UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

REPLY COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION AND
THE ELECTRICITY CONSUMERS RESOURCE COUNCIL

In accordance with the Commission's "Notice Requesting Comments on RTO/ISO Performance Metrics" ("Notice"), issued on February 3, 2010, in the above-noted docket,[1] the American Public Power Association ("APPA") and the Electricity Consumers Resource Council ("ELCON") (together, "APPA/ELCON") submit their joint reply comments to respond to certain initial comments filed in this proceeding.

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APPA/ELCON were encouraged by the substantial number of initial comments submitted regarding the Commission's proposed Regional Transmission Organization ("RTO") and Independent System Operator ("ISO") (together, "RTO") performance metrics. Due to time and resource constraints, APPA/ELCON are only able to reply to selected points raised in these initial comments. The Commission should not assume that APPA/ELCON's failure to address a point in another entity's initial comments that could be construed as adverse to APPA's or ELCON's respective positions or interests means that APPA/ELCON have acceded to that point. To the contrary, the bulk of the comments submitted in this docket precludes an exhaustive, point-by-point rebuttal.

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

APPA/ELCON have long been on record as supporting rigorous analysis of the centralized wholesale electric power markets that RTOs administer. As APPA/ELCON noted in their Initial Comments (at 1), the Commission has overseen the creation of centralized RTO-administered markets over the past 15 years, but has never attempted to determine whether these changes have produced net benefits to end-use consumers. Despite this, APPA/ELCON found the metrics proposed under the category of "Markets" to be of very limited use and generally duplicative of data that are already available. *Id.* at 9. Given that the Commission has the responsibility under Sections 205 and 206 of the Federal Power Act ("FPA") to ensure that wholesale power supply rates are "just and reasonable," no matter what method is employed to develop those rates, the proposed metrics must be substantially improved if the Commission is going to use them as an analytical tool to meet its statutory responsibilities.

The large volume of detailed comments submitted in this docket demonstrates that the still-unanswered question of whether RTO-administered centralized markets are actually providing benefits is of central importance to many market participants. While a number of commenters proposed some modifications to the Reliability metrics, much of the discussion focused on the Markets metrics, as is logical given the GAO's similar focus on markets in the report giving rise to this docket.[2] As the Maryland Public Service Commission ("MD PSC") pointed out in its comments (at 3), "[t]he proposed RTO

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[2] "Electricity Restructuring—FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance," Report No. GAO-08-987 (September 2008), *available at:* http://www.gao.gov/new.items/d08987.pdf ("GAO Report"), Inside front cover ("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.").

performance metrics are highly concentrated in some areas, such as reliability, but fail altogether to measure other important anticipated benefits, such as the prices paid by electricity consumers."

As with their initial comments, APPA/ELCON therefore focus these reply comments on FERC's proposed Markets metrics. APPA/ELCON in those comments (at 9) found that these proposed metrics were "of very limited use and are generally duplicative of data that are already available." This view was reflected in many of the other initial comments as well. A total of 54 comments were submitted; at least 20 explicitly stated that the metrics were insufficient as measures of RTO market performance and do not answer the questions posed in the GAO report. This perspective was expressed even by the internal market monitor for one of the RTOs, ISO New England, Inc. ("ISO-NE IMM"), who concluded (at 3) that the metrics "describe market outcomes rather than measure market performance." Several commenters stated that additional metrics are needed for FERC to meet its responsibilities under the Federal Power Act. *See, e.g.,* Comments of Vice Chairman Tyrone Christy at 1, Transmission Access Policy Study Group ("TAPS") at 1.

A number of commenters stated that the proposed metrics were either so unclear or inadequate that they should simply be used as a starting point or straw proposal for a broader stakeholder process, such as a Notice of Proposed Rulemaking and/or a Technical Conference, or a full RTO stakeholder process, to determine a comprehensive set of metrics. *See, e.g.,* Comments of National Association of Regulatory Utility

Commissioners ("NARUC") at 3–4, Eastern Massachusetts Consumer-Owned Systems[3] ("EMCOS") at 7–8, New England Power Pool Participants Committee ("NEPOOL") at 7, TAPS at 2, Public Systems[4] at 10, National Rural Electric Cooperative Association ("NRECA") at 5, Delaware Municipal Electric Corporation ("DEMEC") at 5, Old Dominion Electric Cooperative ("ODEC") at 2 and 5, MD PSC at 4. While APPA/ELCON take no position on the potential merits of such a broader stakeholder process to develop metrics, they cite these specific comments to illustrate the extent of the dissatisfaction with the proposed metrics.

