**UNITED STATES OF AMERICA**
**BEFORE THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

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| Wholesale Competition in Regions with Organized Electric Markets | ) ) | Docket Nos. RM07-19-000 AD07-7-000 |

**Joint Comments of COMPETE; 7-Eleven, Inc.; Allegheny Energy; Alliance for Real Energy Options (OH); Alliance for Retail Choice; Alliance for Retail Energy Markets (CA); Alliance for Retail Markets (TX); Ardmore Power Logistics; Professor Ross Baldick, IEEE Fellow, Department of Electrical and Computer Engineering, The University of Texas at Austin; Big Lots Stores, Inc.; Nora Mead Brownell, BC Consulting, former FERC Commissioner and former PaPUC Commissioner; H. Sterling Burnett, Ph.D., Senior Fellow, National Center for Policy Analysis; California Alliance for Competitive Energy Solutions (CACES); California Grocers Association; California Retailers Association; Laura Chappelle, Attorney, former Chairman, MI PSC; Colorado Independent Energy Association; Constellation Energy; Comverge, Inc.; Conectiv Energy; Peter Cramton, Professor of Economics, University of Maryland; DC Energy, LLC; David W. DeRamus, Partner, Bates White, LLC; Direct Energy Services, LLC; Richard A. Drom, Partner, Powell Goldstein LLP; Edison Mission Energy; Electric Power Supply Association (EPSA); Electric Power Generation Association (PA); Energy Association of Pennsylvania; Energy Curtailment Specialists, Inc.; Enermetrix; Enerwise Global Technologies; Exelon Corporation; FirstEnergy Corp.; William L. Flynn, Partner, Harris Beach PLLC, former Chairman, NY PSC; John Hanger, former PaPUC Commissioner; Hess Corporation; William W. Hogan, Raymond Plank Professor of Global Energy Policy, John F. Kennedy School of Government, Harvard University; Illinois Energy Association; Illinois Retail Merchants Association; Independent Energy Producers Association (IEP); Independent Power Producers of New York (IPPNY); JCPenney; Kimball Resources, Inc.; Jerry J. Langdon, former FERC Commissioner; LS Power Associates, L.P.; Luminant; Macy's Inc.; Midwest Independent Power Suppliers; Mirant Corporation; Elizabeth A. Moler, Exelon Corporation, former Chair of FERC; National Energy Marketers Association; New England Energy Alliance; New England Power Generators Association, Inc.; Northwest and Intermountain Power Producers Coalition (NIPPC); NRG Energy, Inc.; Nuclear Energy Institute; PennFuture; PetSmart, Inc.; Piney Creek LP; PJM Power Providers Group; PowerGrid Systems, Inc.; PPL Corporation; Priority Power Management, Ltd.; PSEG Companies; John M. Quain, Buchanan Ingersoll & Rooney PC, former Chairman of PaPUC; Reliant Energy; Retail Energy Suppliers Association (RESA); Safeway Inc.; School Project for Utility Rate Reduction (SPURR); Sempra Energy; Shell Energy North America (US); Silicon Valley Leadership Group; Vernon L. Smith, Nobel Laureate, Professor of Economics and Law, Chapman University; David A. Svanda, Svanda Consulting, former MI PSC Commissioner and former President of NARUC; Glen Thomas, GT**

**Power, former Chairman of PaPUC; Telga Corporation; Texas Competitive Power Advocates; TXU Energy; Wal-Mart Stores, Inc.; Western Power Trading Forum; and Pat Wood, III, Former Chairman of FERC and the PUCT**

COMPETE and 81 other parties hereby respond to the Request to Expand Scope of Section 206 Proceeding ("Request") filed on December 17, 2007 in these dockets. The parties to these Joint Comments are customers, demand response providers, consumer groups, suppliers, utilities, generators, transmission owners, marketers, economists, former FERC Commissioners, former state utility commissioners, academics, trade associations, and various organizations and associations whose membership includes the same, all of whom support well-structured competitive electricity markets for the benefit of consumers.[1] A complete list of the signatories to these Joint Comments is provided in Attachment A.

