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April 19, 2011

The Honorable Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission
888 First Avenue, NE
Washington, D.C. 20426

Re: NYISO Rates for Electric Capacity, FERC Docket No. ER1 1-2224-000

Dear Chairman Wellinghoff:

I am writing on behalf of AARP's New York state office to convey our concern over the Federal Energy Regulatory Commission's January 28, 2011 Order in the above-numbered case, which sets demand curves and allowable prices in the NYISO installed capacity (ICAP) market. If not modified, the Order may cause unnecessary hardship for many New York electricity consumers. News media reports have indicated that the rate increase in affected parts of New York could be as much as 12% for residential customers.[1]

AARP is a nonprofit, nonpartisan social welfare organization that helps people 50 and over improve the quality of their lives. Approximately 2.4 million of AARP's members live in New York state. Electricity rate increases adversely impact older Americans, particularly those households with limited incomes, of which there are many in New York. Older Americans are disproportionately affected because they spend a higher percentage of their overall household budgets on energy costs than the population as a whole, with the percentage rising rapidly for those over the age of 65.[2]

Today, despite New York's bounty of inexpensive hydro power,[3] the state's residential electric rates are third highest in the nation, lower than only Hawaii and Connecticut.[4] As a result this basic necessity often is unaffordable for many New Yorkers who are unable to handle today's electric bills. A March 2011 AARP report, *The Quiet Blackout - New York's Utility Termination Storm*, discusses the 321,995 residential service terminations for nonpayment reported by

[1] Barrett, D. (April 2, 2011). Electricity Reversal Sought. *The Wall Street Journal*,

[2] See Bureau of Labor Statistics, Consumer Expenditure Survey (2005), Table 4500, "*Selected Age of Reference Person: Average Annual Expenditures and Characteristics*," available at http://www.bls.gov/cex/2005/Standard/sage.pdf.

[3] New York is the third largest producer of hydro electric power in the nation. EIA Electric Power Monthly, March 2010, *Net Generation from Hydroelectric (Conventional) Power by State by Sector, Year-to-Date through December 2009 and 2008*, Table 1.13.B., p. 37.

[4] See: http://www.eia.gov/cneaf/electricity/epm/epm_sum.html

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utilities to the New York State Public Service Commission in 2010.[5] More than 93,000 of those terminations were in New York City -- where the largest increase in capacity prices is allowed under the January 28, 2011 Order. Further price increases due to the January 28 Order would only make matters worse for New York consumers who are struggling to pay their bills today.

AARP is concerned that the method used by the Commission for setting market prices for electric capacity may rely too much on abstract market theories rather than actual experience and reasonable projections of future capacity needs and costs. For example, the increased prices are based on hypothetical costs of a nonexistent power plant that may not be needed or built,[6] and estimates of future New York City property taxes on that hypothetical new plant which may not actually be assessed.[7] As Mayor of New York City Michael Bloomberg aptly pointed out, "increases resulting from the Commission's Order do not reflect a realistic assessment of the cost increases that producers will likely face in the next three years. Nor do the increases reflect the considerable tax benefits that will be available to private generators in the City."[8]

Just one of the numerous hypothetical items driving the increase – New York City property taxes, which may not actually be assessed – could amount to "potentially hundreds of millions of dollars annually"[9] in windfalls to investors who will not actually pay the taxes assumed in the rate setting methodology. The real world concerns of consumers who would be affected, however, are not addressed by the Commission in its January 28 Order. AARP supports the position of Multiple Intervenors (MI) and the New York State Consumer Protection Board (CPB), who maintain that "[T]he January 28 Order contravenes the requirements of the Federal Power Act ("FPA") because the Commission conducted little, if any, balancing of the interests between consumers and suppliers...."[10] Disregarding or discounting potential impact on consumers when setting electric rates would be inconsistent with what the U.S. Supreme Court has said is required, *i.e.*, "an appropriate balancing of the investor and the consumer interests."[11] Such a balance must not focus on investor interests without also giving due regard to "the Federal Power Act's primary purpose of protecting the utility's customers."[12] The "just and reasonable" standard of the Federal Power Act is intended to serve this purpose by "affording consumers a complete, permanent and effective bond of protection from excessive rates and charges."[13] Without consideration of consumer interests it cannot be said that the prices set in the Order are within a range of reasonableness that balances consumer and investor interests.

The decision to allow major increases in the NYISO prices for wholesale electric capacity, if not corrected, could lead to significant bill increases over the next three years, when higher priced

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[5] A copy of the AARP report is attached.

[6] "The maximum value for each ICAP demand curve is 1.5 times the net Cost of New Entry (CONE) or the *estimated localized levelized cost per kW-month to develop a new peaking unit* in each locality or in the rest of state, as applicable." January 28 Order at p. 3, ¶ 6 (*Emphasis added*).

[7] See discussion of New York City property taxes, and their potential abatement, in estimating the cost of a new power plant, at pages 26 - 34 of the January 28 Order.

[8] March 25, 2011 Letter of Mayor Michael Bloomberg to the Commission.

[9] January 28 Order at 28 -29, referring to New York City's assertions.

[10] MI and CPB Petition for Rehearing, at 4.

[11] *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733, at 2738 (2008) (quoting *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

[12] *Elec. Dist. No. 1 v. FERC*, 774 F.2d 490 at 492-93. (D.C. Cir. 1985).

[13] *Atlantic Refining Co. v. Pub. Serv. Comm'n of New York*, 360 U.S. 378, 388 (1959).

wholesale capacity costs are inevitably passed through to be paid by retail electricity consumers. We urge you to reconsider and modify the decision to assess and ameliorate the harmful impact on consumers.

Thank you for your consideration.

Sincerely,

Lois Wagh Aronstein

Lois Wagh Aronstein,
Senior State Director
AARP New York

Enc. AARP New York Report, *The Quiet Blackout - New York's Utility Termination Storm*, March 2011.

cc: Hon. Philip D. Moeller, Commissioner
Hon. Marc Spitzer, Commissioner
Hon. John R. Norris, Commissioner
Hon. Cheryl A. LaFleur, Commissioner