

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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

**REQUEST OF**

**AARP, AMERICAN ANTITRUST INSTITUTE, AMERICAN CHEMISTRY COUNCIL, AMERICAN FOREST & PAPER ASSOCIATION, AMERICAN IRON AND STEEL INSTITUTE, AMERICAN MUNICIPAL POWER–OHIO, AMERICAN PUBLIC POWER ASSOCIATION, ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY, CITIZEN POWER, CITIZENS UTILITY BOARD OF ILLINOIS, COALITION OF MIDWEST TRANSMISSION CUSTOMERS, COLORADO OFFICE OF CONSUMER COUNSEL, CONSUMER FEDERATION OF AMERICA, COUNCIL OF INDUSTRIAL BOILER OWNERS, DEMOCRACY AND REGULATION, ELECTRICITY CONSUMERS RESOURCE COUNCIL, FLORIDA INDUSTRIAL POWER USERS GROUP, ILLINOIS INDUSTRIAL ENERGY CONSUMERS, ILLINOIS PUBLIC INTEREST RESEARCH GROUP, INDUSTRIAL ENERGY CONSUMERS OF AMERICA, INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA, INDUSTRIAL ENERGY USERS–OHIO, LOUISIANA INDUSTRIAL USERS GROUP, MARYLAND OFFICE OF THE PEOPLE’S COUNSEL, MARYLAND PUBLIC INTEREST RESEARCH GROUP, MISSOURI INDUSTRIAL ENERGY CONSUMERS, NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES, NEPOOL INDUSTRIAL CUSTOMER COALITION, OFFICE OF THE PEOPLE’S COUNSEL OF THE DISTRICT OF COLUMBIA, OHIO HOSPITAL ASSOCIATION, OHIO MANUFACTURERS’ ASSOCIATION, OHIO PARTNERS FOR AFFORDABLE ENERGY, PJM INDUSTRIAL CUSTOMER COALITION, PORTLAND CEMENT ASSOCIATION, POWER IN THE PUBLIC INTEREST, PUBLIC CITIZEN, INC., PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC., STEEL MANUFACTURERS ASSOCIATION, WEST VIRGINIA ENERGY USERS GROUP, WISCONSIN INDUSTRIAL ENERGY GROUP, INC., AND WISCONSIN PAPER COUNCIL  
TO EXPAND SCOPE OF SECTION 206 PROCEEDING**

In further response to the June 22, 2007 “Advance Notice of Proposed Rulemaking” issued in Docket Nos. RM07-19-000 and AD07-7-000 (“ANOPR”),<sup>1</sup>

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<sup>1</sup> FERC Stats. & Regs. ¶ 32,617 (June 22, 2007); 72 Fed. Reg. 36,276 (July 2, 2007).

AARP, American Antitrust Institute, American Chemistry Council, American Forest & Paper Association, American Iron and Steel Institute, American Municipal Power–Ohio, American Public Power Association, Association of Businesses Advocating Tariff Equity, Citizen Power, Citizens Utility Board of Illinois, Coalition of Midwest Transmission Customers, Colorado Office of Consumer Counsel, Consumer Federation of America, Council of Industrial Boiler Owners, Democracy and Regulation, Electricity Consumers Resource Council, Florida Industrial Power Users Group, Illinois Industrial Energy Consumers, Illinois Public Interest Research Group, Industrial Energy Consumers of America, Industrial Energy Consumers of Pennsylvania, Industrial Energy Users–Ohio, Louisiana Industrial Users Group, Maryland Office of the People’s Counsel, Maryland Public Interest Research Group, Missouri Industrial Energy Consumers, National Association of State Utility Consumer Advocates, NEPOOL Industrial Customer Coalition, Office of the People’s Counsel of the District of Columbia, Ohio Hospital Association, Ohio Manufacturers’ Association, Ohio Partners for Affordable Energy, PJM Industrial Customer Coalition, Portland Cement Association, Power in the Public Interest, Public Citizen, Inc., Public Utility Law Project of New York, Inc., Steel Manufacturers Association, West Virginia Energy Users Group, Wisconsin Industrial Energy Group, Inc., and Wisconsin Paper Council (jointly, “Undersigned Parties”) applaud the Federal Energy Regulatory Commission (“FERC” or “the Commission”) for announcing that it anticipates undertaking a Section 206 proceeding under the Federal Power Act (“FPA”) in this docket. The Undersigned Parties, however, urge the Commission to expand the scope of the Section 206 proceeding beyond the four issues discussed in the ANOPR to comprehensively investigate the justness and reasonableness of wholesale power supply

