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CONSUMERS
RESOURCE
COUNCIL**

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FEDERAL ENERGY
REGULATORY COMMISSION



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October 9, 2001

ORIGINAL

David P. Boergers
Secretary
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Comments of Industrial Consumers, Docket No. RT01-100-000 ("Southeast RTO")*

Dear Secretary Boergers:

Attached for filing please find an original and 14 copies of Comments of Industrial Consumers (Electricity Consumers Resource Council, American Iron and Steel Institute, American Chemistry Council, and American Forest & Paper Association). In addition, please date stamp and return the four additional copies enclosed.

If you have any questions regarding this submittal, please contact me at (202) 682-1390. Thank you for your assistance.

Sincerely,

John P. Hughes
Director - Technical Affairs

Enclosures

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Regional Transmission Organizations

Docket No. RT01-100-000

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FEDERAL ENERGY
REGULATORY COMMISSION

COMMENTS OF INDUSTRIAL CONSUMERS ON THE
ADMINISTRATIVE LAW JUDGE'S MEDIATION REPORT
FOR THE SOUTHEAST RTO

The Electricity Consumers Resource Council ("ELCON"), the American Chemistry Council ("ACC"), the American Forest & Paper Association ("AF&PA"), and the American Iron and Steel Institute ("AISI") (jointly, "Industrial Consumers") submit the following comments on Administrative Law Judge Bobbie J. McCartney's *Mediation Report for the Southeast RTO* ("Mediation Report"). The Mediation Report includes six attachments. Our comments and recommendations to the Commission will address issues of concern in the Mediation Report and Attachment 3 ("Congestion Management: LMP/Financial Rights Model, Southeast RTO Mediation Process").

SUMMARY OF COMMENTS OF INDUSTRIAL CONSUMERS

A. Recommendations On Independence and Governance Issues

- **SE RTO Platform** – The Commission should adopt the Independent System Administrator (ISA) Model as the platform for the Southeast RTO. Many RTO functions are "public goods" and we deem an independent system operator structure—with no potential commercial conflicts associated with asset ownership—as the best-suited business model. An ISO-based Southeast RTO will also encourage the broadest participation by the region's diverse transmission owners, and treat them all equally as stakeholders. Should the Commission adopt the ALJ's recommendation (*i. e.*, the Collaborative Governance Model), it should "take the Transco off the top" until Southeastern states commit to allow sufficient transmission divestiture.
- **Compensation of System Administrator** – The Commission should consider adoption of the SeTrans' proposal to retain the Independent System Administrator under an

incentive-driven, performance-based contract. This arrangement induces the Administrator and its staff to operate efficiently and holds them accountable for their performance. It also avoids establishing a self-perpetuating bureaucracy.

- **Selection of System Administrator** – The Stakeholder Advisory Committee should select the slate of candidates for the Independent System Administrator or Independent Market Administrator. The practical effect of this procedure is important: Nobody can become the System Administrator without prior approval of stakeholders.
- **Independent Transmission Companies** – The role of Independent Transmission Companies in the Collaborative Governance Model is retrogressive and should be disallowed if the Commission adopts this model. The proliferation of these entities in the Southeast would preserve the existing balkanization of transmission markets by allowing incumbent Transmission Owners to retain their autonomy.
- **Industrial Sector Representation** – Industrial end-users should have separate sector representation on the Stakeholder Advisory Committee because their commercial interests are not shared by other end-user classes or stakeholder groups.
- **Independent Board** – The Independent Board must be in place before any important “going forward” decisions are made. This prevents undue influence over pre-operational planning activities and start-up decisions by the Transmission Owners.

B. Recommendations On Other Issues

- **Redispatch of Industrial Cogeneration** – All generators are not equal. Cogeneration that serves an industrial steam host must not be redispatched—even under emergency conditions—absent an interconnection agreement (or other contract) that specifies the terms and conditions of such redispatch. This avoids irreparable harm (including risk to public health and safety) to the cogenerator and its steam host.
- **Non-discriminatory Treatment of Transmission Rates, Terms and Conditions** – All load should be subject to the same RTO rates, terms and conditions. This eliminates potential discrimination between the rates charged to wholesale transactions and native loads.
- **Forward Market for Tradable Transmission Rights** – The Day Two congestion management design must ensure a liquid and transparent forward market for transmission rights. This allows market participants to make generation and transmission investment decisions based on their perception of future electricity prices at particular locations. Loads should be allowed to participate in the congestion management market by selling counterflows.
- **Industrial Participation in Markets for Ancillary Services** – The markets for ancillary services should be designed to accommodate—and not discriminate against—the unique characteristics of large loads that are price responsive (or not) in terms of purchases from and sales into such markets. Such sales are a form of “demand response” that is important for curbing the market power of generators and marketers, and should also

include sales of excess power from cogeneration units under the same prices, terms and conditions of sales from merchant generating units.

