

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

<b>Wholesale Competition in Regions</b>	)	<b>Docket Nos. RM07-19-000</b>
<b>With Organized Electric Markets</b>	)	<b>AD07-7-000</b>
	)	

**COMMENTS OF  
CONSTELLATION ENERGY COMMODITIES GROUP, INC.,  
CONSTELLATION NEWENERGY, INC. AND  
CONSTELLATION POWER SOURCE GENERATION, INC.**

Pursuant to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) February 22, 2007 Notice of Proposed Rulemaking (“NOPR”) regarding potential reforms to improve the operation of organized wholesale electric markets in the above-docketed proceeding,<sup>1</sup> Constellation Energy Commodities Group, Inc. (“CCG”), Constellation NewEnergy, Inc. (“CNE”) and Constellation Power Source Generation, Inc. (“CPSG”) (collectively, “Constellation”) herein provide comments on the Commission’s proposals to amend its regulations under the Federal Power Act (“FPA”) to improve the operation of organized wholesale electric markets. In support, Constellation states as follows:

**I. DESCRIPTION OF CONSTELLATION**

CCG, CNE and CPSG are wholly-owned subsidiaries of Constellation Energy Group, Inc. (“CEG”). CEG is a Fortune 125 North American energy company with several merchant subsidiaries in addition to CCG, CNE and CPSG, and includes a regulated utility subsidiary, Baltimore Gas and Electric Company (“BGE”).

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<sup>1</sup> *Notice of Proposed Rulemaking on Wholesale Competition in Regions with Organized Electric Markets*, Commission Docket Nos. RM07-19-000 and AD07-7-000 (issued February 22, 2008) (“NOPR”).

CCG is a power marketer authorized by the Commission to sell energy, capacity and certain ancillary services at market-based rates.<sup>2</sup> CCG focuses on serving the full requirements power needs of distribution utilities, co-ops and municipalities that competitively source their load requirements. CCG also sells natural gas and other commodities at wholesale, both in the United States and abroad, and holds interests in exploration and production companies. CCG does not own any physical assets for the generation, transmission or distribution of electric power and has no retail electric customers or service territories.

CNE is a retail electricity supplier that provides customized energy solutions and comprehensive energy services to commercial and industrial customers. CNE has been certified to act as a competitive retail electric supplier to serve customers located within various service territories throughout the United States and Canada, and has been granted market-based rate authority by the Commission.<sup>3</sup> Nationwide, CNE has over 15,500 MW of load under contract with over 10,000 retail customers.

CPSG was formed in 2000 to acquire BGE's non-nuclear generating facilities. CPSG owns and operates: (i) approximately 3,608 MW in generating capacity at eight wholly-owned generation facilities in Maryland; (ii) 539.8 MW in generation associated with partial ownership interests in the Keystone and Conemaugh generating plants in Pennsylvania; and (iii) an entitlement to 277.7 MW in generation capacity from a hydroelectric generating plant in Pennsylvania by virtue of a stock interest in Safe Harbor Water Power Corporation. All of

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<sup>2</sup> *Constellation Power Source, Inc.*, 79 FERC ¶ 61,167 (1997) (order initially granting CCG market-based rate authority).

<sup>3</sup> *NEV, L.L.C.*, 81 FERC ¶ 61,186 (1997) (order initially granting CNE market-based rate authority).

CPSG's generating facilities are located in the control area of PJM. CPSG was granted market-based rate authority by the Commission.<sup>4</sup>

## II. COMMUNICATIONS

Constellation respectfully requests that all correspondence and communications concerning these proceedings be directed to the following persons,<sup>5</sup> who should be placed on the official service list for this proceeding:

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## III. EXECUTIVE SUMMARY

The Commission is correct in its statement that, "effective competition" in energy markets protects consumers by enhancing innovation of supply options that incorporate effective risk management, creating pressure to reduce costs, and encouraging new entry, quicker innovation and deployment of renewable resources, demand response, energy efficiency, and

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<sup>4</sup> *AmerGen Vt., LLC*, 90 FERC ¶ 61,307, *reh'g denied*, *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270 (2000) (order initially granting CPSG market-based rate authority).