prices in the centralized markets administered by Regional Transmission Organizations (“RTOs”). In support of their request, the Undersigned Parties state the following:

1. The Undersigned Parties represent the interests of a broad and diverse spectrum of wholesale and retail electricity customers in RTO market regions. The Undersigned Parties 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 offices.

2. Many of the Undersigned Parties to this request have sponsored witnesses at either or both of the two technical conferences that the Commission held earlier this year in Docket No. AD07-7-000, and/or filed written comments or statements in conjunction with those technical conferences. Many of them also filed initial comments in Docket No. RM07-19-000 in response to the Commission’s subsequent ANOPR. Still others have not yet taken an active role in these two dockets, but recognize the critical importance of reforming power policies affecting RTO-run centralized wholesale markets and have reviewed the filings and positions of other Undersigned Parties participating in this filing.

3. The Commission in its ANOPR sought comment on four RTO-related issues: (1) the role of demand response in organized markets; (2) increasing opportunities for long-term power contracting; (3) strengthening market monitoring; and (4) RTO responsiveness to customers and other stakeholders. While the Commission correctly perceives that fundamental changes are required in these areas, electricity consumers of all stripes recognize that the problems in the organized markets run much deeper. The

common position that leads the Undersigned Parties to file the instant request is this: *a rulemaking proceeding confined to the four enumerated topics will not resolve the deep systemic problems in RTO-run centralized markets*. Instead, the Commission needs to broaden the scope of its proposed FPA Section 206 investigation to address the core issue of whether RTO markets are producing unjust and unreasonable wholesale power prices.

4. The Undersigned Parties to this request that have filed comments on the ANOPR have all made clear in their comments that they think the current scope of the ANOPR is inadequate. While many of their comments approached the ANOPR from slightly different perspectives, they all agree that something is seriously amiss in RTO-run centralized markets as they are now structured, and that the measures proposed in the ANOPR will not come close to addressing the core issue of the unjust and unreasonable rates those markets are producing for consumers. Given the serious challenges facing the country in coming years to construct needed infrastructure, while addressing converging environmental concerns and retaining our economic competitiveness, the limited scope of reform outlined in the ANOPR is insufficient.

5. Among the many points supported by detailed empirical analysis that certain of the Undersigned Parties have made in their individual comments and statements are the following:

- Certain large, vertically integrated generation suppliers in RTO regions are earning supra-competitive returns that are not commensurate with returns on investments in other enterprises having corresponding risks;

- Rates that consumers are paying in RTO regions where these supra-competitive returns are being earned are consistently higher than rates in regulated markets and are increasing faster;
- Increases in prices in RTOs' organized markets are only partially due to increases in fuel prices, and other non-cost-of-service related factors, including the exercise of market power, also play a significant role;
- Increases in prices and supra-competitive rates of return have not attracted new investment and supply, and have, therefore, not reduced prices, as would be expected;
- The Commission's ratemaking methodology in RTO-run organized markets is based on presumed conditions that are at variance with reality. These presumed conditions include:
  - the absence of significant market power;
  - the existence of free entry to and exit from the market by suppliers in response to "price signals;"
  - the existence of an optimized resource mix to assure inframarginal revenues earned by generators are just and reasonable;
  - the absence of significant structural and behavioral impediments to long-term contracting in a Locational Marginal Pricing ("LMP") environment; and
  - price-responsive demand, short-term substitution alternatives, and demand elasticity to price.