- **RTO's Planning Protocol and Market Monitor**—The Mediation Report's Planning Protocol and Market Monitor—that were adopted in both business models—should be adopted. Both proposals provide a strong basis for implementation of these two essential RTO functions.
- **Interregional Coordination** – The Commission should require full compliance with function 8, *i.e.*, one-stop-shopping and the elimination of rate pancaking throughout the Eastern Interconnection. One-stop-shopping and the elimination of rate pancaking are essential for fulfilling the promise of a competitive electricity market.

COMMENTS OF INDUSTRIAL CONSUMERS

A. Recommendations On Independence and Governance Issues

1. The Commission Should Adopt the Independent System Administrator Model as the Platform for the Southeast RTO.

The seminal issue in the mediation was the choice of business model for the RTO platform. This was the most difficult impasse that the Commission must now resolve.

The two candidates are the Collaborative Governance Model's Transco corporate structure (sometimes called the "Transco on top" model) versus the Independent System Administrator Model's ISO-based corporate structure (or "Transco on the bottom" model). In Order 2000, and in subsequent orders on RTO compliance filings, the Commission did not pick a favorite. Thus, notwithstanding its approvals of GridSouth and GridFlorida (both with very small sub-regional footprints), the Commission has also approved ISO-based RTOs, such as RTO West, that have a much larger footprint with a scope and configuration similar to the proposed Southeastern RTO.

Industrial Consumers overwhelmingly support an ISO-based corporate structure for the Southeast RTO. Many RTO characteristics and functions are "public goods" and we deem an independent system operator structure—with no potential commercial conflicts associated with

asset ownership—as the best-suited business model for the Southeast RTO. The Southeast RTO must accommodate a broad diversity of transmission ownership, both jurisdictional and non-jurisdictional, in a huge ten-state region. The Independent System Administrator Model advanced by the SeTrans group would put all transmission owners on an equal footing. No individual transmission owner or class of owners would be more equal than any other owner.

2. Should the Commission Adopt the ALJ's Recommendation (i. e., the Collaborative Governance Model), It Should "Take the Transco Off the Top" Until Southeastern States Commit to Allow Sufficient Transmission Divestiture.

The Transco-based Collaborative Governance Model is premised on the divestiture of significant portions of the transmission assets in these ten states. Certainly the viability of the Transco business model is in doubt if the Transco footprint does not include—at a minimum—most of the major congestion points in the Southeast. Yet, there is apparently little interest among state commissions to allow such divestiture which many view cynically as the “federalization” of transmission assets.

Absent a stronger public commitment from the southeastern states to allow divestiture into a large Transco, Industrial Consumers strongly question the merits of going forward with this model as recommended by the ALJ in the Mediation Report. Nonetheless, should the Commission adopt the ALJ's recommendation, Industrial Consumers recommend that during the initial phase of the implementation of the RTO that the Commission take the Transco “off the top” until the state commissions have made such a binding commitment. This can be achieved during the initial phase by assigning to the Independent Market Administrator all the functionalities proposed for the Independent System Administrator. Only after a viable Transco has been formed should the Transco be allowed to share selected “functionalities” (and go “back on top”) consistent with Order 2000.

3. The Commission Should Consider Adoption of the SeTrans' Proposal To Retain

the Independent System Administrator Under an Incentive-driven, Performance-based Contract.

The Independent System Administrator (ISA) Model includes a provision that would assign the ISA responsibility to a third party/entity under an incentive-driven, performance-based contract. The method of compensation would include both positive and negative incentives, and will have an initial term of at least five years with annual evergreen extensions. Industrial Consumers believe that this provision deserves strong consideration by the Commission. This option may avoid the tendency, demonstrated by some existing ISOs, to become large, self-perpetuating bureaucracies that avoid full accountability for their actions.

4. The Stakeholder Advisory Committee Should Select the Slate of Candidates for the Independent System Administrator or Independent Market Administrator.

Each model chooses its administrator in a different way. Industrial Consumers believe that the selection procedure advanced by the SeTrans Sponsors in the Independent System Administrator Model is superior to the procedure proposed by the other group. In the SeTrans proposal, the Stakeholder Advisory Committee would select the slate of candidates eligible to be the administrator. In addition, for the purpose of voting on that slate, the Transmission Owners on the Stakeholder Advisory Committee would not vote. The Transmission Owners would select the Independent System Administrator from this slate. The practical effect of this procedure is important: Nobody can become the Independent System without the Stakeholder Advisory Committee's prior approval. The practical effect of the alternative model is that nobody can be the Independent Market Administrator without first being blessed by the Transmission Owners.