<sup>5</sup> Constellation requests waiver of 18 C.F.R. § 385.203(b)(3) to include four names on the service list.

conservation.<sup>6</sup> Contrary to assertions made by opponents of competition, empirical research supports the conclusion that the implementation of competitive markets has led to increased efficiencies which has served to improve electricity service for consumers.<sup>7</sup> To its credit, the Commission has continued to seek ways of improving existing market structures and should be commended for its efforts in this proceeding and elsewhere to refine and improve competitive market structures to more fully realize these benefits. Constellation herein urges the Commission to act in the following manner:

1. Allow demand resources to become fully integrated within the wholesale market so that these resources can impose market discipline on prices during shortage conditions, reducing and replacing the need for artificial price suppression that results from bid mitigation;
2. Require the implementation of scarcity pricing mechanisms such as a reserves demand curve for the day ahead and real-time markets, thereby improving the incentives for demand response and paving the way for the value of reliability resources to be increasingly reflected in the energy markets, rather than in capacity prices;
3. Take appropriate measures to provide sufficient transparency, information and regulatory certainty to manage transactional risk and promote rules to encourage contracting across seams, in order to enable long-term power contracting in organized markets;

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<sup>6</sup> NOPR at P1.

<sup>7</sup> See also Scott M. Harvey, Bruce M. McConihe and Susan L. Pope, “Analysis of the Impact of Coordinated Electricity Markets on Consumer Electricity Charges,” (Nov. 20, 2006, revised June 18, 2007) ) (“Harvey, McConihe, Pope Analysis”); See also Susan F. Tierney, “Pennsylvania’s Electric Power Future: Trends and Guiding Principles,” (Jan. 2008) (“Tierney”);

4. Maintain the goal of providing guidelines to secure Market Monitoring Unit (“MMU”) independence and increase efficiency and transparency to MMU market analysis, but refrain from accelerating the release of generation offer and bid data and uphold that state commissions should maintain a clear separation from market participation; and
5. Require uniformity in regional transmission operator (“RTO”) / independent system operator (“ISO”) governance only to the extent required by the Commission in Order No. 2000.<sup>8</sup>

#### **IV. COMMENTS**

##### **A. Demand Response and Pricing During Power Shortages in Organized Markets**

During the Advanced Notice of Proposed Rulemaking (“ANOPR”) portion of this proceeding, Constellation supported the Commission’s view that integration of demand resources into the energy and ancillary service markets in a non-preferential manner was important to ensuring that wholesale energy markets remain competitive and reflect current supply and demand conditions.<sup>9</sup> In general, Constellation supports the Commission’s proposed changes to integrate demand resources into the wholesale energy markets and to address scarcity pricing. In the NOPR, the Commission proposed to direct RTOs/ISOs to: (1) accept bids from demand response units in ancillary service markets for certain ancillary services in a comparable fashion to any other resource; (2) abolish charges to buyers in the energy market who, during a system emergency, acquire less electric energy in the real-time market than procured in the day-head market; (3) authorize an aggregator of retail customers to bid demand response capability

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<sup>8</sup> *Regional Transmission Organizations*, Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000) (“Order No. 2000”).

<sup>9</sup> See ANOPR at P35. See also *Comments of Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc. and Constellation Generation Group, LLC on the Commission’s Advance Notice of Proposed Rulemaking*, submitted on September 14, 2007 (“Constellation ANOPR Comments”).

on behalf of those customers directly into the organized energy and ancillary service markets; and (4) modify the market rules to allow market-clearing prices during periods of operating reserve shortage to reflect the supply and demand conditions of the RTO or ISO or constrained sub-region while maintaining reliability of the system.<sup>10</sup>

While the Commission's proposals to facilitate demand response generally are improvements over the status quo, the Commission should be careful not to create unintended consequences. Specifically, the Commission should not eliminate during times of system emergency those charges imposed on buyers in the energy market who take less electricity in the real-time market than they had purchased in the day-ahead market.<sup>11</sup> While this proposal attempts to provide incentives for demand resources to participate in the wholesale energy and ancillary services markets, it does so in a manner that is preferential to energy providers that supply load reduction over generators that supply a similar product.

Specifically, the charge to buyers for deviating in real-time from the amount of day-ahead purchased energy is appropriate for two reasons: (1) to provide an incentive for load serving entities to accurately forecast and bid their load into the day-ahead market; and (2) to provide a source of funds to compensate out of merit generators that are necessary to meet peak load when the real-time load deviates from its day-ahead load bid. By allowing buyers to avoid the real time deviation charges, the incentives to accurately forecast and schedule their load will be eliminated and compensation to out-of-market generators likely will not follow principles of cost causation. Such unintended consequences should be avoided. Constellation recommends that the Commission direct RTOs and ISOs to leave the deviation charge in place and institute a

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<sup>10</sup> NOPR at P6.