6. The Commission has the legal obligation to initiate a Section 206 investigation if evidence is presented to it that unjust and unreasonable rates are being charged. The

Undersigned Parties believe that the statements, testimony and comments that many of the Undersigned Parties participating in this request have filed, taken together, provide ample justification to initiate a full Section 206 investigation of the prices charged in RTO-run centralized wholesale markets. If the Commission’s investigation reveals unjust or unreasonable rates, contracts, or practices, it must take action to address them. Chairman Kelliher has pointed out that, in such circumstances, declining or failing to act simply is not an option that is lawfully available to the Commission. He has stated, quite correctly, that “[t]he legal duty of the Commission to prevent unjust and unreasonable rates and undue discrimination or preference in the sale of wholesale power or interstate transmission by jurisdictional sellers is absolute; the Commission does not have the discretion to ignore them.”<sup>2</sup> The Undersigned Parties therefore urge the Commission to investigate this issue, to fulfill its statutory obligation.

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<sup>2</sup> Joseph T. Kelliher, *Market Manipulation, Market Power, and the Authority of the Federal Energy Regulatory Commission*, 26 Energy L.J. 1, 3–4 (2005).

WHEREFORE, the Undersigned Parties request the Commission to expand the scope of the FPA Section 206 proceeding it has proposed in these dockets to investigate the justness and reasonableness of wholesale power prices charged in RTO-run centralized markets.

Respectfully submitted,

David M. Certner  
Legislative Counsel and Legislative Policy Director  
Office of Government Relations and Advocacy,  
State and National Initiatives

AARP  
601 E Street, N.W., A6-110  
Washington, D.C. 20049  
(202) 434-3750  
[dcertner@aarp.org](mailto:dcertner@aarp.org)

*On behalf of AARP*

Diana L. Moss, Ph.D.  
Vice President and Senior Fellow  
American Antitrust Institute  
Post Office Box 20725  
Boulder, Colorado 80308  
(720) 233-5971  
[dross@antitrustinstitute.org](mailto:dross@antitrustinstitute.org)

*On behalf of American Antitrust Institute*

Nancy M. Clark  
Director of Energy  
Regulatory and Technical Affairs  
American Chemistry Council  
1300 Wilson Boulevard  
Arlington, Virginia 22209  
(703) 741-5414  
[nancy\\_clark@americanchemistry.com](mailto:nancy_clark@americanchemistry.com)

*On behalf of American Chemistry Council*

Jerry Schwartz  
Senior Director  
American Forest & Paper Association  
1111 19th Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 463-2581  
[jerry\\_schwartz@afandpa.org](mailto:jerry_schwartz@afandpa.org)

*On behalf of American Forest & Paper Association*

James D. Schultz  
Vice President, Environment and Energy  
American Iron and Steel Institute  
1140 Connecticut Avenue, N.W., Suite 705  
Washington, D.C. 20036  
(202) 452-7180  
[jschultz@steel.org](mailto:jschultz@steel.org)

*On behalf of American Iron and Steel Institute*

Jolene Thompson  
Executive Director, Ohio Municipal Electric  
Association; and  
Vice President of Public Affairs, American  
Municipal Power–Ohio  
2600 Airport Drive  
Columbus, Ohio 43219  
(614) 337-6222  
[jthompson@amp-ohio.org](mailto:jthompson@amp-ohio.org)

*On behalf of American Municipal Power–Ohio*

Susan N. Kelly  
Vice President of Policy Analysis  
and General Counsel  
American Public Power Association  
1875 Connecticut Avenue, N.W., Suite 1200  
Washington, D.C. 20009-5715  
(202) 467-2933  
[skelly@appanet.org](mailto:skelly@appanet.org)

*On behalf of American Public Power Association*

Robert A. W. Strong  
Association of Businesses Advocating Tariff  
Equity (ABATE)  
Clark Hill PLC  
255 South Old Woodward Avenue  
Third Floor  
Birmingham, Michigan 48009  
(248) 988-5861  
[rstrong@clarkhill.com](mailto:rstrong@clarkhill.com)

