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UNITED STATES OF AMERICA  
 BEFORE THE  
 FEDERAL ENERGY REGULATORY COMMISSION

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 FEDERAL ENERGY  
 REGULATORY COMMISSION

Regional Transmission Organizations  
  
 Carolina Power & Light Company  
 Duke Energy Corporation  
 South Carolina Electric & Gas Company  
 GridSouth Transco, L.L.C.

Docket No. RT01-100-001  
  
 Docket No. RT01-74-005

**RESPONSE OF CONCERNED STAKEHOLDERS  
 TO MOTION FOR STAY OF THE NORTH CAROLINA  
 UTILITIES COMMISSION**

On August 13, 2001, the North Carolina Utilities Commission (“NCUC”) filed a motion for partial stay of this Commission’s Order on Compliance Filing and Status Report issued on July 12, 2001 in Docket Nos. RT01-74-002 and RT01-74-003 in *GridSouth Transco, LLC*, 96 FERC ¶ 61,067, and the Order Initiating Mediation, also issued on July 12, 2001, in Docket No. RT01-100-000 in *Regional Transmission Organizations*, 96 FERC ¶ 61,066. The NCUC seeks a stay of the July 12 orders to the extent they require the parties to the *GridSouth* proceeding to participate in expedited mediation settlement discussions.

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, Electricities of North Carolina, Inc., Piedmont Municipal Power Agency, and the Cities of Orangeburg and Seneca, South Carolina (hereinafter “Carolina Municipal Entities”); Florida Municipal Power Agency; Enron Power Marketing, Inc.; Carolina Utility Customers Association; the Electricity Consumers Research Council, American Chemistry Council, American Forest & Paper Association, and American Iron

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and Steel Institute; and the Southeastern Power Administration (jointly referred to as “Concerned Stakeholders”) oppose the NCUC’s motion for stay. The Concerned Stakeholders are market participants who are intervenors in the GridSouth proceeding or other proceedings included in the mediation and are active participants in the mediation provided for in the Commission’s July 12 orders. They represent interests of transmission dependent utilities, generators and marketers, end use consumers, and the federal power marketing administration in the Southeastern United States. Although their interests are diverse, the Concerned Stakeholders share a common objective of a large, and workable RTO that will support a robust, reliable and competitive electricity marketplace. They therefore have welcomed and supported the initiation of mediation by the Commission as the best, and perhaps last, chance to achieve a Southeast-wide RTO through a voluntary collaborative process.

***A. The Objective of a Single RTO for the Southeast Region is Not a Departure from the Transmission Policy Enunciated in Order No. 2000 or in Prior Orders in the GridSouth Proceeding***

The NCUC’s motion for stay is premised on an incorrect assumption. On page 2 of its motion, the NCUC contends (footnote omitted) that the Commission “dramatically departed from the electric transmission policy it had enunciated in Order No. 2000 and abandoned the voluntary, collaborative, flexible approach it had established in that order.” Although the Commission favors a voluntary approach for formation of appropriate RTOs, it has not ruled out intercession if it determines that the voluntary approach is not working. In Order No. 2000, the Commission stated:

Our objective is for all transmission–owning entities in the Nation, including non-public utilities, to place their transmission facilities under the control of appropriate RTOs in a timely manner . . . . As a result of this voluntary

approach, we expect jurisdictional utilities to form RTOs. If the industry fails to form RTOs under this approach, the Commission will reconsider what regulatory steps are in the public's interest.

*Regional Transmission Organizations*, 65 FR 809, 811 (January 6, 2000), FERC Stats. & Regs. ¶31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 FR 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *petitions for review pending sub nom.*, *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, Nos. 00-1174, *et al.* (D.C. Cir.).

The NCUC's motion assumes that, by ordering mediation, the Commission has imposed a substantive requirement on the GridSouth Applicants and on other parties. See Motion at 2-6. The Concerned Stakeholders disagree that the July 12 orders represent a departure from the voluntary, collaborative approach. Rather, the mediation is an effort to encourage and facilitate a voluntary resolution to the Commission's correctly perceived need for a much larger RTO footprint than proposed by GridSouth. As the Commission explained in its July 12 order in *GridSouth*:

[R]esolution of this issue [the ability of public power and cooperatives to participate in the RTO] is best left to negotiations between the parties. This is a delicate matter that must be decided in the first instance by the parties. Accordingly, we expect these issues in GridSouth and similarly in the Southeast region to be addressed in the settlement discussions before the mediator relating to the formation of a single RTO in the Southeast, and to be addressed in the mediator's report.