<sup>11</sup> NOPR at P5.

scarcity pricing regime and address other issues that socialize out of market costs to minimize socialized uplift charges.

An effective demand response program within wholesale markets allows for a re-examination of certain aspects of existing wholesale market designs. Beginning at paragraph 44 of the NOPR, the Commission discusses one of the most important issues in wholesale market design – the relationship between capped [or artificial] clearing prices during reserve shortages and the response of supply and demand resources to those shortage conditions.<sup>12</sup> In the NOPR the Commission concluded that:

Existing market rules appear to be unjust, unreasonable, and unduly discriminatory or preferential during times of scarcity. In particular, they may not accurately reflect the true value of energy and, by failing to do so, may harm reliability, inhibit demand response, deter new entry of demand response and generation resources and thwart innovation.<sup>13</sup>

Constellation applauds the Commission for recognizing that proper price formation is a crucial determinant in creating incentives for demand response to participate in the wholesale energy market. The Commission has rightly chosen to examine the price formation process under times of scarcity conditions because those are times when demand response is most needed. The lack of a transparent scarcity price is only one of the areas in which price formation must be improved to promote efficiency in existing RTOs and ISOs. Constellation will offer comment on two areas where inadequate price formation inhibits participation of demand response in wholesale energy markets: (1) socialization of block loaded peaking units; and (2) price formation during times of scarcity.

Anytime supply resources are compensated outside of market clearing prices through the use of uplift charges, an opportunity is lost for the demand side of the market to respond. Such a

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<sup>12</sup> NOPR at PP44-45.

<sup>13</sup> NOPR at P107.

lost opportunity commonly occurs within organized markets when system operators block load and hold on peaking units to alleviate system constraints.<sup>14</sup> In many cases peaking units are dispatched to alleviate a system constraint and these units properly set the clearing price while they are ramping up or ramping down. When these same units are block loaded, however, they are no longer the marginal units and do not set the LMPs. As a consequence, these units are under-compensated through clearing prices for their costs during the time that they are block loaded for reliability. The revenue deficiency is addressed through an uplift charge which is socialized outside the market clearing price and has the effect of artificially lowering the price signals sent to demand bids and demand resources within the market. However, for an efficient market, these block loaded peaking units should be used to set the local LMP price.

Using uplifts to appropriately compensate supply, however, may result in improper incentives for load and virtual bidders. When costs are socialized through uplift, load that benefits from the socialization has incentives to under-forecast their load in the day-ahead market, depressing the day-ahead price. Similarly, if virtual bidders are not assessed uplift charges, as has recently been debated in the spread bidding task force in PJM, then they have similar improper incentives. Virtual bidders that do not pay uplift charges have an incentive to offer virtual supply in the form of “inc” offers when out-of-market costs are socialized. The goal of the virtual supplier is to force physical units out of the day-ahead market and into the Residual Unit Commitment, where the above market costs of running these units are socialized in uplift charges that they avoid. Out-of-market socialized costs such as those associated with block

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<sup>14</sup> A unit is referred to as block loaded when the system operator dispatches the unit at a fixed level and the unit does not respond to automatic generation control (“AGC”). Peaking units are often dispatched in a block loaded manner to alleviate constraints. In many cases these units are “held on” by the system for reliability reasons. In these cases the costs of running units to ensure the reliability of the system are socialized outside of the market clearing price. Constellation is not opposed to the reliability coordinator dispatching the system in the most reliable manner possible but opposes the socialization of costs that create artificial clearing prices and create disincentives for market participants such as new generation and demand response.



loading and holding-on units are far more prevalent than conditions of scarcity; the artificial prices that result from these practices create a meaningful disincentive to proper and efficient demand response participation in wholesale energy markets. Therefore, the Commission should take action within this rulemaking to address this issue as part of the overall objective of improving demand resource participation in organized markets through improvements to price formation.