**Summary**

The Commission should maintain its current focus in this proceeding and should not expand the scope of the Advance Notice of Proposed Rulemaking ("ANOPR") in response to the Request. As the record in this proceeding demonstrates, there is no evidence of "deep systemic problems" in organized electric power markets. If anything, these markets would benefit from the regulatory stability the Commission intends as it considers incremental changes that will improve market functioning. Although the Request concedes, as it must, that our country faces "serious challenges . . . in coming years to construct needed infrastructure, while addressing converging environmental concerns and retaining our economic competitiveness. . .,"[2] it offers only rhetoric and unsubstantiated claims rather than any means of meeting those challenges. The most effective way to meet these serious

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[1] The signatories to this pleading are united in the positions taken herein. They do not necessarily agree with each other on each and every issue or subject matter otherwise addressed in this docket.

[2] Request at P 4.

challenges is to let the markets work, while prudently exploring and implementing incremental improvements in regulation. The Request offers no evidence whatsoever for its claims of market power abuse and market failure. The fundamental objection of the Request, its rhetoric notwithstanding, is that prices in certain unspecified retail and wholesale electric markets are higher than they have been. Higher prices, in and of themselves, are not a sign of market failure but a proper signal that, as the Request itself acknowledges, the nation demands new and improved resources for electric supply, delivery and demand response. For these reasons, the Commission should continue on the course it has set for this proceeding and avoid the actions urged by the Request.

**The scope of the ANOPR is appropriate**

In the ANOPR, the Commission initiated a proceeding "to make incremental improvements to the operation of organized markets without undoing or upsetting the significant efforts that have already been made in providing demonstrable benefits to wholesale customers..." and the Commission noted it "is not seeking to fundamentally redesign organized markets or to appropriate jurisdiction from our state colleagues."[3] Instead, the Commission identified the following four issues to consider: (1) the role of demand response and greater use of market prices to promote electricity demand reductions during a power shortage; (2) improving opportunities for long-term power contracting; (3) strengthening market monitoring; and (4) enhancing RTO and ISO responsiveness.

The scope of issues the Commission articulated for improving the organized markets is appropriate. First, the Commission adopted this approach and identified the ANOPR's four issues after holding two public conferences and receiving subsequent written

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[3] Wholesale Competition in Regions with Organized Electric Markets, Advance Notice of Proposed Rulemaking, 119 FERC ¶ 61,306 at P 3 (2007).

comments. Thus, the Commission based its approach on resolving the most salient issues raised by market participants. This is a responsible and deliberate way to proceed.

Second, fundamental redesign of the markets would be counterproductive. As Professor Paul Joskow observed in this proceeding, "[d]rastic market redesign will not lead to lower wholesale prices, though it may lead to discriminatory prices that benefit some large consumers and burden smaller consumers . . .," and "the greatest impediment to investment in new generating capacity is political and regulatory uncertainty that is being produced by calls for 're-regulation' and calls for altering dramatically wholesale market designs that have evolved in positive directions and work well."[4]

Third, and perhaps most compelling, the Request fails to show that the concerns it expresses cannot be adequately addressed within the context of the four issue areas identified by the Commission, thereby continuing to ensure just and reasonable prices. For example, improved opportunities for demand response, including appropriate market prices that reflect supply and demand, will help keep prices as low as possible and provide a significant check on potential exercises of market power. Improved opportunities for long-term contracting in the organized markets will help protect both consumers and suppliers from the risks of the spot market. And, although the RTO and ISO market monitors have consistently found that their markets generally operate competitively, improved market monitoring will help detect and prevent market power. By focusing on specific issues, the Commission's ANOPR asks participants to identify particular problems and suggest specific ways to address them. At this stage in the proceeding, the time has long passed for offering complaints without suggesting specific and reasonable policy solutions.

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[4] Prepared Comments of Professor Paul L. Joskow, submitted in Docket No. AD07-7-000, February 27, 2007.

**The Request is an inadequate basis for a Section 206 investigation**

Although the Request is styled as a request to expand the scope of a section 206 proceeding, it is actually a late-filed comment on the ANOPR reiterating the points raised in rulemaking comments already filed by the parties to the Request.[5] As such, the Request is untimely, superfluous and unnecessary. As support for initiation of a section 206 investigation, the Request is remarkably deficient. The Request presents only a one-page list (double-spaced) of points that the parties have made in other filings or statements that purportedly indicate that the organized markets are not producing just and reasonable prices. Although the Request claims that the sum total of the Parties' previous "statements, testimony and comments . . . filed, taken together, provide ample justification to initiate a full section 206 investigation . . .,"[6] this does not amount to new evidence at all, let alone come close to carrying the burden under section 206 to "state the change or changes to be made . . . and the reasons for any proposed change or changes therein."[7] Rather, the Request is simply a rehash of old arguments, barren of facts or new insights.[8] The Request appears to invite the Commission to take an unwise short-term view. Yet, the Commission must

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[5] *See* Request at P 4.

