UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

RTO/ISO Performance Metrics	)	Docket No. AD10-5-000

INITIAL COMMENTS OF AARP, AMERICAN FOREST & PAPER ASSOCIATION, AMERICAN MUNICIPAL POWER, INC., AMERICAN PUBLIC POWER ASSOCIATION, BLUE RIDGE POWER AGENCY, CITIZEN POWER, CITIZENS UTILITY BOARD, COALITION OF MIDWEST TRANSMISSION CUSTOMERS, CONNECTICUT OFFICE OF CONSUMER COUNSEL, DELAWARE MUNICIPAL ELECTRIC CORPORATION, INC., ELECTRICITY CONSUMERS RESOURCE COUNCIL, ILLINOIS ATTORNEY GENERAL, INDUSTRIAL ENERGY CONSUMERS OF AMERICA, KENNEBUNK LIGHT & POWER, MARYLAND OFFICE OF PEOPLE'S COUNSEL, MODESTO IRRIGATION DISTRICT, MUNICIPAL ELECTRIC UTILITIES ASSOCIATION OF NEW YORK, NATIONAL CONSUMER LAW CENTER (ON BEHALF OF OUR LOW-INCOME CLIENTS), NEPOOL INDUSTRIAL CUSTOMER COALITION, NEW ENGLAND PUBLIC POWER ASSOCIATION, NEW YORK ASSOCIATION OF PUBLIC POWER, OFFICE OF THE PEOPLE'S COUNSEL FOR THE DISTRICT OF COLUMBIA, OHIO PARTNERS FOR AFFORDABLE ENERGY, PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE, PJM INDUSTRIAL CUSTOMER COALITION, PUBLIC CITIZEN, PUBLIC POWER ASSOCIATION OF NEW JERSEY, PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC., AND VIRGINIA CITIZENS CONSUMER COUNCIL

AARP, American Forest & Paper Association, American Municipal Power, Inc., American Public Power Association, Blue Ridge Power Agency, Citizen Power, Citizens Utility Board, Coalition of Midwest Transmission Customers, Connecticut Office of Consumer Counsel, Delaware Municipal Electric Corporation, Inc., Electricity Consumers Resource Council, Illinois Attorney General, Industrial Energy Consumers of America, Kennebunk Light & Power, Maryland Office of People's Counsel, Modesto Irrigation District, Municipal Electric Utilities Association of New York, National Consumer Law Center (on behalf of our low-income clients), NEPOOL Industrial Customer Coalition, New England Public Power Association, New York Association of Public Power, Office of the People's Counsel for the District of Columbia, Ohio Partners for Affordable Energy, Pennsylvania Office of Consumer Advocate, PJM Industrial Customer

Coalition, Public Citizen, Public Power Association of New Jersey, Public Utility Law Project of New York, Inc., and Virginia Citizens Consumer Council (jointly, "Consumer Commenters") submit these initial comments in response to the Federal Energy Regulatory Commission's ("FERC" or "Commission") **"**Notice Requesting Comments on RTO/ISO Performance Metrics" ("Notice"), issued in the above-noted docket on February 3, 2010.[1]

I.

INTEREST OF THE PARTIES

The parties submitting these comments represent the interests of a broad and diverse spectrum of wholesale and retail electricity customers in RTO market regions. The Consumer Commenters include: load-serving entities ("LSEs") or associations of LSEs; industrial and large commercial end-use customers or associations of such customers; advocacy organizations that represent the interests of residential consumers or subgroups of such consumers (*e.g*., low-income consumers, senior citizens, *etc*.); and state consumer advocate and attorney general offices.

II.

COMMUNICATIONS

The Consumer Commenters request that service in this proceeding be made upon, and communications directed to, the respective representatives of the signatories listed at the end of these comments.

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[1] 75 Fed. Reg. 7,581 (February 22, 2010).

III.

COMMENTS

Development of a comprehensive set of metrics to measure whether wholesale electricity markets administered by Regional Transmission Organizations ("RTOs") provide benefits for end-use consumers is an essential and long overdue component of adequate FERC oversight and regulation of these markets. The restructuring of wholesale electricity markets and the creation of centralized RTO-operated markets have been undertaken over the past 15 years without an accurate determination of whether these changes have in fact produced net benefits to end-use consumers.