96 FERC at 61,291.

The motion claims (at 2) that the July 12 orders were "based on unarticulated, unsupported, and speculative assumptions." Contrary to such claims, the July 12 *GridSouth* order sets forth an ample and well-supported basis for the decision to require mediation. That order begins with the observation:

The Commission has been attempting to facilitate the development of large, regional transmission organizations reflecting natural markets since we issued Order No. 2000. We favor the development of one RTO for the Northeast, one RTO for the Midwest, one RTO for the Southeast and one RTO for the West. Through their independence from market participants, RTOs can ensure truly non-discriminatory transmission service and will instill confidence in the market that will support the billions of dollars of capital investment in generation and demand side projects necessary to support a robust, reliable and competitive electricity marketplace. RTOs are the platform upon which our expectations of the substantial generation cost savings to American customers are based.

96 FERC at 61,287.

The Commission's view that there should be one RTO for the Southeast has been a constant concern in the GridSouth proceeding. It is not a new policy first announced on July 12. In its March 14 "Order Provisionally Granting RTO Status" in *GridSouth*, the Commission addressed the concerns raised by numerous intervenors who argued that GridSouth, as proposed, is too small to meet Order No. 2000's scope and configuration requirements. The Commission stated that it would provisionally accept GridSouth as a "starting point," and that it "strongly encourage[d] GridSouth to continue to expand...." "Order Provisionally Granting RTO Status," *Carolina Power & Light Co., et al.*, 94 FERC ¶ 61,273, 61,993 (2001). Indeed, the Commission went further, stating that expansion of GridSouth is required:

The Applicants' proposal reflects a realistic and balanced effort to create an RTO in the Southeast region. However, we emphasize that GridSouth must continue to expand in the region as the Applicants represent and commit in their filing. Expansion to include Southern, TVA, Santee Cooper and other public power entities and even GridFlorida and other regional entities with RTO filings pending before the Commission would enhance the scope and configuration of GridSouth and increase the RTO's importance in the region.

94 FERC at 61,994 (emphasis added).

The Commission reiterated the import of the March 14 Order in its May 30, 2001 “Order Denying Rehearing and Granting, in Part, Clarification” in *GridSouth* (95 FERC ¶ 61,282). There, the Commission stated:

The March 14 order addressed in detail the reasoning for provisionally accepting the Applicants' proposal on scope and configuration. With regard to the contention that acceptance of the proposal will deter expansion because the Applicants will "rest on their laurels," the Applicants acknowledged in their October 16, 2000 compliance filing the need to continue to expand and expressed their aspiration that GridSouth be a platform for the development of a larger RTO in the Southeast. Moreover, the March 14 order directed the Applicants to continue its efforts to expand and file a compliance report by May 14, 2001 that addresses its efforts. The Applicants have submitted their compliance report, and the Commission is currently seeking public comment on the filing. We plan to address the Applicants' efforts to enlarge the scope of GridSouth in a separate order. As we said in the March 14 order, GridSouth can serve as an initial platform for the formation of a larger RTO in the Southeast. The Commission's goal, however, is the formation of a single RTO in the Southeast.

95 FERC at 61,990 (emphasis added, footnote omitted).

The July 12 order in *GridSouth* is the “separate order” contemplated in the May 30 Order Denying Rehearing etc. In that July 12 order, the Commission reviewed comments, protests and interventions on the GridSouth Applicants' May 14 compliance filing and separate comments, protests and interventions filed in response to status reports submitted on that same date “regarding: (1) efforts to expand the scope and configuration of the RTO; and (2) interregional coordination discussions with neighboring transmission entities.” 96 FERC at 61,287.

After summarizing the discussion in the GridSouth Applicants' Status Report, the order then described comments and protests in response to that status report.

SC Consumer Advocate comments that Applicants' discussions to expand GridSouth seem to be making little, if any, progress. It believes that "stronger persuasion, if not outright mandate, by the [Commission] may be necessary to get progress toward making GridSouth more inclusive.