*On behalf of Association of Businesses  
Advocating Tariff Equity*

David Hughes  
Executive Director  
Citizen Power  
2121 Murray Avenue  
Pittsburgh, Pennsylvania 15217  
(412) 421-6072  
[hughes@citizenpower.com](mailto:hughes@citizenpower.com)

*On behalf of Citizen Power*

Anne McKibbin  
Attorney  
Citizens Utility Board  
208 South LaSalle Street, Suite 1760  
Chicago, Illinois 60604  
(312) 263-4282  
[amckibbin@citizensutilityboard.org](mailto:amckibbin@citizensutilityboard.org)

*On behalf of Citizens Utility Board of Illinois*

Samuel C. Randazzo  
Coalition of Midwest Transmission  
Customers (CMTC)  
McNees Wallace & Nurick, LLC  
Fifth Third Center, Suite 1700  
21 East State Street  
Columbus, Ohio 43215  
(614) 719-2840  
[sam@mwncmh.com](mailto:sam@mwncmh.com)

*On behalf of Coalition of Midwest  
Transmission Customers*

James G. Greenwood  
Director  
Colorado Office of Consumer Counsel  
1560 Broadway, Suite 200  
Denver, Colorado 80202  
(303) 894-2121  
[james.greenwood@dora.state.co.us](mailto:james.greenwood@dora.state.co.us)

*On behalf of Colorado Office of Consumer Counsel*

Mark Cooper  
Director of Research  
Consumer Federation of America  
1620 Eye St., N.W., Suite 200  
Washington, D.C. 20006  
(202) 387-6121  
[markcooper@aol.com](mailto:markcooper@aol.com)

*On behalf of Consumer Federation of America*

Robert D. Bessette  
President  
Council of Industrial Boiler Owners  
6035 Burke Centre Parkway, Suite 360  
Burke, Virginia 22015  
(703) 250-9042  
[bessette@cibo.org](mailto:bessette@cibo.org)

*On behalf of Council of Industrial Boiler Owners*

Jerrold Oppenheim, Esquire  
Democracy and Regulation  
57 Middle Street  
Gloucester, Massachusetts 01930  
(978) 283-0897  
[jerroldopp@democracyandregulation.com](mailto:jerroldopp@democracyandregulation.com)

*On behalf of Democracy and Regulation*

John A. Anderson  
President and CEO  
Electricity Consumers Resource Council (ELCON)  
Eighth Floor, West Tower  
1333 H Street, N.W.  
Washington, D.C. 20005  
(202) 682-1390  
[janderson@elcon.org](mailto:janderson@elcon.org)

*On behalf of ELCON*

Florida Industrial Power Users Group (FIPUG)  
John W. McWhirter, Jr.  
McWhirter & Davidson, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, Florida 33602-3350  
(813) 224-0866  
[jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com)

*On behalf of Florida Industrial Power Users Group*

Eric Robertson, Esquire  
Lueders, Robertson & Konzen LLC  
1939 Delmar Avenue  
Post Office Box 735  
Granite City, Illinois 62040  
(618) 876-8500  
[erobertson@lrklaw.com](mailto:erobertson@lrklaw.com)

*On behalf of Illinois Industrial Energy Consumers*

Brian Imus  
State Director  
Illinois Public Interest Research Group  
407 South Dearborn, Suite 701  
Chicago, Illinois 60605  
(312) 364-0096, ext. 210  
[brian@illinoispirg.org](mailto:brian@illinoispirg.org)

*On behalf of Illinois PIRG*

Paul N. Cicio  
President  
Industrial Energy Consumers of America  
1155 15th Street, N.W., Suite 500  
Washington, D.C. 20005  
(202) 223-1661  
[pcicio@carbonleaf.net](mailto:pcicio@carbonleaf.net)