The remainder of these reply comments discusses APPA/ELCON's responses to the primary concerns and recommendations made concerning FERC's proposed metrics.

Prices and Costs to Consumers

Many commenters asserted that costs to consumers should be a central measure of RTO success, as reflected in FERC's expectations (expressed in Order No. 2000) that consumers would pay lower electricity rates as a result of the actions of RTOs. *See, e.g.,* MD PSC Comments at 2, PJM Industrial Customer Coalition and the Coalition of Midwest Transmission Customers ("PJM ICC/CMTC") Comments at 4. As APPA/ELCON stated in their initial comments (at 10), the Commission's three proposed market-pricing metrics, Load-Weighted Locational Marginal Prices ("LMPs"), Components of Total Power Costs, and Load-Weighted Fuel-Adjusted LMPs, shed little light on whether

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3 Eastern Massachusetts Consumer-Owned Systems include Belmont Municipal Light Department, Braintree Electric Light Department, Concord Municipal Light Plant, Hingham Municipal Lighting Plant, Reading Municipal Light Department, Taunton Municipal Lighting Plant, and Wellesley Municipal Light Plant.

4 Public Systems include Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative, Inc.

such prices are just and reasonable and reflect levels that would be produced in a truly competitive market. Therefore, the question of whether consumers are incurring excess costs as a result of RTO markets cannot be answered by simply presenting these isolated data points.

A number of comments addressed the inadequacy of pricing data as a measure of RTO performance. These commenters pointed out that FERC has not provided sufficient explanation of how it will interpret the data. *See, e.g.*, NARUC at 3, EMCOS at 7, NEPOOL at 7, TAPS at 1, Midwest Independent Transmission System Operator ("MISO") at 3, New York Public Service Commission ("NY PSC") at 3. Others noted that LMP data would fail to account for innate differences in the characteristics of each RTO (*i.e.*, size, fuel mix, geography)—*see*, *e.g.*, MidAmerican Energy Company ("MidAmerican") at 5, ISO-NE IMM at 4, MISO at 2—or do not account for other sources of revenue, such as uplift charges—*see*, *e.g.*, Midwest ISO Transmission Owners ("MISO TO") at 12.

The Electric Power Supply Association ("EPSA") expresses in its comments (at 7) a different concern, namely that focusing on prices "would implicitly at first, perhaps explicitly eventually, drive the ISOs/RTOs to simply achieve lower short-term prices irrespective of other factors and at the expense of long-term investment, innovation and reliability." This statement assumes that RTOs themselves directly influence prices in the markets they administer. Instead, it is the market structure and rules, and the behavior of the sellers operating in those markets, which provide opportunities for supra-competitive returns. EPSA cites no evidence that the relatively higher prices generators in RTO regions are earning have led to any improvements in infrastructure or technological innovations, as compared to non-RTO regions where prices are lower.

These types of argument and conjectures in fact demonstrate the importance of developing a set of standard measures that will answer the fundamental question of whether RTO-administered centralized markets have provided cost savings and other benefits to consumers. LMP data alone are not adequate for such a standard measure. Instead generator profits, as calculated using the actual costs and revenues from all components of wholesale markets, are essential to determining whether consumers are incurring net costs or benefits from the RTO-run markets and whether the prices paid in these markets are in fact just and reasonable. *See, e.g.*, APPA/ELCON at 13–14, Steel Producers[5] at 5, Vice Chairman Tyrone Christy at 1, TAPS at 8.

Using generator profits as a standard measure would address the inadequacy of simply examining LMPs as a measure of market performance, by incorporating all components of wholesale market revenue. This data should answer the central question of whether higher prices are simply attributable to higher costs of fuel and other inputs or to generators' earning higher profits than one would expect to see in either a truly competitive market or under cost-of-service regulation.

Moreover, a reasonable level of generator profits over time is critical to the overall health and functioning of the market, as explained by Public Systems:

> For example, while short-lived spikes or dips in generator profits may not be cause of concern, large changes (whether positive or negative) at times when the system is reasonably in balance may point to problems in the market design. Similarly, sustained shortages (and resulting profit levels) may suggest the existence of unidentified or unresolved barriers to entry…. Conversely, large, sustained losses experienced by a wide range

[5] Steel Dynamics and Nucor Steel.

