

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

_____)
Southern Company Services, Inc.) Docket No. RT01-77-000
_____)

COMMENTS OF INDUSTRIAL CONSUMER INTERVENORS

Industrial Consumer Intervenors, the Electricity Consumers Resource Council (“ELCON”), the American Iron and Steel Institute (“AISI”), the American Forest and Paper Association (“AF&PA”), and the American Chemistry Council (“ACC”) offer the following comments on the May 14, 2001 RTO status report by the Southern Companies (“Southern”).

Industrial Consumers’ comments are directed to the “scope and configuration” aspects of the Southern RTO filing. Unfortunately, Southern Companies’ May 14, 2001 filing offers lame excuses about its failure to forge a greater Southeastern RTO in lieu of tangible progress.

Industrial Consumers recommend that FERC convene a greater Southeastern RTO settlement conference, as Commissioner Massey and several intervenors have already urged in this docket. Southern Companies’ RTO proposal should be denied.

I. BACKGROUND ON THE PROCEEDING

On March 14, 2001, FERC issued an Order rejecting Southern Companies RTO filing. Southern Company Services, Inc., 94 FERC ¶ 61,271 (2001). The Commission held that Southern Companies' proposal to create a for-profit grid company that would only include new wholesale transmission service does not meet the standards of Order No. 2000. Because bundled retail service and native load would not have been under the control of the grid company, FERC concluded that the vast majority of the transmission system's load would not be under the RTO's tariff, operation or direction, violating Order No. 2000. The FERC Order required Southern Companies to file a status report on May 14, 2001, regarding its progress on joining with other neighboring utilities in forming a Southeast RTO.

On May 14, 2001, Southern Companies filed its status report. Southern Companies has entered into a memorandum of understanding with Municipal Electric Authority of Georgia (MEAG), the City of Dalton (Georgia), South Mississippi Electric Power Association (SMEPA), Jacksonville Electric Authority (JEA), and the City of Tallahassee to form an RTO. The proposed RTO would cover most of Georgia and Alabama, and parts of Florida and Mississippi. Southern Companies also entered into a memorandum of understanding with TVA, which will lead to an eventual Coordination Agreement.

Southern Companies has met with GridSouth, GridFlorida, and Entergy. The filing claims that participation in one of these entities is less likely than other options. Southern Companies specifically criticized the other RTO governance structures, especially those of GridFlorida and Entergy that will have boards selected by stakeholders rather than pursuing an RTO structure that is "a completely independent entity (with a Board representing its investors) having expertise in operating an electric system." May 14, 2001 Filing, p. 4. As an alternative

to joining one of the other proposed RTOs in the Southeast, Southern Companies contends it is pursuing the development of seams agreements with GridSouth, GridFlorida, and Entergy.

II. COMMENTS OF INDUSTRIAL CONSUMERS

While Southern Companies May 14, 2001 filing reflects that it has made progress in discussing RTO participation with certain municipal entities, Southern has made no substantial progress with GridSouth, GridFlorida, and Entergy.

It is unacceptable for Southern to offer as an excuse that other entities are “far along in developing their respective arrangements.” Id. Southern cannot rely on its own recalcitrance to justify failure to support a broader Southeastern RTO. The fact that other RTOs have adopted different structures or institutional arrangements need not foreclose a viable Southeastern RTO with Southern’s transmission system as a centerpiece.

There is ample diversity among the proposed neighboring RTOs that surround Southern to accommodate any credible business model contemplated by Southern. The Commission should reject Southern’s preferred approach which is to go it alone and isolate itself and its customers from the eastern interconnection. Southern’s legendary recalcitrance, if unchecked, will stifle the efforts of GridFlorida, GridSouth, Alliance, and SPP to comply with Order No. 2000. In light of the broader objective of bringing the power industry into the 21st century, FERC must not allow Southern to stop the clock.

Given concern voiced by a number of independent market participants that Southern has not included all stakeholders in the initial process leading to development of its RTO proposal, it is essential that in going forward all stakeholders participate in a greater

Southeast RTO collaborative effort under the auspices of FERC. In this manner, there will be openness and credibility about practical means to achieve superregional rates in the Southeast and otherwise progress toward a single RTO.

While Southern may attempt to rely on the apparent protection of the Commission's preference for a "voluntary approach" to RTO formation, Order No. 2000 contains some teeth and indicates that the Commission will, in individual cases, take action to deal with utilities that fail to comply with Order No. 2000:

We are not adopting as a generic policy in this Final Rule either that RTO participation is required in order to retain or obtain market-based rate authorization for wholesale power sales, or that RTO participation is required for a disposition of jurisdictional facilities to be in the public interest. However, in response to those who argue that the Commission has a statutory responsibility to remedy undue discrimination and anticompetitive effects when evaluating market-based rate and merger requests, we recognize that we may have to consider, in individual cases, issues that arise as to whether market power has been mitigated in the absence of RTO participation or as to whether a merger would be in the public interest without RTO participation.

Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 810, 834 (January 6, 2000).

FERC also makes clear that even under the "voluntary approach," compliance with Order 2000 criteria is mandatory:

While we have concluded on this record that it is in the public interest to provide for a voluntary approach to RTO formation that relies upon encouragement, guidance, and support from the Commission, this does not mean that all aspects of this Rule are voluntary. The filing requirements set forth in section 35.34(c) of the new regulations are mandatory. In other words, public utilities must file either an RTO proposal or a report on the impediments to RTO participation. In addition, to qualify as an RTO, an applicant must comply with the minimum characteristics and functions and other specific RTO requirements set forth in the new regulations. We will

also expect that all transmission owners will participate in good faith in the collaborative process that we are establishing herein.

Id. (emphasis added).

Southern has failed to meet the scope and regional configuration criteria of Order No. 2000. Southern should either actively participate in such a collaborative process or accept instruction by FERC as to which RTO it should join.

Respectfully submitted,

/signed/

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Dated: June 19, 2001

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of Industrial Consumer Intervenors were today mailed to parties on the service list of this proceeding by U.S. mail, postage prepaid.

Dated at Washington, D.C., this 19th day of June, 2001.

/signed/

Kari Vander Stoep
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