*On behalf of Industrial Energy Consumers  
of America*

David M. Kleppinger  
Industrial Energy Consumers of  
Pennsylvania (IECPA)  
McNees Wallace & Nurick LLC  
100 Pine Street  
Post Office Box 1166  
Harrisburg, Pennsylvania 17108-1166  
(717) 237-5214  
[dkleppinger@mwn.com](mailto:dkleppinger@mwn.com)

*On behalf of Industrial Energy Consumers  
of Pennsylvania*

Samuel C. Randazzo  
General Counsel  
Industrial Energy Users–Ohio (IEU–Ohio)  
21 East State Street, Suite 1700  
Columbus, Ohio 43215  
(614) 469-8000  
[sam@mwncmh.com](mailto:sam@mwncmh.com)

*On behalf of Industrial Energy Users–Ohio*

Louisiana Industrial Users Group (LEUG)

Katherine W. King, #7396

J. Randy Young, #21958

Lauren M. Walker, #29984

Kean, Miller, Hawthorne, D'Armond,

McCowan & Jarman, L.L.P.

Post Office Box 3513

Baton Rouge, Louisiana 70821

(225) 387-0999

[katherine.king@keanmiller.com](mailto:katherine.king@keanmiller.com)

[randy.young@keanmiller.com](mailto:randy.young@keanmiller.com)

[lauren.walker@keanmiller.com](mailto:lauren.walker@keanmiller.com)

*On behalf of Louisiana Industrial Users Group*

Paula M. Carmody, People's Counsel

William F. Fields, Senior Assistant

People's Counsel

Maryland Office of the People's Counsel

6 St. Paul Street, Suite 2102

Baltimore, Maryland 21202

(410) 767-8150

[paulac@opc.state.md.us](mailto:paulac@opc.state.md.us)

[billf@opc.state.md.us](mailto:billf@opc.state.md.us)

*On behalf of Maryland Office of the People's Counsel*

Johanna E. Neumann

Policy Advocate

Maryland Public Interest Research Group

3121 St. Paul Street, Suite 26

Baltimore, Maryland 21218

(410) 467-9389

[johanna@marylandpirg.org](mailto:johanna@marylandpirg.org)

*On behalf of Maryland PIRG*

Diana Vuylsteke, MoBar #42419

Bryan Cave LLP

211 North Broadway, Suite 3600

St. Louis, Missouri 63102

(314) 259-2543

[dmvuylsteke@bryancave.com](mailto:dmvuylsteke@bryancave.com)

*On behalf of Missouri Industrial Energy Consumers*

Charles A. Acquard  
Executive Director  
National Association of State Utility  
Consumer Advocates  
8380 Colesville Road, Suite 101  
Silver Spring, Maryland 20910  
(301) 589-6313  
[charlie@nasuca.org](mailto:charlie@nasuca.org)

*On behalf of National Association of State Utility  
Consumer Advocates*

Robert A. Weishaar, Jr.  
McNees Wallace & Nurick, LLC  
777 North Capitol Street, N.E., Suite 401  
Washington, D.C. 20002  
(202) 898-5700  
[rweishaa@mwn.com](mailto:rweishaa@mwn.com)

*On behalf of NEPOOL Industrial  
Customer Coalition*

Sandra Mattavous-Frye, Deputy People's Counsel  
Lopa Parikh, Assistant People's Counsel  
Office of the People's Counsel of the  
District of Columbia  
1133 15<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20005-2710  
(202) 727-3071  
[smfrye@opc-dc.gov](mailto:smfrye@opc-dc.gov)  
[lparikh@opc-dc.gov](mailto:lparikh@opc-dc.gov)

*On behalf of Office of the People's Counsel of the  
District of Columbia*

Richard L. Sites  
General Counsel and Senior Director  
of Health Policy  
Ohio Hospital Association  
155 East Broad Street, 15th Floor  
Columbus Ohio 43215-3620  
(614) 221-7614  
[ricks@ohanet.org](mailto:ricks@ohanet.org)

*On behalf of Ohio Hospital Association*

Thomas J. O'Brien  
Of Counsel  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
(614) 227-2335  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