> of generating resources may reveal market design defects preventing those generators from realizing appropriate compensation or may point out the need for certain of these resources to exit the market.

Public Systems Comments at 14–15.

A number of commenters did not directly recommend generator profits as a metric, but proposed similar measures. The New Jersey Division of Rate Counsel ("NJ Rate Counsel") in its comments (at 14) recommended a metric of "estimates of generation cost recovery across all markets, by type of generation." The Public Utilities Commission of Ohio ("PUCO") in its comments (at 2–3) concluded that:

> Only a comparison of RTO pricing of wholesale services to energy, capacity and ancillary services to the prices for services subject to traditional cost-of-service regulation can determine whether RTO markets are providing value to customers.

The PJM ICC/CMTC in their comments (at 7) make a similar recommendation, as part of a list of questions that the metrics should address, including "Are suppliers' returns in competitive markets greater than or less than the allowed returns that would exist under cost-of-service regulation?"

Data on generator profits in RTO regions would enable a comparison of returns because for utilities under cost-of-service regulation, there are publicly available data on the regulated allowed return on equity, which can be directly compared to the returns earned in the wholesale markets. APPA commissioned financial analyst Edward Bodmer to perform several such analyses of the largest sellers of unregulated generation into PJM, the most recent of which found that in 2008 the difference in return on equity earned by the large sellers in the study relative to the return earned by regulated companies was $4.9 billion in both 2007 and 2008.[6]

Several other commenters recommended a comparison of electricity prices in RTO states and non-RTO states (Ohio Consumers' Counsel at 14, PJM ICC/CMTC at 7, Transmission Agency of Northern California at 6–7) as another indicator of whether RTOs are providing benefits to consumers. APPA/ELCON fully support inclusion of such an analysis as one of the metrics, along with the aforementioned generator profit data. APPA has published such a rate comparison periodically, as updated data becomes available.[7]

A number of commenters recommend adding the Lerner Index or price-cost markup, as reported by RTO market monitors, to the metrics. *See*, *e.g.*, ISO-NE IMM at 4, California Public Utilities Commission ("CA PUC") at 4. As discussed in APPA/ELCON's comments (at 14), these measures, as currently reported, have several shortcomings and are not accurate indicators of the competitiveness of the markets. Such shortcomings include the absence of underlying cost data, limitation to the marginal unit and calculation only for the energy markets. These indices, which are used by market monitors to measure the competitiveness of the markets, should be assessed and compared in the light of more comprehensive data on generator revenues and costs.

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6 "The Deregulation Penalty: Losses for Consumers and Gains for Sellers," Report to the American Public Power Association, by Edward Bodmer (August 2009), *available at:* http://www.appanet.org/files/PDFs/BodmerUpdatedFinancialAnalysis81309.pdf.

7 "Retail Electric Rates in Deregulated and Regulated States: 2008 Update" (March 2009), *available at:* http://www.appanet.org/files/PDFs/RKWFinal2008update.pdf.

Those arguing against use of a generator revenue and cost metric argue that support for this metric implies support for both limitations on profits and payments to those who are under-earning (ISO-NE IMM at13, EPSA at 13). As EPSA states in its comments (at 13):[8]

> If the assumption underlying this metric is that it is FERC's responsibility to determine what constitutes sufficient profits in the market-based rate context—*i.e.*, to set a cap on revenues, then that responsibility would apply equally to the need to determine when profits are insufficient—*i.e.*, to guarantee some specific level of revenues. Do chronic ISO/RTO critics really want to journey down this path?

EPSA is employing an age-old rhetorical tactic here: setting up a strawman argument that no one has made, and then knocking it down. None of the parties supporting such a metric has asked for limits on either profits or losses. Rather, they are advocating that the Commission and interested stakeholders evaluate all of the data collected for the RTO performance metrics, and use it to determine whether the structure and rules of the centralized markets that RTOs administer are benefitting consumers and providing just and reasonable rates. If these metrics reveal that this is not the case, then the Commission would need to initiate a rulemaking or other stakeholder process to determine the needed market reforms. APPA proposed a detailed plan, which it called the *Competitive Market Plan* ("CMP"),[9] over a year ago, but it is open to considering other measures to reform RTO markets.

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8 EPSA also argues in its comments (at 8) that release of generator-specific data would raise the risk of coordination among the sellers into RTO-administered centralized markets, which is discussed later in these comments in the section on data transparency.