[6] Request at P 6.

[7] 16 U.S.C. § 824e(a) (2006).

[8] For instance, bald, completely unsupported allegations that prices are a result of the exercise of market power within the organized markets is contrary to the findings of the RTO market monitors that the markets generally performed competitively. *See* PJM Market Monitoring Unit, "2006 State of the Market Report, Volume II: Detailed Analysis," at p. 23 (March 8, 2007); Potomac Economics, "2006 State of the Market Report, The Midwest ISO," at p. i (July 2007); ISO New England, "2006 Annual Markets Report," at p. 135 (June 11, 2007); David B. Patton, Potomac Economics, "2006 State of the Market Report: New York Electricity Markets," at p. 4 (May 2007); and Department of Market Monitoring, "California ISO: 2006 Annual Report-Market Issues and Performance," at p. 26 (April 2007).

make policy decisions based on its judgment of where the public interest lies, in this case ensuring that well-functioning markets provide price signals to attract the investment necessary over the long term for the efficient and reliable delivery of power to consumers.

Aside from its severe lack of detail, the Request fails to satisfy one of the more important contents required of a section 206 complaint by the Commission's regulations: to explain *how* the subject of the complaint violates applicable statutory standards or regulatory requirements.[9] The Request does not distinguish clearly between wholesale and retail rate impacts and does not address why the conclusory observations presented in its brief list of points result in unjust and unreasonable rates. What is the standard by which such a claim is made? None is provided. At best, the list may indicate that prices are rising, and it makes the unsubstantiated claim that currently some participants are making higher than regulated profits. Yet most observers agree that the industry is now in a time of tightening supply and rising input costs. Thus, the issue list in the Request, shorn of rhetorical flourish, at most observes that prices rise when supply is tight. The Request fails to specify how the Commission should evaluate its basic claims. The Commission is on solid ground in its regulation of organized competitive wholesale electricity markets, and should not overturn its precedents and weaken confidence in the organized markets based upon such a thin and unsubstantiated pleading. Moreover, there is absolutely no basis on which to transform this rulemaking into an adjudicatory proceeding.

**The fundamental existing structure of the organized markets is producing benefits**

The organized markets are regional in scope, independently administered, and rely on a single clearing price based on locational marginal pricing to meet demand for energy. Independent observers agree that this is an efficient means to operate organized competitive

[9] 18 C.F.R. § 385.206(b)(2)(2007).

electricity markets,[10] and the Commission has so found in its orders. For example, just over a year ago, the Commission found that a single-clearing price based on locational marginal pricing will "provide appropriate price signals indicating the value of additional resources or conservation at each node on the transmission system . . ." and provides "incentives for market participants to make efficient decisions regarding investments . . ." and "to maximize profits through increased availability and/or efficiency."[11]

In the organized markets, price transparency provides valuable information about when and where to invest. As the Commission observed, "[w]hen market-based rates exceed cost-based rates, it is not market failure but rather a signal for the construction of new generation and/or transmission, as well as the implementation of demand-side solutions."[12]

Prices in the organized markets also provide a firm basis for energy products and contracts, such as risk management tools for suppliers and consumers, as well as the long-term power procurement arrangements and investment decisions that assist in planning and meeting reliability goals.

These are long-respected, mainstream, fundamental principles of electricity markets. The Request offers no basis to depart from these principles.

The Commission's observations in the ANOPR are right on point: the organized markets are producing the benefits expected. The price signals in the organized markets

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[10] For example, a number of analyses have concluded that the single price auction used in the organized markets facilitates a least cost dispatch. See, for example, the following: Cramton and Stoft, "Uniform-Price Auctions in Electricity Markets," at pp. 7-9 (March 18, 2006), submitted by PJM in FERC Docket No. AD05-13 on March 28, 2006.

[11] *Richard Blumenthal, Att'y Gen. for the State of Conn., et al. v. ISO New England, Inc.,* 117 FERC ¶ 61,038 at P 78 (citation omitted)(2006).