Similar to the socialization of out of market costs, market-wide bid caps artificially depress energy prices and create the disincentives noted by the Commission and cited earlier in these comments. All of the organized markets currently have some form of market-wide bid or price cap. Price caps are designed to protect consumers from the exercise of market power during times when conditions approach scarcity and supply resources are selected without the price discipline of elastic demand.<sup>15</sup> It is precisely in these times of scarcity that demand response is most needed and most valuable; but with prices suppressed by the bid cap, there is no adequate price incentive to reduce demand across the full range of response that is truly cost-effective. In order to provide the proper incentive for demand response providers to participate in the wholesale energy market, the market design must provide a mechanism that allows a scarcity price in the day-ahead and real-time markets to be visible, so that demand can react. The ability for demand to respond to high prices will likewise reduce the need for other forms of out-of-merit and exceptional dispatch mechanisms that further distort incentives and create artificial market clearing prices.

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<sup>15</sup> NOPR at P44.

To address the problems associated with price and bid caps, the Commission offered four possible approaches in the ANOPR and sought comments on each.<sup>16</sup> In the NOPR the Commission notes that two proposals received the strongest support, namely the proposals to: (1) raise all caps during an emergency; and (2) have a demand curve for operating reserves.<sup>17</sup>

1. *Requiring RTOs and ISOs to increase the energy bid caps and price caps above current levels only during an emergency.*<sup>18</sup>

Lifting bid and price caps during an emergency may represent an appropriate solution to providing a scarcity price and an incentive for demand resources to increase their participation in the energy and ancillary services markets. However, the difficulty with increasing energy bid and price caps only during “emergency” conditions is that the declaration of an emergency is by definition arbitrary, creating market uncertainty that will reduce its effectiveness. This lack of clarity regarding when and how emergency conditions will be declared, and the subsequent elevation of the cap, impairs the participation of demand side resources in the energy and ancillary services markets. Furthermore, a discretionary or subjective mechanism for adjusting bid caps likely would find intense political scrutiny, which would diminish dramatically its effectiveness in protecting just and reasonable prices during scarcity conditions.

Ultimately, the timing of when the emergency is declared in relation to day ahead and real time scheduling can have significant market impacts. Exelon Corporation (“Exelon”), in its ANOPR Comments, discussed some of the problems associated with instituting scarcity pricing through a declaration by the RTO or ISO.<sup>19</sup> Exelon explains that on August 8, 2007 PJM implemented its scarcity pricing rules for the first time. After posting day-ahead warnings of a

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<sup>16</sup> ANOPR at PP57-82.

<sup>17</sup> NOPR at P102.

<sup>18</sup> NOPR at P102.

<sup>19</sup> *See Comments of Exelon Corporation on the Commission’s Advance Notice of Proposed Rulemaking*, submitted on September 14, 2007 (“Exelon ANOPR Comments”)

potential scarcity condition, on August 8, 2007 at 12:33 hours EDT, PJM sent the participants in the real-time market a call for “Maximum Emergency Generation” (“MEG”) in the Pepco and BGE load zones.<sup>20</sup> Despite this call for MEG, prices remained mitigated for another 2.5 hours, depressing market prices and creating a disincentive for load to voluntarily curtail. At 15:05 hours EDT, PJM called for MEG in the Dominion zone and suspended price mitigation. Prices rose immediately to \$1000/WWh in the Dominion zone.<sup>21</sup> Less than one hour later PJM declared a voltage reduction for the Mid-Atlantic region and prices again immediately increased to \$1000/MWh for the entire region.<sup>22</sup> The example Exelon provided illustrates the pitfalls associated with instituting scarcity pricing and removing price mitigation by declaring an emergency in real-time. There was not sufficient transparency in the price formation process to allow load and generation to decrease the demand for energy or increase the supply of energy in the day-ahead and real-time markets in a manner that could have lowered the energy price and obviated the declaration of an emergency that resulted in a \$1000/MWh price. In short, despite day-ahead warnings of scarcity, mitigation remained in effect, prices remained suppressed and additional supply and demand response was not forthcoming until system reliability was severely threatened. It is exactly this distortion of price signals that impairs the participation of demand side resources in the energy and ancillary services markets. As Exelon’s example illustrates, scarcity events that are declared in real-time after the day-ahead bids and offers are submitted create a challenge for load and generators attempting to participate in day-ahead and real-time markets. Generation that is under a must-offer obligation in the day-ahead market is left

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<sup>20</sup> Exelon ANOPR Comments p.12.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

unhedged<sup>23</sup> against the high real-time prices generated by the declaration of the emergency condition.<sup>24</sup> Bid caps and mitigation in the day-ahead market prevented the day-ahead prices from reflecting the anticipated scarcity but prices were unmitigated in the real-time market. On the other hand, if an “emergency” is declared in the day-ahead and not realized in the real-time market, the RTO/ISO along with the generators and load that responded to the scarcity signal will be open to criticism or complaint as their market actions are evaluated with the clarity of after the fact review. This is the risk of reliance upon administrative “emergency” declarations . A better mechanism to assure reliability at the most efficient cost is to allow price formation during all times of scarcity to reflect the value of increased supply and reduced demand, thereby signaling to both buyers and sellers the value of increased response.