9 "APPA's Competitive Market Plan: A Roadmap for Reforming Wholesale Electricity Markets" (February 2009), *available at:* http://www.appanet.org/files/PDFs/EMRICompetitiveMarket.pdf.

Other commenters simply dismissed generator profit data as "irrelevant" (Comments of MidAmerican at 6), or in the case of FirstEnergy's comments (at 7–8), make unsupported generic claims about market benefits:

> Markets drive down prices by encouraging generators to decrease their cost of production in order to create profit margin, and markets provide price signals regarding the most efficient location of transmission facilities. These factors improve the electric infrastructure of this country as well as providing lower costs to consumers.

But simply repeating platitudes of this sort does not make them so. In fact, this statement is completely contrary to the conclusions reached in the GAO Report that there is insufficient evidence to determine whether RTO markets are in fact providing benefits to consumers.[10]

FirstEnergy also directly attacks the motives of those parties supporting the disclosure of generator cost and revenue data, by claiming they have "a self-serving demand that certain stakeholders always get the lower of cost or market price." It further states that the "same groups that are today looking to undermine competition, supported competitive markets and the formation of RTOs…." Comments of FirstEnergy at 8–9. To the contrary, APPA/ELCON continue to support truly competitive markets, but have concluded, based on extensive studies of RTO-administered centralized markets, that the prices, profits, market structure, barriers to entry, and absence of data transparency they display do not comport with competitive markets. FirstEnergy's assertion in its Comments (at 9) that APPA/ELCON and other parties wish to simply obtain low prices and to "effectively re-regulate generators at less than cost-of-service" does not appear

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[10] GAO Report at 58–59.

to be based on any actual reading of APPA's CMP or ELCON materials.[11] Rather, it is just a groundless *ad hominem* attack that overlooks the fact that a substantial number of other commenters also supported the provision of such data. Among them is one of FirstEnergy's own retail regulatory authorities, PUCO, which states in its comments (at 2–3):

> Taking into consideration GAO's remarks, FERC's proposed RTO performance metrics do not satisfy the GAO's criteria concerning whether RTO pricing is providing customer value. That is, FERC cannot fully realize the objective of the GAO's recommendation without establishing detailed metrics concerning RTO pricing of wholesale services to include energy, capacity and ancillary services. However, "benefits" can only be measured with reference to an alternative. That alternative is cost-of-service regulation. Only a comparison of RTO pricing of wholesale services to include energy, capacity and ancillary services to the prices for services subject to traditional cost-of-service regulation can determine whether RTO markets are providing value to customers.

Finally, APPA/ELCON note that FirstEnergy itself is not in a strong position to criticize the motives of other market participants in recommending or opposing particular RTO metrics. As the Commission knows, FirstEnergy requested and received permission to move the transmission assets of its American Transmission System Inc. ("ATSI") subsidiary from the control of MISO to PJM.[12] It is widely understood that one of the principal factors underlying FirstEnergy's "RTO realignment" is that PJM's capacity market is more lucrative for generation owners than MISO's; hence, the generation

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[11] The APPA CMP in fact provides for a market based on bilateral contracts negotiated under market-based rates, and does not advocate a return to cost-of-service regulation. APPA states explicitly that it "does not expect that increased reliance on longer-term bilateral contracts and owned generation will immediately produce lower prices. It is, however, likely to produce more stable and reasonable prices in the long run." *Id.* at 20. Apparently, FirstEnergy used as its sole source of information a "study" of APPA's CMP by John Chandley and William Hogan that is filled with mischaracterizations of APPA's plan, rather than the document published by APPA itself describing the plan in detail.

[12] *FirstEnergy Service Co.*, Docket No. ER09-1589 (filed August 17, 2009), 129 FERC ¶ 61,249 (2009).

owned by FirstEnergy's unregulated affiliates in the ATSI footprint can obtain higher profits by participating in PJM's markets than they would if they continued to participate in MISO's markets.[13] These higher profits will not come about as a result of more efficient operations or better business acumen, but instead will occur because FirstEnergy opted to change the applicable centralized RTO-administered markets and rules. Given these facts, APPA/ELCON can certainly understand why FirstEnergy is not eager to see generator costs and profits included as an RTO metric.

