

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

SeTRANS PETITION FOR DECLARATORY ORDER

)
) DOCKET NO. EL02-101
)

MOTION TO INTERVENE OF INDUSTRIAL CONSUMERS
THE ELECTRICITY CONSUMERS RESOURCE COUNCIL,
THE AMERICAN IRON AND STEEL INSTITUTE, AND
THE AMERICAN CHEMISTRY COUNCIL

Industrial Consumers the Electricity Consumers Resource Council (ELCON), the American Iron and Steel Institute (AISI), and the American Chemistry Council (ACC), move to intervene in the above-captioned proceeding to offer comments on SeTrans' petition for declaratory order approving the SeTrans' RTO governance structure.

Industrial Consumers applaud the SeTrans RTO governance model with its Independent System Administrator (ISA) structure. Industrial Consumers believe that overall the SeTrans stakeholder advisory committee (SAC) had performed well, but offer general observations about the need to assure a balance between demand-side and supply-side interests in RTO governance. Industrial Consumers also offer comments on SeTrans' proposed "Participant Funding" approach to transmission expansion. These comments were approved by our members before FERC issued its proposed rulemaking on Standard Market Design. Industrial Consumers assume that the SeTrans Sponsors will wish to revise their participant funding proposal and reserve their right to file responsive comments as the SeTrans revise their filing.

A. Description of Intervenors

The Electricity Consumers Resource Council (ELCON) is an association of industrial consumers of electricity organized to promote the development of coordinated and rational federal and state policies that will assure an adequate, reliable and efficient electricity supply for all users at competitive rates. ELCON member companies produce a wide range of products, including: aluminum, chemicals, petroleum, cement, motor vehicles, industrial gases, machinery, glass, agricultural and food products, rubber, computer chips, paper and electronics. The member companies of ELCON consume approximately five percent of all electricity in the United States.

The American Iron and Steel Institute (AISI) is the principal trade association of the North American steel industry. Its member companies account for about seventy percent of the raw steel production in the United States. The steel industry is one of the most energy-intensive sectors in the United States; the cost of electricity for AISI members may constitute as much as twenty percent of the manufacturing cost of a steel mill product.

The American Chemistry Council (ACC) is a nonprofit trade association whose member companies represent more than ninety percent of the productive capacity of basic industrial chemicals in the United States. The manufacturing processes of many ACC member companies are highly energy-intensive. In addition, the chemical industry used a substantial amount of self-generated electricity. Total electricity used by the industry, purchased plus self-generated, represented approximately eighteen percent of industrial electricity consumption in the U.S. and approximately six percent of national electricity consumption.

ELCON, AISI and ACC have member company facilities in the SeTrans region and are directly affected by this filing.

B. Description of SeTrans Filing

SeTrans has filed a request for declaratory order on June 27, 2002, requesting that FERC approve their proposed governance structure and business model. (SeTrans is not seeking formal RTO approval at this time).

The SeTrans model is organized around the key governance concept of an independent, incentive-driven, third party operator (the SeTrans ISA) that will manage (but will not own) the transmission facilities dedicated to the RTO. The SeTrans ISA will be charged with responsibility for the essential functions of an RTO, except that the market monitoring role that will be assumed by an independent organization. SeTrans envisions a role for ITCs that will assume certain RTO functions and responsibilities.

The SeTrans Sponsors support a “Day Two” market design includes a broad, seamless market for energy and ancillary services, a congestion management model based on LMP and a market for Financial Transmission Rights (“FTRs”) to hedge against the impact of potential congestion costs, and Participant Funding of certain new transmission facilities. At this point, the SeTrans Sponsors are requesting that the Commission determine that the governance structure and business model of the proposed SeTrans RTO, and the selection process for the SeTrans ISA, satisfy the Commission’s requirements. SeTrans Sponsors recognize that the Market Design Protocol is subject to further discussion in the context of an order issued in the SMD Docket, No. RM01-12-000.

C. Comments Of Industrial Consumers

Industrial Consumer comments focus on several threshold issues: (1) choice of model, (2) participant funding of transmission expansion, (3) treatment of grandfathered transmission rights, and (4) governance.

1. Industrial Consumers Applaud The SeTrans ISA Model

a. Description Of The SeTrans ISA

The SeTrans ISA will exercise exclusively the RTO's Section 205 rights, except that any FERC-approved ITC will have certain Section 205 rights with respect to rate design and performance-based or incentive rates for the ITC's footprint.