[12] *Id.* at P 85.

allow regional system operators and consumers to measure the value of demand response, and thereby provide a solid foundation for the substantial growth in demand response seen in the organized markets in recent years.[13] Competitive pressures have improved the operating efficiency of power plants, resulting in cost savings, fewer outages and enhanced reliability.[14]

**Conclusion**

For the above reasons, the scope of this proceeding as announced by the Commission in the ANOPR is appropriate, and we respectfully suggest that the Commission proceed accordingly.

Respectfully submitted,

William L. Massey
Counsel for COMPETE
Covington & Burling, LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
202-662-5322

wmassey@cov.com

[13] ISO/RTO Council, "Progress of Organized Wholesale Electricity Markets in North America", at pp. 6-7 (October 16, 2007).

[14] *Id.*, at pp. 4, 8; Susan F. Tierney, Analysis Group, "Decoding Developments in Today's Electric Industry - Ten Points in the Prism, " at pp. 11-14 (October 2007).

**Attachment A**

## SIGNATORIES

7-Eleven, Inc.
Allegheny Energy
Alliance for Real Energy Options (OH)
Alliance for Retail Choice
Alliance for Retail Energy Markets (CA)
Alliance for Retail Markets (TX)
Ardmore Power Logistics
Professor Ross Baldick, IEEE Fellow, Department of Electrical and Computer Engineering, The University of Texas at Austin
Big Lots Stores, Inc.
Nora Mead Brownell, BC Consulting, former FERC Commissioner and former PaPUC Commissioner
H. Sterling Burnett, Ph.D., Senior Fellow, National Center for Policy Analysis
California Alliance for Competitive Energy Solutions (CACES)
California Grocers Association
California Retailers Association
Laura Chappelle, Attorney, former Chairman, MI PSC
Colorado Independent Energy Association
COMPETE
Constellation Energy
Comverge, Inc.
Conectiv Energy
Peter Cramton, Professor of Economics, University of Maryland
DC Energy, LLC
David W. DeRamus, Partner, Bates White, LLC
Direct Energy Services, LLC
Richard A. Drom, Partner, Powell Goldstein LLP
Edison Mission Energy
Electric Power Supply Association (EPSA)
Electric Power Generation Association (PA)
Energy Association of Pennsylvania
Energy Curtailment Specialists, Inc.
Enermetrix
Enerwise Global Technologies
Exelon Corporation
FirstEnergy Corp.
William L. Flynn, Partner, Harris Beach PLLC, former Chairman, NY PSC
John Hanger, former PaPUC Commissioner
Hess Corporation
William W. Hogan, Raymond Plank Professor of Global Energy Policy, John F. Kennedy School of Government, Harvard University
Illinois Energy Association
Illinois Retail Merchants Association

Independent Energy Producers Association (IEP)
Independent Power Producers of New York (IPPNY)
JCPenney
Kimball Resources, Inc.
Jerry J. Langdon, former FERC Commissioner
LS Power Associates, L.P.
Luminant
Macy's Inc.
Midwest Independent Power Suppliers
Mirant Corporation
Elizabeth A. Moler, Exelon Corporation, former Chair of FERC
National Energy Marketers Association
New England Energy Alliance
New England Power Generators Association, Inc.
Northwest and Intermountain Power Producers Coalition (NIPPC)
NRG Energy, Inc.
Nuclear Energy Institute
PennFuture
PetSmart, Inc.
Piney Creek LP
PJM Power Providers Group
PowerGrid Systems, Inc.
PPL Corporation
Priority Power Management, Ltd.
PSEG Companies
John M. Quain, Buchanan Ingersoll & Rooney PC,
former Chairman of PaPUC
Reliant Energy
Retail Energy Suppliers Association (RESA)
Safeway Inc.
School Project for Utility Rate Reduction (SPURR)
Sempra Energy
Shell Energy North America (US)
Silicon Valley Leadership Group
Vernon L. Smith, Nobel Laureate, Professor of Economics and Law,
Chapman University
David A. Svanda, Svanda Consulting, former MI PSC Commissioner
and former President of NARUC
Glen Thomas, GT Power, former Chairman of PaPUC
Telga Corporation
Texas Competitive Power Advocates
TXU Energy
Wal-Mart Stores, Inc.
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