5. The Role of the Independent Transmission Company (ITC) in the Collaborative Governance Model is Retrogressive and Should Be Disallowed If the Commission Adopts This Model.

The Collaborative Governance Model includes a provision for the sharing of certain RTO "functionalities" with independent transmission companies (ITCs). Thus, under this business

model, key RTO responsibilities would be shared with the Transco, the Independent Market Administrator, and one or more ITCs. Industrial Consumers are concerned that this fragmentation of responsibilities defeats the purpose of a centralized, independent RTO and goes beyond the rationale used to justify previously approved binary-type hybrid RTOs.

In addition, the Collaborative Governance Model would clearly allow and encourage multiple ITCs to form—one for as many incumbent Transmission Owners that may elect this option—unlike the situation in Avista and Bangor where multiple transmission owners came together to establish a single, much larger entity.

6. Industrial End-users Should Have Separate Sector Representation On the Stakeholder Advisory Committee.

Industrial Consumers believe in a strong stakeholder role. The two proposals, while ostensibly based on the same GridFlorida stakeholder model (discussed below), differ with respect to stakeholder sector definitions. Industrial Consumers believe that the SeTrans' definitions of stakeholder sectors are more reflective of actual market participant and stakeholder representation in practice. The sector definitions in the Collaborative Governance Model are much more restrictive and an artifact of circumstances unique to Florida that are not relevant to the greater southeastern region.¹ For example, the SeTrans' proposal would make Industrial End-users—that represent at least one-third of the load and a sizeable portion of the generation in the Southeast—a stand-alone sector. But Grid Group would force all end-users into a sector that also includes governmental entities and NGOs such as environmental groups—entities with little or no affinity with corporate energy buyers.

In the past, Commission decisions addressing RTO governance tended to focus on the

¹ Industrial loads consume only 9.8% of total utility sales (in MWh) in Florida, whereas in the other southeastern states, the percentage approximates or exceeds the national average (e.g., In 1998, 42.2% in Alabama; 41% in Arkansas; 31.2% in Georgia; 39.9% in Louisiana; 34.3% in Mississippi; 30.8% in North Carolina; 43.6% in South Carolina; and 33.2% in Tennessee). Source: EIA

composition of RTO boards, but gave scant attention to the composition of stakeholder advisory committees. FERC has not articulated detailed guidance on sector representation. Rather, the Commission has blessed a variety of proposals imposing only minimal standards that the Stakeholder Advisory Committee be “balanced” and “knowledgeable.” Industrial Consumers strongly believe that the Commission should adopt standards for sector definitions and Stakeholder Advisory Committee composition, and this should include a separate sector for Industrial Consumers.²

Ideally, a stakeholder sector should include relatively homogeneous entities with common commercial interests. And the ideal need not be the impossible in practical application. Mixing entities within the same sector with conflicting interests potentially disenfranchises all the members of that sector. For example, members of Industrial Consumers typically take service at transmission-level voltages, own or operate their own substation, and cogenerate or self-generate power using waste products as fuel. The dispatch/redispach policies of RTOs, interconnection requirements, and backup power needs are extremely important issues to them. None of these issues are shared with residential consumers, governmental entities such as consumer advocates, or NGOs. Industrial end-users need separate and distinct representation within the Stakeholder Advisory Committee to more effectively advocate market design features and business practices that support demand response and participation in markets for ancillary services and transmission congestion.

Fortunately, both models in the Mediation Report adopted the overall stakeholder process from the GridFlorida filing that was approved by the Commission. The Stakeholder Advisory

² The SeTrans Sponsors' SAC would include ten sectors. RTO West and PJM have both adopted a five-sector committee with all end-users combined in one sector as an end-user only sector. Industrial Consumers are indifferent with respect to the ten or five-sector models provided that, in a five-sector committee, the sector is not required to vote as a whole, i.e., minority votes within a sector count in the final tally.

Committee would have an ongoing role of providing advice to the system administrator or Transco that is governed by a Stakeholders' "Bill of Rights."

7. The Independent Board Must Be In Place Before Any Important "Going Forward" Decisions Are Made.

Finally, a flaw with both proposals that must be adequately addressed is interim independence. For example, while Grid Group commits to having the governance structure "in place when the RTO goes into operations," it makes no such commitment with respect to pre-operational planning activities and start-up decision-making. Industrial Consumers recommend that the independent board be established before the commencement of collaborative efforts and any start-up activities of the RTO.

B. Recommendations On Other Issues

1. All Generators Are Not Equal; Cogeneration That Serves An Industrial Steam Host Must Not Be Redispatched Absent An Interconnection Agreement (Or Other Contract) That Specifies The Terms and Conditions of Such Redispatch.