The SeTrans ISA will be the Security Coordinator for the SeTrans RTO's region. The SeTrans ISA will be responsible for OASIS administration and Available Transmission Capability ("ATC") and Total Transmission Capability ("TTC") calculations for all facilities under its control, including those facilities of any ITC and non-jurisdictional entities.

The SeTrans ISA's authority and responsibilities will be set forth in the ISA Retention Agreement ("SARA"). The initial term will be five years, with automatic renewal for five-year terms unless notice is given by the Participating Owners at least one year in advance, or unless there is early termination for cause (e.g., gross negligence, willful misconduct, unwillingness to expand the RTO, or bankruptcy).

Three different types of incentives are contemplated by the SeTrans Sponsors. The first category of incentives will apply to the management fee to be earned by the SeTrans

ISA. The management fee will be adjusted upward or downward based on performance by the SeTrans ISA in key areas with direct impact on customers such as customer satisfaction, service timeliness and accuracy, forecast accuracy regarding loads, outage coordination, credit risk management, quality of planning, and short-term reliability. A second category of incentives will be related to cost effectiveness of the SeTrans ISA, and will be tied to such measures as getting the RTO up and running on budget and on schedule. A third category of incentives will be management and employee incentives for meeting SeTrans ISA goals. The use of these incentives is a non-asset based form of PBR; stakeholders will have a significant role in establishing these incentives. The incentives should be relatively invisible in most customers' bills but are important to the ISA.

Substantial portions of the region's transmission facilities are owned by state and federal authorities, municipalities, and electric cooperatives. SeTrans insists that non-jurisdictional Participating Owners must be allowed to terminate and withdraw from the SeTrans RTO without FERC approval. Given their non-jurisdictional nature and the serious tax, financial and political ramifications that may require their decision to withdraw, they must be assured the right to terminate their participation in the RTO.

b. Industrial Consumers' Comments on the ISA Model

Industrial Consumers commend the SeTrans RTO model and in particular the ISA feature. Industrial Participants have been strong proponents of the SeTrans ISA model since the Southeast RTO Mediation, Docket RT01-100-000. At that time, Industrial Consumers made the following recommendations:

- **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.

Industrial Consumers commend the SeTrans Sponsors for advancing many of these sound features for the RTO’s business model.

Three aspects of the ISA feature are particularly optimal. The SeTrans ISA Model “takes the transco off the top” and avoids a situation where a self-interested market participant makes decisions with respect to congestion and transmission expansion that do not further the public interest. Second, the ISA allows appropriate performance incentives not associated with asset ownership. Third, the ISA structure facilitates the participation of public power entities, thereby encouraging more utilities under the RTO umbrella.

2. The Cost Of Essential Transmission Network Upgrades Should Receive Rolled-In Rate Treatment

 - a. The SeTrans Transmission Upgrade Policy

The SeTrans ISA will have responsibility for issuance of the annual transmission expansion plan, subject to review by Public Service Commissions. Transmission system expansions will be funded either by those entities that request and benefit from such expansion (known as “Participant Funded”) or, if included as part of a Base Plan, funded through the applicable Zonal Rates (known as “Base Plan Funded”).

The SeTrans RTO model adopts Participant Funding of certain new transmission investment. Participant Funding refers to a mechanism whereby a party or parties seeking the economic expansion of the transmission network (in contrast to an upgrade that is required to maintain adequate reliability levels) will be responsible for funding the cost of the expansion. In return for funding the expansion, the funding parties will receive the net incremental FTRs created by the expansion for a 30-year term.

SeTrans states that a mechanism such as Participant Funding is extremely important in the Southeast. Over the past few years, an enormous amount of generation has been

announced in the area -- much more generation than is needed to serve the load in the region. This growth in generation appears to be caused by the abundant natural resources in the Southeast. The region may continue to attract more generation than is needed to serve the load. If all transmission upgrades needed to add new IPP generators to the grid are “rolled in,” these generators will not see a transparent and accurate signal as to the cost their locational decisions are imposing. The Participant Funding concept seeks to provide transparent and accurate price signals and to act as a market surrogate for the integrated planning traditionally employed by utilities.