In short, the distorting impacts on the market which stem from the timing and uncertainty of an emergency declaration are best avoided by adopting market design improvements that minimize out-of-market socialized uplift charges and that gradually raise the market-wide bid and offer caps over time for all hours. This makes it unnecessary for bidders to anticipate emergency declarations, or for the Commission to establish an arbitrary standard for emergency conditions that applies to both the day-ahead and real-time markets. With a concerted and planned approach to gradually raising bid and price caps, load and suppliers are presented with a clear and certain path to more competitively priced energy. This, in turn, is more likely to produce efficient price formation in all hours for both supply and demand resources.

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<sup>23</sup> Must-offer capacity resource generators are exposed to sizable outage and derate risk when there is a scarcity price in the real-time market and not the day-ahead market. Market participants can attempt to use virtual bids to mitigate this risk but if the virtual bids do not clear then the generator is left unhedged.

<sup>24</sup> It could be asserted that generators are compensated for taking this risk through the capacity markets but since these markets are also mitigated, the capacity clearing price does not reflect this risk.

2. *Requiring a demand curve for operating reserves.*<sup>25</sup>

The Commission is correct in observing that many demand resources are well suited to providing operating reserves<sup>26</sup> and might have a preference for participation in the ancillary services markets over participating in the energy market. It is also fair to say that the implementation of either a reserve demand curve or reserve constraint penalty factors – as used in the New York ISO (“NYISO”) and ISO-New England (“ISO-NE”) – has worked reasonably well.<sup>27</sup> Critics may point out that the reserves demand curve approach is an administrative solution and thus can be the victim of political compromises that limit its effectiveness. Moreover, there exist practical problems associated with getting a reserves demand curve or penalty factors defined and calibrated properly. The calculations are necessarily approximations of what an efficiently functioning market would produce and by their nature are somewhat subjective and based on engineering judgment. Nonetheless, these issues and limitations can be addressed, and the benefits of implementing the solution justify efforts to deal with these challenges through Commission leadership direction.

A reserves demand curve for both the day-ahead and real-time wholesale energy markets, defined by the value of lost load (“VOLL”) and value of expected unserved energy (“VEUE”), would allow each RTO/ISO to achieve five important results. First, a scarcity price for the energy and reserves markets would be created without increasing the risk of market power abuse by either load or generation. Second, demand response would provide proper incentives to participate in the day-ahead and real-time energy and ancillary services markets. Third, scarcity

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<sup>25</sup> NOPR at P102.

<sup>26</sup> NOPR at P41.

<sup>27</sup> The NYISO and ISO-NE implementations are discussed and compared in the white paper by the California Independent System Operator, “California ISO Straw Proposal: Reserve Scarcity Pricing Design,” September 5, 2007, <http://www.caiso.com/1c51/1c51b3ab4fea0.pdf>;

prices represent the value of reliable operation of the electricity grid and supply shortages without requiring an evaluation and declaration from any administrative body. Fourth, the reserves demand curve would reallocate some of the reliability-related price risk related to reliability to the energy market where it could be managed by load and generators to maximize consumer surplus. Placing some of the price risk for reliability back in the energy markets and allowing load to participate as a demand resource lowers the deadweight loss associated with socializing the cost of reliability fully into a capacity market. Fifth, scarcity prices provide an important source of capital for renewable resources such as wind generators which are otherwise unable to participate in resource adequacy programs.

The presence of fully integrated reserves demand curves in energy markets in NYISO and ISO-NE<sup>28</sup> answers the criticism that implementation would be overly burdensome and complicated. NYISO recently filed its plan to further integrate demand resources into the ancillary market,<sup>29</sup> illustrating that a reserves demand curve is a mechanism that can be fully compatible with the Commission's goal of increasing the participation of demand resources in all parts of wholesale energy markets.