NHEC, NCEMC, Central and Carolina Municipal Entities, all public power entities, echo the same theme that the status report shows that Applicants' efforts to secure the participation of other transmission owners have failed to produce any progress towards achieving the goal of a Southeast-wide RTO. They contend that the report reveals "deep differences" between Applicants and Santee Cooper, and Applicants and Southern Companies, over their participation in GridSouth. These public power entities also share in the belief that Applicants have not demonstrated an ability to successfully expand through bilateral negotiation, and that future expansion will not occur without Commission intervention. They propose various actions that the Commission could take to "move the ball forward" toward the attainment of a Southeast RTO, including: (1) withdrawing provisional approval of the GridSouth RTO until a commitment from new members is secured; (2) deferring the December 15, 2001 start-up date until further expansion occurs; (3) directing the Chief Judge to convene an expedited collaborative process; or (4) convening a technical conference to explore how GridSouth could revise its business model to attract additional participants.

Calpine, states that it is "encouraged" by the prospect of an expanded GridSouth RTO that encompasses all major transmission owners in the Southeast. ... Calpine believes that MOUs and seams agreements create delay and balkanization of markets, and therefore, should not substitute for the creation of a single regional RTO from the inception.

96 FERC at 61,290, footnote omitted.

Based upon those comments and protests, the Commission then set forth its conclusions at 96 FERC at 61,290-91. It first recognized that the two-month window between March 14 and the May 14 reporting deadline was "a relatively short period of time for Applicants to enter into final agreements with other transmission owners." *Id.*

The order went on to find:

However, we are disappointed by the lack of progress Applicants have made in expanding the RTO's scope through the inclusion of additional members in GridSouth. It appears that Applicants have, to date, been unsuccessful in engaging in any fruitful discussions with other transmission-owning entities in the region.

Further, we agree with Calpine's observation that the initial formation of a single Southeast RTO is preferable to the formation of multiple RTOs in the same region that coordinate through an umbrella organization or seams agreements.<sup>12</sup> There is no reason at this early stage of development to work towards second-best solutions without having made sufficient efforts to achieve the goal of a single RTO within the region.

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<sup>12</sup> See Southern Companies [96 FERC ¶ 61,064 (2001)] (issued concurrent with this order), which emphasizes the inefficiency of establishing two or more RTOs in the Southeast

96 FERC at 61,291.

***B. The Commission was Not Required to Issue a Notice and Provide Opportunity for Comment Before Requiring Mediation***

In its motion (at 3), the NCUC claims that the Commission violated its own Rules of Practice and Procedure and the [Administrative Procedures Act] in adopting the July 12 Orders." The NCUC states that "[i]n this case, the parties received no notice that the Commission intended to modify Order No. 2000." As pointed out *supra* at 2, an objective of Order No. 2000 was that "all transmission-owning entities in the Nation ... place their transmission facilities under the control of appropriate RTOs in a timely manner." 65 Fed. Reg. at 811. The Commission has been constant in its view that GridSouth, as initially proposed and as it continues, was not of adequate scope and configuration. Rather, it found that it "represents a good first step toward the creation of an RTO in the Southeast region and can serve as a platform for the formation of a larger RTO in the Southeast." 94 FERC at 61,993. The Commission "provisionally accept[ed]

its scope as a starting point . . . “ *Id.* This conclusion was reiterated in the May 30 Order on Rehearing where the Commission stated: “The Commission’s goal . . . is the formation of a single RTO in the Southeast.” 95 FERC at 61,990.

Contrary to the claim in the motion, the Commission has not departed from the voluntary approach in Order No. 2000. In the view of Concerned Stakeholders, the Commission has bent over backwards to try to accommodate the GridSouth Applicants by “provisionally” accepting the scope of GridSouth, rather than rejecting the filing as providing for too small an RTO. The Commission has not found that GridSouth should be approved on other than a provisional basis; it could withhold or deny final approval because of the failure to expand the scope of the proposed GridSouth RTO as envisioned by the March 14 and May 30 orders (94 FERC at 61,994; 95 FERC at 61,990). Once again, in the July 12 orders, the Commission has attempted to promote and facilitate a voluntary solution, this time through mediation.