The following are examples of the types of investments that are proposed to be Participant Funded:

- Transmission investments to add, integrate or interconnect any new generation resources to the transmission system, regardless of ownership.
- Transmission investments required for transmission reservations for point-to-point service, or to increase or change the operating characteristics of an existing network resource.
- Transmission investments to allow changes in designation of network resources by existing network customers.
- Transmission investments to meet RTO deliverability requirements for installed capacity providers, should the RTO establish such requirements.
- Transmission investments to reduce congestion within the SeTrans RTO, meaning investments that are designed to reduce the delivered price of power

for certain loads and/or increase the locational marginal price received by certain generators.

Base Plan investments include: (i) investments to maintain NERC standards of reliability and investments that are required to serve load growth reliably; (ii) investments to replace or repair transmission facilities, where such investments are designed primarily to restore or maintain the existing transfer capability of the system; and (iii) investments necessary to maintain the simultaneous feasibility of all FTRs that have been issued by the RTO based on the system capacity available on Day Two and the system capacity that becomes available as a result of subsequent Base Plan investments. Any such investments made by Participating Owners will be included in the applicable SeTrans Zonal Rate, unless the SeTrans ISA, in consultation with affected LSEs, makes a determination that the Base Plan investment should be shared among multiple pricing zones. The SeTrans ISA will develop criteria for making such determinations.

b. Industrial Consumers Comments On SeTrans Transmission Upgrade Policy

(i) It is important for U.S. energy policy to reverse the trend of under-investment in transmission. Nationally, there is a significant and growing shortage of transmission facilities. According to an Issue Paper submitted for the “National Transmission Grid Study,” U.S. Department of Energy May, 2002:

The U.S. electricity industry is in them midst of a transition from a structure dominated by vertically integrated utilities regulated primarily at the state level to one dominated by competitive markets. In part, because of the complexities of this transition, planning and construction of new transmission facilities are lagging behind the need for such grid expansion.

Between 1979 and 1989, transmission capacity increased slightly faster than did summer peak demand (Hirst and Kirby 2001).

However, during the subsequent decade, utilities added transmission capacity at a much lower rate than loads grew. The trends established during this second decade are expected to persist through the next decade. According to one analysis, maintaining transmission adequacy at its current level might require an investment of about \$56 billion during the present decade, roughly half that needed for new generation during the same period (Hirst and Kirby 2001).¹

(ii) Because of the general state of inadequate transmission

infrastructure at this time, it appears beneficial to permit rolled-in rate treatment to the extent that system benefits are evident or may realistically be realized. Investments in transmission infrastructure confer benefits to the system and reduce overall energy costs to consumers. The benefits not only flow to consumers who buy power directly from a generator that has added new and more efficient generation, but other consumers benefit as well. When new generation comes on line, competitive pressures will drive down the prices in that area. Additionally, increased generation availability enhances reliability. Rolled-in rate treatment is appropriate for new transmission projects if (i) the project is necessary to maintain and comply with NERC reliability standards and/or (ii) the project will likely increase the economic benefits to customers in excess of the project's cost. This may include, for example, projects that increase the amount of generation available to customers and contribute to the development of competitive regional wholesale markets.

Advocates of direct assignment of transmission upgrade costs argue that such assignment sends price signals to new generators to consider locational factors in their decision-making process. But other factors such as location of gas and water, permitting considerations, and land availability may be equally or more significant as binding constraints on site suitability.

¹ "Transmission Planning And The Need For New Capacity," E. Hirst and B. Kirby.

(iii) However, Participant Funding should be required where transmission expansion will only benefit an identifiable customer or group of customers. In the RTO planning process, the utilities or transmission owners seeking Participant Funding of a transmission project bear the burden of proof to demonstrate that the costs of a new or upgraded transmission facility should be recovered by this method and not receive rolled-in rate treatment. Otherwise, to qualify for rolled-in rate treatment, it must be demonstrated that a project is needed for reliability and/or cost-beneficial economic reasons. After some period of time for any Participant Funded project (but less than the economic life of the project), if the benefits begin to accrue to a broader group of customers, some form of crediting mechanism should be established to reimburse the original funding participants.

In general, state or federal regulators should exercise considerable discretion when evaluating the merits of any new transmission project and the mechanism by which it is financed. Certainly the risk is very low that too much transmission will be built, and that the risk is certainly much higher that too little will be built—at great harm to consumers. However, regulators must also recognize that transmission investments tend to be “lumpy” in nature and expansion by incremental amounts may—in the long-run—be inefficient and more costly to consumers. Industrial Consumers advise the Commission that cost causation may not always be the real issue in the debate between rolled-in versus participant funding. The real issue may be attempts by existing transmission owners to preserve their local generation monopolies by loading the costs of network upgrades on potential competitors.