Claim that Metrics are Not within RTO Control

A common assertion in the comments, especially from generation owners, was that a number of the proposed metrics are "not under RTO control" and are therefore not appropriate as RTO performance measures (while generally acknowledging that these data may still provide useful information). *See, e.g.*, MidAmerican at 4–5, New England States' Committee on Electricity ("NESCOE") at 4–5, Allegheny Energy Power and Allegheny Energy Supply Company ("Allegheny") at 3, California Independent System Operator ("CAISO") at2–3, MISO TO at 11–13, National Grid at 2–3, New England Conference of Public Utilities Commissioners ("NECPUC") at 7–8, 10. Metrics listed as outside of RTO control include renewable resources, demand response, transmission construction, generator outages, and even LMPs in some cases.

13 *See, e.g., "*Knowledge Problem: Commentary on Economics, Information and Human Action," Michael Giberson, blog post of July 31, 2009 ("Of course, talk about better this and lower that at best just part of the story. Presumably FirstEnergy would not pursue the change unless it expected to profit from the change. Nothing wrong with that, but consumers will want to be sure that any additional profits come about because of better service and operating efficiencies available to the company."), *available at:* http://knowledgeproblem.com/2009/07/31/firstenergy-seeks-switch-from-midwest-iso-to-pjm/.

Such statements are in themselves very revealing, as they directly contradict repeated claims made by the Compete Coalition ("Compete"), EPSA, and the RTO/ISO Council over the past few years. In its comments in this docket (at 1), Compete states that "the organized competitive markets overseen by RTOs and ISOs are performing quite well… encouraging innovative resources such as demand response service providers and flywheel energy storage operators, incentivizing renewables, keeping costs down, and deriving environmental benefits." Among Compete's listed members are Allegheny Energy Supply and National Grid, entities which stated in their own comments that these benefits are not in fact due to RTO/ISO actions. (Allegheny at 3, National Grid at 2–3). Similarly, the ISO/RTO Council released a report last year finding that: "[O]rganized competitive markets are shattering barriers for renewable and demand response resources; creating new efficiencies in plant operations; significantly improving grid reliability; sending clear, timely, and transparent pricing signals; and expanding regional planning."[14] EPSA in turn issued a "PowerFact" on this report stating that "[R]egions served by ISOs and RTOs have nurtured increased development of renewable resources and seen an increase in demand response resources. ISOs, RTOs, and the competitive wholesale power markets they operate continue to provide consumers with efficient, clean, and affordable electricity."[15]

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14 "North American Grid Operators Release Report on Market Efficiencies," ISO/RTO Council Press Release (September 22, 2009), *available at:* http://www.isorto.org/site/apps/nlnet/content2.aspx?c=jhKQIZPBImE&b=2708737&ct=7511417.

15 "Competitive ISO/RTO Regions Promote Efficiency, Affordability, and Clean Energy," EPSA PowerFacts (September 24, 2009), *available at:* http://www.epsa.org/forms/documents/DocumentFormPublic/view?id=11B6100000009.

In sum, representatives of the RTOs and generation owners have been attempting to "sell" RTO-operated markets on the basis that they directly achieve lower prices, renewable energy and demand response. Now that FERC is proposing to formally measure such benefits, however, several generation and transmission owners, and even one RTO, assert that many of these developments are a result of factors not directly related to RTO operations.

APPA/ELCON agree that renewable energy resources, demand response, transmission construction, generator outages and even LMPs can be influenced by many factors exogenous to RTOs. But nonetheless they believe there are two important purposes for including these measures among the performance metrics. First, it is useful to determine the extent to which both RTO and non-RTO practices do affect these metrics, given the extensive claims made to this effect, and to identify best practices for improving these metrics. Second, it is critical to differentiate the impact of established RTO characteristics that most agree provide benefits, such as centralized dispatch of resources over a wide geographic area and non-discriminatory open transmission access, from more problematic issues such as market structure and design. Much of the rhetoric of the RTO market proponents has been focused on a defense of RTO-administered centralized markets, but attribute to these markets other RTO benefits that, as the GAO acknowledges, are not in dispute.[16]

[16] GAO Report at 7–8.

<u>Other Market Metrics</u>

Many commenters proposed additional market metrics, not all of which were included in APPA/ELCON's initial recommendations. This section does not address every recommended additional metric. Rather, it is intended to highlight the more crucial additional metrics proposed in the comments.