*On behalf of Ohio Manufacturers' Association*

David C. Rinebolt  
Executive Director and Counsel  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Post Office Box 1793  
Findlay, Ohio 45839-1793  
(419) 425-8860  
[drinebolt@aol.com](mailto:drinebolt@aol.com)

*On behalf of Ohio Partners for Affordable Energy*

David M. Kleppinger  
Susan E. Bruce  
Vasiliki Karandrikas  
McNees Wallace & Nurick, LLC  
100 Pine Street  
Post Office Box 1166  
Harrisburg, Pennsylvania 17108  
(717) 232-8000  
[dkleppinger@mwn.com](mailto:dkleppinger@mwn.com)  
[sbruce@mwn.com](mailto:sbruce@mwn.com)  
[vkandrikas@mwn.com](mailto:vkandrikas@mwn.com)

Robert A. Weishaar, Jr.  
McNees Wallace & Nurick, LLC  
777 North Capitol Street, N.E., Suite 401  
Washington, D.C. 20002  
(202) 898-5700  
[rweishaa@mwn.com](mailto:rweishaa@mwn.com)

*On behalf of PJM Industrial Customer Coalition*

Deidra Ciriello  
Director of Environmental and Energy Policy  
Portland Cement Association  
500 New Jersey Avenue, N.W., 7th Floor  
Washington, D.C. 20001  
(202) 408-9494  
[dciriello@cement.org](mailto:dciriello@cement.org)

*On behalf of Portland Cement Association*

Marilyn Showalter  
Executive Director  
Power in the Public Interest  
2601 Capitol Way South  
Olympia, Washington 98501  
(360) 259-1700  
[marilyn.showalter@ppinet.org](mailto:marilyn.showalter@ppinet.org)

*On behalf of Power in the Public Interest*

Lynn Hargis, Counsel  
Tyson Slocum, Director  
Energy Program  
Public Citizen, Inc.  
215 Pennsylvania Avenue, S.E.  
Washington, D.C. 20003  
(202) 454-5191  
[lhargis@citizen.org](mailto:lhargis@citizen.org)  
[tslocum@citizen.org](mailto:tslocum@citizen.org)

*On behalf of Public Citizen, Inc.*

Gerald Norlander, Esquire  
Executive Director  
Public Utility Law Project of New York, Inc.  
194 Washington Avenue, Suite 420  
Albany, New York 12210  
(518) 449-3375  
[ganorlander@pulp.tc](mailto:ganorlander@pulp.tc)

*On behalf of Public Utility Law Project  
of New York, Inc.*

Thomas Danjczek  
President  
Steel Manufacturers Association  
1150 Connecticut Avenue, N.W., Suite 715  
Washington, D.C. 20036  
(202) 296-1515  
[stuart@steelnet.org](mailto:stuart@steelnet.org)

*On behalf of Steel Manufacturers Association*

Derrick Price Williamson  
West Virginia Energy Users Group (WVEUG)  
McNees Wallace & Nurick, LLC  
100 Pine Street  
Post Office Box 1166  
Harrisburg, Pennsylvania 17108  
(717) 237-5446  
[dwilliamson@mwn.com](mailto:dwilliamson@mwn.com)

*On behalf of West Virginia Energy Users Group*

Todd Stuart  
Executive Director  
Wisconsin Industrial Energy Group  
10 East Doty Street, Suite 800  
Madison, Wisconsin 53703  
(608) 441-5740  
[tstuart@wieg.org](mailto:tstuart@wieg.org)

*On behalf of Wisconsin Industrial Energy Group, Inc.*

Earl Gustafson  
Vice President, Energy, Forestry and  
Human Resources  
Wisconsin Paper Council  
250 North Green Bay Road (54956)  
Post Office Box 718  
Neenah, Wisconsin 54957-0718  
920-722-1500  
[gustafson@wipapercouncil.org](mailto:gustafson@wipapercouncil.org)

*On behalf of Wisconsin Paper Council*

December 17, 2007