Providing FTRs in exchange for the new participant-funded investment is meaningless if the transmission project will likely substantially reduce or nullify any economic

value of the FTRs. Industrial Consumers are greatly concern that some transmission projects might be deliberately undersized to preserve FTR value. Such projects should be deemed imprudent by definition.

3. Treatment of Grandfathered Transmission Rights

a. The SeTrans Proposal

The SeTrans application (vol. 2 Att. F. pp. 24-25) observes that various parties currently hold contractual physical rights for transmission service within SeTrans or for transmission interfaces at the SeTrans border. Some of these contracts are “pre-Order No. 888” contracts. Other contracts, “post-Order No. 888”, provide physical transmission entitlements within, into, out of, or through SeTrans. Still others involve allocations of physical rights across an interface or service that is offered by a non-jurisdictional entity (non-jurisdictional to FERC). SeTrans proposes to accommodate grandfathered transmission rights preferentially.

Unconverted physical rights will retain their present scheduling priority:

Physical rights within SeTrans will be accommodated in the FTR allocation process by pre-assigning the corresponding source-sink combinations, and performing the Simultaneous Feasibility Test on the FTRs requested by SeTrans members, with these physical rights guaranteed at their limit. Per the provisions of the Grandfathered Agreement, the limits of these physical rights will increase when transmission improvements are made to serve new load under the Grandfathered Agreement. These physical rights, then, take precedence over requested FTRs related to network service of SeTrans members, and this physical right will reduce the amount of FTRs that can be allocated to requesting parties.

As to those holders who will convert their rights into financially equivalent FTRs, SeTrans will guarantee to the holder an FTR that is financially equivalent to the physical right.

b. Industrial Consumers Comments on Grandfathering Transmission Rights

SeTrans concedes that grandfathering will diminish the liquidity of the market for

FTRs:

SeTrans encourages holders of physical rights to convert those rights to financial rights. Conversion of these rights will allow the SeTrans market to function more efficiently, and will allow the holders of the rights to fully participate in the benefits of the market.

Effectively SeTrans creates a bifurcated world where some users have physical rights and others operate under FTR. Industrial Consumers urge FERC to consider the implications.

First, FTR liquidity will be reduced. The SeTrans Sponsors do not disclose the number and scope of these contracts and therefore the amount of ATC that will likely be tied up by the contracts. Second, the ISA will have to operate a hybrid LMP-physical rights system. It is not clear how this will work. In one sense, the physical rights may be a set-aside and the LMP system will dispatch what is left. Thus, the traditional utilities in the South will enjoy a physical rights world and all other users will be subject to LMP.

Industrial Consumers appreciate that there is a balance between honoring existing contracts and similar treatment to all transmission customers. Industrial Consumers are firm advocates of the principle of sanctity of contract. However, we believe that FERC should inquire into the extent of grandfathered transmission rights and evaluate the feasibility of the bifurcated model that will result and the consequences on the efficient implementation of the SMD.

4. RTO Governance Structures Must Balance Demand-Side And Supply-Side Interests

Industrial Consumers' comments on SeTrans' governance focus on the role of SACs as well as discuss the issue of balanced representation of RTO SACs and committees.

a. SeTrans Proposal For The Stakeholder Advisory Committee (SAC)

The SeTrans SAC consists of up to 20 representatives of stakeholder interests, with two members from each of the following stakeholder groups:

1. Investor-Owned Utilities,
2. Power Marketers and Brokers,
3. Generator Owners and Developers,
4. Transmission Dependent Municipal Joint Action Agencies and Municipalities,
5. Transmission Dependent Cooperatives,
6. Transmission-Owning Cooperatives,
7. Transmission-Owning Municipal Joint Action Agencies and Municipalities,
8. State Government Agencies, Consumer Advocates and Environmental Interests,
9. Industrial End Use Customers, and
10. Transmission-Owning or Transmission Dependent Federal Utilities and State Owned Authorities.

Stakeholders qualifying in each group will establish a procedure for appointing members and alternate members. Market participants, including affiliates, may participate in more than one stakeholder group for which they qualify, but may not have more than one voting representative on the SAC. Each representative will have one vote on the SAC and the SAC will act upon

majority vote of a quorum of the representatives. The Participating Owners will be allowed to participate in the SAC; SeTrans claims that they will not have a majority vote on the SAC, nor will they have sufficient voting power to be able to veto a proposal.