We commend the Commission for providing an opportunity for public comment on the Commission's proposed metrics. The proposed metrics, however, are insufficient to determine the extent to which RTO markets are actually benefitting or harming consumers.

The proposed Performance Metrics address three categories: Reliability, Markets and Organizational Effectiveness. These comments focus on the metrics in the Markets category. Joint Commenters believe this focus is appropriate because the issue of whether or not RTOs provide net benefits to consumers is by far the most controversial, yet unanswered, question.

The Commission in its Notice states that it is undertaking this metrics development effort in response to a recommendation of the Government Accountability Office ("GAO") contained in a report the GAO issued in September 2008.[2] In that report (on the inside cover), the GAO found:

> Many agree that RTOs have improved the management of the transmission grid and improved generator access to it; however, there is no consensus about whether RTO markets provide benefits to consumers or how they have influenced consumer electricity prices. FERC officials believe RTOs have resulted in benefits; however, FERC has not conducted an empirical analysis of RTO

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[2] *Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance*, Government Accountability Office, September 2008, http://www.gao.gov/new.items/d08987.pdf

performance or developed a comprehensive set of publicly available, standardized measures to evaluate such performance.

Despite the centrality of consumer impacts and electricity prices in GAO's finding above, the metrics the Commission proposes under the category of "Markets" are of very limited use and are generally duplicative of data that are already available. The three metrics in the sub-category of Market Pricing (Load-Weighted Locational Marginal Prices ("LMPs"), Components of Total Power Costs, and Load-Weighted Fuel-Adjusted LMPs) shed little light on whether such prices are just and reasonable and are at levels that would be produced in a truly competitive market. For example, if LMPs fall, as they did in 2009, this is not necessarily indicative of the performance of RTO markets and could simply be a reflection of declining fuel costs, loss of load due to the economic recession, and other factors. The question remains as to whether prices fell to the extent that would be expected in a competitive market. LMPs and LMP components, standing alone, do not reveal anything about market behavior and possible exercise of market power that could raise prices above competitive levels.

LMP data also do not paint a complete picture of the impact on consumers because they do not reflect all of the factors contributing to retail prices. Sources of costs other than LMPs, such as capacity payments and ancillary service charges, are a major component of the retail prices consumers and LSEs must pay.

The remaining metrics provide basic data on congestion costs, generator availability, demand response and renewable energy. All are important measures, and the Consumer Commenters support consistent reporting of such data across RTOs. But without an assessment of whether these measures are attributable to RTO market structure or to other exogenous factors (state renewable generation policies, federal and state incentives, individual utility programs *etc*.), their usefulness in evaluating the performance of RTO markets is limited.

While the Consumer Commenters support the use of a wide array of measures of RTO market performance, *these joint comments focus on the importance of one primary metric that is missing from the Commission's proposed array—generator costs compared to revenues*. A fundamental argument underlying deregulation of the electricity markets is that competitive forces will be more effective than cost-based price regulation in achieving just and reasonable prices and benefits for consumers. Determination of the degree to which there is a divergence between actual costs of power production and revenues received from consumers is necessary to ascertain the benefits of moving from cost-of-service regulation (where utilities are allowed to recover prudently incurred costs through rates) to market-based rates (where market forces are supposed to discipline rates to just and reasonable levels). Only through a determination of all components of generators' revenues earned from wholesale electricity markets and all components of their actual costs, can this divergence be accurately measured and evaluated.

IV.

CONCLUSION

The Consumer Commenters strongly urge the Commission to require development of a comprehensive set of RTO metrics that allow for an accurate determination of how the RTO-operated markets are impacting prices and whether these market structures are benefiting consumers. At a minimum, the Commission must collect and report on accurate measures of all generator costs and revenues earned from the wholesale markets. Unfortunately, many of the metrics the Commission has proposed duplicate the data available at the time of the GAO Report that found that FERC has not "developed a comprehensive set of publicly available, standardized measures to evaluate such performance."[3] The Commission should therefore institute further

[3] *Id.*, inside front cover.

proceedings in this docket to develop comprehensive and meaningful measures of RTO market performance.

WHEREFORE, Consumer Commenters submit these initial comments for the Commission's consideration in this docket.

Respectfully submitted,

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