Calibrating the parameters of the reserves demand curve, however, continues to leave some questions unanswered. As discussed earlier, though, these issues can be overcome by focusing on and developing the VOLL and VEUE parameters in a manner that achieves the

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<sup>28</sup> See *New England Power Pool and ISO New England, Inc.*, "Order Accepting Ancillary Services Market Proposal," Docket No. ER06-613-000, (May 12, 2006). ISO-NE's Reserve Penalty Factors apply to the real-time market for reserves. To maximize the efficiency and gains from this type of scarcity pricing, Constellation believes that the demand curve for reserves should apply to both the day-ahead and real-time markets. Scarcity prices generated by the reserves demand curve should set both the energy and reserves price leaving generators indifferent between supplying energy or reserves in the day-ahead and real-time markets.

<sup>29</sup> See New York Independent System Operator, Inc.'s Compliance Filing re: Proposed Revisions to its Market Administration and Control Area Services Tariff and its Open Access Transmission Tariff to Allow Demand Side Resources to Offer Operating Reserves and Regulations Service on Terms Comparable to Generators, Docket No. ER04-230-034, submitted on March 24, 2008.; See also *New York Independent System Operator, Inc.*, "Order Accepting Tariff Filing Subject to Modification" Docket Nos. ER04-230-000 and -001, (Feb. 11, 2004).

advantages discussed above.<sup>30</sup> The proper calibration should be one that, at a minimum, provides a price that achieves system reliability goals. That is, the minimum estimate for the VOLL should be a value that on an *ex-ante* basis, provides a price signal and revenue stream that supports investment in new resources in order to ensure reliability.

This construct is consistent with current capacity markets and provides a means to utilize energy and ancillary service adjustments to encourage capital investments in energy markets, while supporting reliability and investment in new resources. The minimum values for VOLL could be set by the RTOs/ISOs using their respective hourly market simulation software and a basic process to simulate outages in transmission and generation. Stakeholders would need to be given an opportunity to be a part of the process to establish the modeling parameters in addition to an opportunity to comment when each RTO/ISO files its proposal at the Commission.

The Commission's efforts to integrate demand response into wholesale markets are on the right track. The two separate proposals – raising the bid caps during emergencies only and developing an operating reserves demand curve can be improved by: (1) developing specific and structured plans to raise bid caps gradually over time, rather than just in emergencies; and (2) ensuring that the calibration of operating reserve demand curves is predicated upon VOLL and VEUE standards.

Implementing these mechanisms and addressing the other price formation issues – including specifically the block-loading issue discussed in these comments – will provide to all market participants, benefits and proper incentives. Large loads that see real-time prices will be able to hedge their exposure to price spikes by becoming demand response participants. Smaller

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<sup>30</sup> Estimates for the VOLL, have been published that range from \$10,000/MWh to \$200,000/MWh and arguments can probably be made for any real number. See Comments on Wholesale Competition in Regions with Organized Electric Markets of William W. Hogan and Susan L. Pope, submitted on September 17, 2007 at pp.16-17 (“Hogan-Pope Comments”)

loads will be able to hedge price volatility through mechanisms such as wholesale full requirements auctions (*e.g.*, New Jersey’s Basic Generation Service model), entering into competitive retail supply arrangements or by aggregating load and becoming demand response participants. Renewable resources such as wind units that are not traditionally participants in resource adequacy programs will be able to generate revenue that reflects their contribution to the energy grid. In this way, eliminating socialized out-of-market costs and creating scarcity pricing will provide incentives for demand response units that prefer to avoid higher prices and pay lower resource adequacy charges. Constellation encourages the Commission to take action as discussed above to address scarcity pricing and participation by demand response providers in wholesale energy markets.

#### **Market Monitoring Policies.**

Constellation generally supports the Commission’s proposals in the NOPR regarding MMU policies. The Commission is on the right track in providing guidelines that secure the MMUs’ independence and promote increased efficiency and transparency to the market monitoring function of conducting market analysis.<sup>31</sup> In particular, Constellation supports the Commission’s proposal that “each RTO and ISO set forth all its provisions involving market monitoring in one section of its tariff.”<sup>32</sup> The Commission’s action to consolidate all MMU provisions into one section of each RTO/ISO tariff will benefit all participants by creating greater confidence and understanding in the MMUs’ functions. With respect to the Commission’s other MMU proposals, Constellation offers comments on only two issues regarding information sharing by MMUs.

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<sup>31</sup> NOPR at P171.

<sup>32</sup> NOPR at P215.