The SAC will invite to its meetings: (i) representatives of the State Public Service Commissions and local regulatory commissions with jurisdiction within the geographic area in which the SeTrans RTO operates or proposes to operate; (ii) representatives of the Electric Reliability Councils with responsibility within the geographic area in which the SeTrans RTO operates or proposes to operate; and (iii) members of the Staff of the Federal Energy Regulatory Commission, any of whom may participate fully in SAC proceedings on a non-voting basis.

b. Industrial Consumers' Comments On The SeTrans SAC

Industrial Consumers appreciate many aspects of the SAC experience. Unlike some SACs, the SeTrans SAC allows industrial consumers their own seat on the SAC. At the present time, ELCON's Technical Director, John Hughes, chairs the SAC. Industrial Consumers believe that SAC had admirably discharged the first function in its charter and arrived at nomination of two well-qualified applicants for the ISA through a fair and open process.

Of concern to Industrial Consumers--not just for SeTrans but on all RTOs--is assurance of a continuing, meaningful role for the SAC. Under the SeTrans governing documents, for example, the SAC has a right to meet with the Board, both at periodic meetings and on special request. It is important that FERC specify--not just for SeTrans but with respect to RTO market design more generally--that the Board is required to respond and give due consideration to the comments of SACs. The Board is the ultimate decision-maker but should duly consider comments that it receives and reflect consideration of such comments.

c. Balance Between Demand and Supply Side Is Important To SMD

ELCON commends FERC for the discussion of governance issues in the recently-issued SMD NOPR. In addition to confirming that an independent board will be required, FERC takes an important step to assuring balance with respect to stakeholder advisory committees. In particular, at paragraphs 561 and 562, FERC states that the SAC must have six shareholder class which will provide more balanced representation between supply side interests and end-users, alternative energy providers and public interest groups. FERC also correctly requires utilities to choose in which sector it will be represented. We believe that such an alignment will go a long way to preventing domination of stakeholder processes by traditional utilities and other supply side interests.

Existing ISOs, RTOs and standard-setting organizations have gerrymandered class structures which over-represent the generators, transmission and distribution companies and power marketers--the aggregate supplier class. End-use customer interests (including residential, commercial and industrial consumers; municipal, state and federal power purchasers; and other entities who actually pay electric bills) are inevitably outvoted on issues that pit supply-side solutions against demand-side solutions. All too often, interests of the demand- and the supply-side clash. In such cases, FERC should require balanced representation. This re-tooling of governance is necessary i) to assure independence; ii) to further FERC's core statutory mandate to protect consumer interests; and iii) to assure effectuation of key FERC policies such as implementation of optimal demand-response. FERC stated in Order 2000 that due to insufficient experience with the fledgling ISO and RTO concept, it was reluctant to specify too many details about governance. With some experience under its belt, FERC can and should provide further prescriptive detail with respect to assuring balance in governance.

- Under-Representation Of Demand Interests Can Defeat The Purpose Of

The ISO/RTO Independence Requirement. In Order 2000, FERC states: “The RTO must have a decision-making process that is independent of control by any market participant or class of participants.” Dominance by the supply-side defeats the key governance objective that no one segment of the As FERC stated in the RTO NOPR, Docket RM99-2, it is important both to the reality and the perception of RTO independence that RTO decision-making should not be controlled by any one class of participants:

An RTO needs to be independent in both reality and perception. As we have said before in the context of ISOs, we think that “the principle of independence is the bedrock upon which the ISO must be built...” It is the Commission’s view that independence can be achieved if the RTO satisfies three conditions. First, the RTO, its non-stakeholder governing board members and its employees must have no financial interests in market participants. Second, the RTO’s decision making must not be controlled by any market participants. Third, the RTO must have independent authority to file changes to its transmission tariff.

Dominance by the Supplier Class defeats the key governance objective that no one segment of the industry should dominate RTO/ISO decision-making:

An ISO governing board’s delegation of decisions to a stakeholder committee would be contingent on this committee not being dominated by one segment of the industry. We recently found that the existing tiered governance arrangements of the New York and New England ISOs failed to meet this standard and we ordered both ISOs to reduce the voting power of dominant utilities in the lower tier of stakeholders charged with advising the non-stakeholder governing boards. See Central Hudson, 87 FERC ¶ 61,135 (1999); New England Power Pool, 86 FERC ¶ 61,262 at 61,965.