The Commission could have, and perhaps in retrospect should have, rejected the GridSouth proposal at the outset rather than provisionally accepting it. Such action would have been fully consistent with Order No. 2000 based on the concerns raised by a number of parties and recognized by the Commission. The Commission should be not criticized for taking a less drastic step by “provisionally” approving the GridSouth proposal.<sup>1</sup> Continued efforts to reach a voluntary solution through mediation and remedial action thereafter if the mediation is not successful would not be contrary to Order No. 2000.

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<sup>1</sup> Without detailing the full range of relief that may be ordered if the parties are not able to form an RTO of adequate scope, examples of what might be ordered would be withdrawal of provisional approval of the GridSouth RTO and termination of market pricing authority of each of the GridSouth Applicants.

The NCUC's claim (motion at 6) that "the Commission offered no opportunity for parties to comment on its abrupt change in position . . ." is not well taken. First, as discussed above, the ordering of mediation is a continuation of the effort to achieve a negotiated resolution. Second, FERC-assisted dispute resolution was expressly requested by Carolina Municipal Entities in their June 1, 2001 "Protest and Comments Concerning the GridSouth Applicants' Status Report on Scope and Configuration." See July 12 *GridSouth* order, 96 FERC at 61,290. That Protest and Comments was served on all parties to the proceeding, including the NCUC, and no party opposed the request for FERC-assisted dispute resolution. Although the notice of the mediation conference was short, it was reasonable under the circumstances because of the Commission's determination in Order No. 2000 that its goal was to have RTO startup by December 15, 2001. 65 Fed. Reg. at 947. As the Commission found in that rulemaking order:

As a general proposition, we believe that, given the urgent needs of electricity markets as discussed elsewhere in our Final Rule, we have an obligation to promote RTO operation at the earliest feasible date. Even where a market may already be served by an ISO or other approved transmission entity, we are concerned that such market may remain hampered to the extent that the approved entity has yet to fully conform with our Final Rule.

*Id.*

The NCUC claims (motion at 7) that "State commissions have been shoved aside, unintentionally or not, in this process, and . . . a denial of the requested stay would result in the unlimited expenditure of enormous time for little gain." The State commissions have not "been shoved aside." They have been encouraged to participate in the mediation efforts and have had an opportunity to participate in that process. Moreover, they will have an opportunity to comment on the results of the mediation and express any concerns they have. With respect to the NCUC's claim that a denial of the stay would

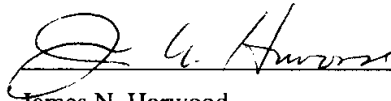
result in expenditure of time for little gain, the short answer is that continued expenditure of time on a flawed GridSouth RTO which has not developed, and is not likely to develop, as a platform for a Southeast-wide RTO would be an effort doomed to little (or no) gain. A delay in achieving an adequately sized RTO for the Southeast region would merely allow the continuation of the *status quo* of noncompetitive electricity markets dominated by large utilities having market power enhanced by their control of transmission.

For the foregoing reasons, the Commission should deny the motion for stay filed by the NCUC.

Respectfully submitted,

ELECTRICITIES OF NORTH CAROLINA, INC.,  
PIEDMONT MUNICIPAL POWER AGENCY,  
AND THE CITIES OF ORANGEBURG AND  
SENECA, SOUTH CAROLINA; FLORIDA  
MUNICIPAL POWER AGENCY; ENRON  
POWER MARKETING, INC.; CAROLINA  
UTILITY CUSTOMERS ASSOCIATION; THE  
ELECTRICITY CONSUMERS RESEARCH  
COUNCIL, AMERICAN CHEMISTRY  
COUNCIL, AMERICAN FOREST & PAPER  
ASSOCIATION, AND AMERICAN IRON AND  
STEEL INSTITUTE; AND THE  
SOUTHEASTERN POWER ADMINISTRATION

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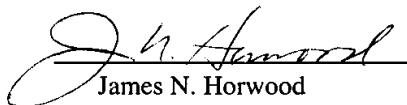


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August 28, 2001

## CERTIFICATE OF SERVICE

I hereby certify that I have on this 28<sup>th</sup> day of August , 2001, caused the foregoing document to be sent by first-class mail (postage prepaid) to all parties named on the official service list compiled by the Secretary of the Commission in this proceeding.



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