*1. Posting after three months offer and bid data, without identification of market participants.*

It is not necessary or appropriate to accelerate the release of generation offer and bid data. However, if the Commission adopts the proposal in the NOPR to allow RTOs/ISOs to release bid and offer data after a three-month or shorter lag,<sup>33</sup> the Commission should apply this policy equally to all areas of the market. MMUs should post bid and offer data for demand and virtual markets under the same confidentiality provisions.

*2. Information sharing with state commissions.*

To the extent it is appropriate for state commission's to be given access to wholesale market information, the Commission correctly recognizes that: (1) confidentiality needs to be maintained for non-public communications between the MMU and a state commission; (2) when state commissions make requests that go beyond bid and offer data of a market participant, the named party should be given notice and opportunity to contest the information; and (3) the MMU is not an extension of a state commission's enforcement arm.<sup>34</sup>

State commissions should continue to maintain a clear separation from participation in the market. As state commissions increasingly have begun to shape their states' actual involvement in wholesale markets (*e.g.*, through direct purchase of wholesale supply to serve retail customers' needs), allowing them to *both* have access to data and analysis not provided to other market participants *and* to participate in ISO/RTO governance will harm existing market participants' interests and confidence in wholesale markets.

**D. Responsiveness of RTOs/ISOs**

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<sup>33</sup> NOPR at P220.

<sup>34</sup> NOPR at PP234-236.

Constellation commends the Commission for evaluating in this NOPR whether there should be increased uniformity among RTOs/ISOs' governance, but remains unconvinced that RTO/ISO governance requires or benefits from uniformity beyond the basic principles enunciated by the Commission in Order 2000.<sup>35</sup> Constellation applauds the Commission for rejecting a one-size-fits-all approach.<sup>36</sup> As the Commission recognizes, each RTO/ISO region has its own history of coordination and cooperation among stakeholders and each has a different landscape in terms of the types of stakeholder interests presented and their relative need and desire to be involved in RTO/ISO decision making.<sup>37</sup> The structures in place in each RTO/ISO are in each case the result of difficult negotiations and compromises between the RTO/ISO and their stakeholders and the RTO/ISO tariffs reflect these regional differences. The Commission should continue along this path and not upset the negotiated balance where it appears to be functioning successfully. The Commission should continue to be mindful in not forcing uniformity that is neither beneficial nor aimed at solving any widely perceived problem. Reforms should be required only where the need is widely demanded by a stakeholder body to achieve a better balance between independence and accountability.

Finally, the Commission proposes to require each RTO/ISO to demonstrate in a compliance filing that it is achieving RTO/ISO responsiveness using four criteria: (1) inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness.<sup>38</sup> First, responsiveness must not come at the expense of independence. Second, the Commission should clarify its definition of the term "customer" in its

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<sup>35</sup> See Order No. 2000.

<sup>36</sup> NOPR at P277.

<sup>37</sup> NOPR at P272.

<sup>38</sup> NOPR at P275.

statement that “[the Commission believes] that access by customers and other stakeholders to the board based on these criteria will provide them with the opportunity to ensure that their concerns are considered.”<sup>39</sup> Without further clarification, the term “customer” could be applied to non-jurisdictional entities such as retail customers. The Commission has already ensured that state agencies that regulate the retail market have access to RTO/ISO boards and also the MMUs.<sup>40</sup> The term “customer” should therefore be limited and clarified to include only Commission-jurisdictional entities.

Constellation supports the Commission’s mandate that each RTO/ISO publish a mission statement setting forth the organization’s purpose, guiding principles, and commitment to responsiveness to customers and other stakeholders.<sup>41</sup> This mission statement should reflect and incorporate the minimum characteristics and functions that the Commission has mandated for each RTO/ISO in Order No. 2000.<sup>42</sup>

## **V. CONCLUSION**

Constellation appreciates this opportunity to submit its comments in response to the Commission’s NOPR and looks forward to continued dialogue regarding all of the issues presented herein and in the comments submitted by all other parties in this proceeding.

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<sup>39</sup> NOPR at P275.

<sup>40</sup> See Order No. 2000.

<sup>41</sup> NOPR at P280.

<sup>42</sup> See Order No. 2000.

Respectfully Submitted,

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*On Behalf of*

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*Constellation Power Source Generation Group, Inc.*

Dated: April 21, 2008

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have served on this 21<sup>st</sup> Day of April, 2008 the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Divesh Gupta

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