Docket RM99-2, 87 FERC ¶ 67,173 (1999) fn. 190.

- Under-Representation Of Demand Interests Is Not Consistent With Statutory Duty To Protect Consumers From Exercise Of Monopoly Power. FERC’s “primary aim” is “to protect consumers against exploitation” at the hands of monopolist utilities. Process Gas Consum. v. FERC, 177 F.3d 995, 1002 (D.C. 1999). See FPC v. Hope Natural Gas Co., 320 U.S. 591, 610 (1944); see also Public Sys. v. FERC, 606 F.2d 973, 979 n.27 (D.C. Cir. 1979) (“control of the economic power of utilities that enjoy monopoly status’ is the focus of regulation under the Natural Gas Act and the Federal Power Act”). See City of Detroit v. FPC, 230 F.2d 810 (D.C. 1955), where the court found that the Commission’s approach to incentive pricing could not be squared with the Federal Power Act:

While as we have indicated the Commission may be empowered to consider some of these factors it must also, and always, relate its action to the primary aim of the Act to guard the consumer against excessive rates.

230 F.2d at 817. The Federal Power Act’s “primary orientation . . . toward the maintenance of low prices for the consumer” (230 F.2d at 818) precludes the Commission from authorizing ISOs, RTOs and standard-setting organizations which may impose higher rates on consumers than necessary due to an unbalanced governance structure.

- Under-Representation Of Demand Interests Can Jeopardize Key FERC Policy Objectives. FERC’s policy objectives cannot be achieved in an environment where supply-side interests dominate ISOs, RTOs and standard-setting organizations decision-making with respect to the conflict between supply-side and demand-supply solutions.

Industrial Consumers advocate a 50%-50% division of representation between those who supply and those who actually pay the electric bills. Unless there is equality of representation, decisions regarding issues such as how to relieve congestion will be biased. As

an example, congestion can be relieved with either increased generation, increased transmission, or demand response. Without balance between the demand and supply interests, the decision will be resolved in favor of the interests of the supply-side.

As another example in many existing ISOs, such as ISO New England and PJM, demand response programs currently in place are sub-optimal. Under-representation of consumer interests on ISO/RTO committees results in “consensus” demand-response programs that do not adequately fulfill FERC goals or market needs.

While in most RTOs/ISOs generators pay lip service to supporting demand-response programs, efforts to adopt adequate demand-side measures are being opposed by transmission companies and generators that benefit from inflexible demand. Because the governance structure of RTOs does not contain sufficient representation of the Customer Class, sub-optimal policies result. FERC’s February 7, 2002 Strawman for Market Power and Mitigation states that “If and when a region develops substantial price-responsive demand, there will be less of a need for mitigation rules....” In its 2001 Report “Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform,” the FTC identified three key advantages of demand-response: Enforced demand-response (i) can be expected to “moderate wholesale spot market prices and price volatility;” (ii) “improve reliability for electricity;” and (iii) “moderate market power.” FTC notes that price responsive demand can reduce the profitability of economic withholding in wholesale spot markets.² While we appreciate that in the

² The FTC states:

Large retail customer participation in wholesale markets, coupled with variable retail pricing, would benefit all retail customers, because the average price paid by all customers decreases as peak demand is reduced. These programs increase system reliability, mitigate the potential for price spikes during periods of peak demand and supply scarcity, and increase the opportunity for retail suppliers to add value to commodity reselling, as well as indirectly reduce the environmental impacts of

Southeast in particular, effective demand-response is not imminent and neither is retail access in most states (Texas being an exception), it is important as a matter of standard market design that FERC assure balance between supply-side and demand-side interests in all RTOs.

D. Notices and Communications

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CONCLUSION

For the foregoing reasons, Industrial Consumers urge that FERC grant this timely motion to intervene.

/s/ Sara D. Schotland

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electricity production. Moreover, real-time, demand-side participation by wholesale buyers and large retail customers of electricity can potentially mitigate existing electricity supplier market power and increase incentives to attract customers by lowering prices.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion To Intervene Of Industrial Consumers The Electricity Consumers Resource Council, The American Iron and Steel Institute, And The American Chemistry Council, were mailed today to parties on the service list of this proceeding by U.S. mail, postage prepaid.

Dated at Washington, D.C., this 5th Day of August, 2002.

/s/ Jennifer A. Morrissey

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