Industrial Consumers are concerned that the Collaborative Governance Model's intention to mandate the redispatch of all generation in emergency conditions would cause irreparable harm (including risk to public health and safety) to industrial cogeneration and the associated steam host. As proposed in the SeTrans Sponsors model, emergency dispatch of such units should to be negotiated and subject to the terms and conditions of a contract.

2. All Load Should Be Subject to the Same RTO Rates, Terms and Conditions.

The RTO must be the sole transmission provider of all transmission service rendered across the facilities under its control with such service fully subject to the rates, terms and conditions of the RTO's OATT. Neither model meets this test. While they may commit to the RTO's terms and conditions of services, they balk at assigning the same RTO rates to both wholesale and native loads. The Commission is urged to ensure that all load—wholesale and

native load—be subject to the same RTO rates, terms and conditions.

3. The Day Two Congestion Management Design Must Ensure A Liquid and Transparent Forward Market for Transmission Rights. Loads Should Be Allowed to Participate in the Congestion Management Markets By Selling Counterflows.

Industrial Consumers believe that the decision to select the Day Two congestion management model should be left to further discussion in a collaborative effort. We believe that either the financial or physical rights approach will work depending upon how a liquid and transparent forward market for transmission rights is structured and guaranteed. Industrial Consumers believe that should the Commission adopt the Financial Transmission Rights proposal of the Collaborative Governance Model, it is critical that it include all of the features of the SPP Congestion Management System and not just a subset of those features.³ It is important to recognize that the SPP collaborative process did not adopt Locational Marginal Pricing with Financial Transmission Rights, but rather it adopted a congestion management system that includes a flexible set of financial transmission rights known as Financial Congestion Hedges (FCHs). These FCHs are designed to promote a liquid and transparent forward market for transmission rights. While the SPP Congestion Management System includes LMP and point-to-point financial transmission rights that are obligations (as implemented by PJM), it also includes many other types of financial rights that have characteristics that better lend themselves toward establishing a liquid and transparent forward market for transmission rights.⁴ PJM has yet to

³ Appendix 3 to the Mediation Report simplifies the essential features of the original SPP document, "Structuring Forward Markets for Congestion Management, White Paper 1: Forward Congestion Market Concepts," Draft, June 2001. The SPP document was approved by SPP's Congestion Management System Working Group (CMSWG).

⁴ Many stakeholders in the SPP CMSWG process, including industrial end-use customers, felt that a forward market consisting exclusively of point-to-point FCH that are obligations (*i.e.*, PJM-style financial transmission rights) would not provide for a liquid and transparent forward market for transmission rights out to the horizon of new generation and transmission construction. The establishment of such a market is vital toward providing for a reasonably stable electricity market. Therefore, the SPP CMSWG did not restrict FCHs to point-to-point financial transmission rights that are obligations. Instead, the SPP CMSWG proposal included a flexible and interchangeable

adopt these advanced features.

Industrial Consumers believe the failure to provide for a liquid and transparent forward market for transmission rights will lead to unnecessarily unstable electricity markets with prolonged periods of severe generation deficiencies and surpluses. Only a liquid and transparent forward market for transmission rights will provide accurate price signals to those market participants that will help ensure sufficient infrastructure is constructed “just in time” to meet the demand of consumers.

4. The Markets for Ancillary Services Should Be Designed to Accommodate the Unique Characteristics of Large Loads That Are Price Responsive (Or Not), In Terms of Both Purchases From and Sales Into Such Markets, Including Sales of Excess On-site Generation.

The markets for ancillary services should be designed to accommodate—and not discriminate against—the unique characteristics of large loads that are price responsive (or not) in terms of purchases from and sales into such markets. Such sales are a form of “demand response” that is important for curbing the market power of generators and marketers, and should also include sales of excess power from cogeneration units under the same prices, terms and conditions of sales from merchant generating units.

5. The Mediation Report’s Planning Protocol and Market Monitor Should Be Adopted.

6. The Commission Should Require Full Compliance With Function 8, *i.e.*, Mandate One-Stop-Shopping and the Elimination of Rate Pancaking Throughout the Eastern Interconnection.

system of four other types of FCHs (“options”) constructed from the basic components of the “right to be paid” and the “requirement to pay” on individual flowgates.

Notices and Communications

Notices and communications should be addressed to:

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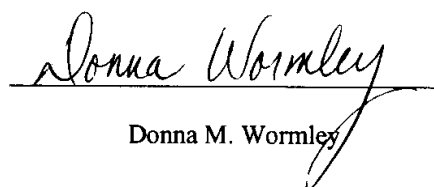
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Dated: October 5, 2001

Certificate of Service

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day caused a copy of the foregoing document to be served on all persons designated on the service list compiled by the Secretary and the restricted service list in these proceedings.

Dated at Washington, D.C., this 9th Day of October 2001.


Donna M. Wormley