Non-RTO Region Metrics: APPA/ELCON stated in their initial comments that all the metrics should be compared to data collected for non-RTO regions, which was supported in several comments. *See, e.g.*, NARUC Comments at 3, Public Systems Comments at 8. They therefore do not oppose the request of Compete (at 4) that FERC develop common metrics for both regions now, rather than in FY 2012 as provided for in the Commission's Strategic Plan.

Out-of-merit Dispatch: Although not originally listed as a separate metric by APPA/ELCON, they agree that this is a critical measure of the health of the markets and recommend that the RTOs be required to report the total megawatt-hours and revenue collected by such dispatch. As several commenters noted, out-of-merit dispatch and associated uplift charges are indicators of inefficient market pricing. *See, e.g.,* DC Energy at 5, DEMEC at 4–5, Organization of MISO States at 4. Moreover, uplift is a key component of total costs incurred by consumers and should also be reported (along with the contributing causes).

Virtual Bidding: APPA/ELCON recommended the collection of detailed data on virtual bids, as did many others in their comments. In addition, APPA/ELCON concur with the recommendation of Southern California Edison ("SCE") in its comments (at 3) for provision of a comparison of "aggregate, actual clearing prices that have virtual bids taken out. This will provide a direct assessment of the benefit or cost of virtual bidding in ISO markets."

Market Monitoring: A number of commenters suggested adding metrics regarding the number of market monitoring investigations opened, the number resolved and corrective actions taken as a result. *See, e.g.*, New York Transmission Owners[17] ("NY TO") at 3, NECPUC at 9, Massachusetts Attorney General at 6. APPA/ELCON support these suggestions.

Long Term Transmission Rights ("LTTRs"): TAPS suggested in its comments (at 6–7) a metric to determine the extent to which RTOs are planning transmission systems to support existing LTTRs. TAPS also suggested requiring RTOs to report when Load-Serving Entities ("LSEs") are denied LTTRs for existing resources for which LTTRs were previously allocated or if LSEs have been unable to collect the full value of LTTRs. APPA/ELCON support such metrics as well.

Participation of Demand Response: APPA/ELCON recommended a metric for the actual curtailments by Demand Response providers receiving payments in the capacity markets. Several commenters agreed with this recommendation, as well as a metric for participation in and payments to demand-side resources in the energy markets. *See, e.g.,* DC Energy at 7, Missouri Public Service Commission at 4, Pennsylvania Public Utility Commission at 4, NY PSC at 7, ISO-NE IMM at 8.

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[17] NY TO includes Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Rochester Gas & Electric Corporation, Long Island Power Authority, New York Power Authority, Consolidated Edison Company of New York, Inc., Indicated New York Transmission Owners, and Orange & Rockland Utilities, Inc.

Responsiveness: ODEC in its comments (at 7) suggested that a metric should be incorporated to measure RTO responsiveness to all stakeholder interests. One way to accomplish such a measure would be to implement customer surveys that include all stakeholder groups and customer classes, with the results presented by category of stakeholder. *See also* Steel Producers at 4, NECPUC at 12. APPA/ELCON would support such metrics.

Costs of RTO Participation: There are many costs that stakeholders themselves must incur to participate meaningfully in an RTO, including personnel training, software, consulting, legal, regulatory, recordkeeping, and meeting participation, costs. *See, e.g.,* California Department of Water Resources State Water Project at 9, Public Systems at 13. A metric to measure such costs would provide better insight into the total consumer costs incurred as a result of the operation of RTOs. As noted by Public Systems at 13, this data would need to be obtained by the RTOs from customers.

Future Process Recommendations

Certain commenters made a number of useful recommendations regarding the process to be used going forward, with which APPA/ELCON concur.

APPA/ELCON agree that FERC should specify how the metrics will be used to evaluate RTO performance. Better metrics, however, such as those recommended by APPA/ELCON and others, would pave the way for a more informed determination of the future use of the metrics. For example, as discussed in many comments, data on just average LMPs alone will be difficult for FERC to analyze in the context of RTO benefits. In contrast, a comparison of generator-specific earnings and costs within RTOs and non-RTO regions can provide a direct indicator of supra-competitive profits and potential deviations in RTO market prices from the just and reasonable standard of the FPA.

