have been active debates about the use of carbon adders not only in New York, but also in New England. It has also been discussed in FERC workshops. The concept has gained the greatest traction in New York. California is not entirely out of the picture, however, as its transmission operator has created a mechanism for tracking the cost of complying with the state's greenhouse gas restrictions. This is not a carbon adder in the broadest sense, since it does not represent an extra charge imposed on power providers, nor does it represent the full social cost of carbon.

While the New York report supports the adoption of a carbon adder, it does not address the legal challenge that the state would face. Remember, it is FERC that approves wholesale rates and it is FERC that must adopt a rationale for finding the addition of a carbon adder to be just and reasonable. With the new administration's FERC appointees just moving in, it is too soon to know what the agency might support. However, initial indications create no great reason for hope, as one new FERC commissioner has already used his bully pulpit to extol the virtues of coal-fired power.

The path to success most likely would have two components: a continuation of the deference to state policy that is evident in the decisions of FERC under President Obama, and a recognition of the legitimacy of a carbon adder in a world of just and reasonable rates.