An essential component of the metrics is the development of remedies in cases where RTO markets are found by the metrics review not to be providing benefits to consumers or to be in need of improvement. *See, e.g.,* NESCOE at 5, PJM ICC/CMTC at 9, NJ Rate Counsel at 7. APPA/ELCON agree strongly with this recommendation. The Commission should develop the appropriate remedies with adequate due process opportunities for full stakeholder comment. Several commenters expressed the concern that the metrics not be used to develop penalties or punitive measures. *See, e.g.*, Edison Electric Institute at 3, PHI Companies[18] at 3, National Grid at 3. While APPA/ELCON agree that direct monetary penalties should not be imposed as a result of the application of the metrics themselves, troublesome trends or issues raised by analysis of the metrics should be pursued in appropriate Commission proceedings under Section 206 of the FPA.

APPA/ELCON agree with periodic revisiting of the metrics within a pre-determined time frame, such as every two years, with public comment, to determine if changes to then-existing metrics or additional metrics are needed; s*ee, e.g.*, TAPS at 8, Public Systems at 16, NYTO at 2, SCE at 4. They also agree with the recommendation by NESCOE in its comments (at 5) for the Commission to include the steps taken by RTOs to address areas needing improvement as a separate metric in future years.

Finally, RTOs should be required to conduct cost/benefit analyses of all new markets or changes to current markets going forward. *See, e.g.* TAPS at 6. Future metrics should then be tailored to measure the accuracy of the projected costs and benefits as compared to actual performance.

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[18] PHI Companies are Pepco Holdings Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company.

Data Transparency

The broader issue of data transparency emerged in several of the comments. APPA/ELCON support much greater transparency in the RTO markets. The metrics they and others have proposed would be an important first step in providing such needed transparency. Several commenters added the recommendation that all data provided in the metrics reporting be made publicly available. *See, e.g.*, NJ Rate Counsel at 6, PJM ICC/CMTC at 4, 8, NEPOOL Participants Committee at 6. As the NEPOOL Participants Committee stated (at 6, footnote 11), "Transparency facilitates evaluation. Evaluation facilitates understanding of RTO performance. An understanding of RTO performance facilitates the assessment of net benefits."

EPSA in its comments (at 8) opposed greater transparency, citing a Department of Justice ("DOJ") statement that "the incremental benefit of increased public dissemination of firm- and transaction-specific information may be small relative to the risks of coordination."[19] This DOJ statement, however, was not made in regard to the public disclosure of metrics intended to measure the actual performance of RTOs. More fundamentally, it is somewhat ironic that the only party expressing concern in this docket about coordination or collusion is the representative of the generators that could benefit from such collusion. The reality is that the relatively small number of generators in each market, their repeated market interactions in RTO-run auctions, their understanding of the physical attributes of other generating facilities in their region, and their ability to purchase expensive databases of generating resource information from a variety of commercial suppliers make it likely that the more active sellers already know, or can

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[19] "Comments of the Department of Justice on Transparency Provisions of the Energy Policy Act of 2005," Docket No. AD06-11-000 (January 25, 2007), at 2.

reasonably estimate, their competitors' cost information. Such information is not available, however, to the smaller load-side and consumer interests, which are the ones bearing the costs of the RTO markets.

While defending an absence of transparency in RTO markets, EPSA (at 5) also criticizes what it terms "the utter lack of meaningful transparency of these non-ISO/RTO regions in comparison to the ISOs/RTOs." The single piece of support given for this claim is a footnote to a notice of a conference to discuss the arrangement of an Independent Coordinator of Transmission and transmission access issues on Entergy's transmission system.

As noted above, APPA/ELCON are supportive of metrics to measure market performance in non-RTO regions. They note, however, that in many of these regions, most power supplies are sold by vertically integrated utilities directly to their retail customers. The rates for such sales are generally determined by state public utility commissions based on rate case filings that include extensive cost-of-service information. This is exactly the type of information that EPSA and its members selling power in RTO regions would rather fall on their swords than disclose. Therefore, when EPSA decries the lack of data transparency in non-RTO regions, it should recall that this is the case.

Conclusion

The number and volume of the comments filed in this docket clearly indicate that the development of comprehensive RTO performance metrics is both important and controversial. There is widespread concern about whether RTO-administered centralized markets are in fact providing benefits to consumers. APPA/ELCON therefore urge the Commission to expand the scope and reach of the proposed metrics as set out in APPA/ELCON's initial comments and the initial comments of others noted herein.

WHEREFORE, APPA/ELCON submit these reply comments for the Commission's consideration in this docket.

Respectfully submitted,

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March 19, 2010