

RTO Filings Under
FERC's Order No. 2000:
The First Wave



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Legal Disclaimer

- I am speaking today on my own behalf, and not on behalf of any client or group of clients
- My views are formed by past experience working for cooperatives and municipal systems dependent on transmission systems of neighboring IOU Transmission Owners (TO) to serve their loads

Looking Back At Order No. 2000

- Close to a year since Commission issued Order No. 2000
- In retrospect, the Commission got much right, but it fell short in 3 crucial respects:
 - Did not mandate RTO participation
 - Was not more specific on regions RTOs should cover
 - Signaled weakness on independence by allowing unlimited passive ownership

The Perils of Voluntary RTO Formation

- By going with a voluntary approach, the Commission immediately weakened its bargaining position with the IOU sector of industry
- Had to count on the industry stepping up to the bar to do the “right thing”
- Industry has stepped up to the bar all right, but some apparently think it is an OPEN BAR

Is The “Incentives” Bar Now Open???

- The Commission issued relatively strong RTO orders on independence issues in the *Alliance RTO* dockets (89 FERC ¶ 61,298 and 91 FERC ¶ 61,152)
- But *International Transmission Co.* (92 FERC ¶ 61,276 (2000)) implies rate incentive bar is open for Transcos prior to RTO formation; it has had a harmful ripple effect, contributing to destabilization of RTO formation in the Midwest (migration from ISO to Transcos..)

2001--The Year of the Stick?

- October filings are a markedly mixed bag
- Chairman Hoecker has recently said that “this year was the year of the carrot”
- So is 2001 the year of the stick?
- Some of these filings (especially those in the SE) will test the Commission’s mettle-- will it accept them or require the Applicants to redo their homework?

The “Macro Issues” Teed Up in the October RTO Filings

- Will FERC accept RTO regions based on Applicants’ own strategic decisions, rather than what the regional market needs?
 - “It is important to get the fundamentals right and to devise a roadmap that takes into account the needs of the market and the regional implications of electricity trade.” *San Diego G&E v. Sellers of Energy into California*, 93 FERC ¶ 61,121 (November 1, 2000)

More Macro Issues...

- Will the Commission accept single state RTOs? (*SDG&E* order seems to cast new doubt on this...)
- Will the Commission accept single company RTOs? (Generation market dominance implications seem obvious...)
- In the case of hybrid proposals, how will the various RTO functions be divvied up?

Still More Macro Issues...

- Will the Commission accept proposed RTOs with questionable independence characteristics?
 - LLC with only passive owners and TO-chosen board?
 - Transcos with only one company ownership?
 - Stakeholder boards? (FERC in *SDG&E* Order dealt stakeholder boards a real body blow...)

Special SE RTO Issues

(Is Summer School Required?)

- Where's Waldo (a/k/a TVA)? It is hard not to contrast BPA's and TVA's responses to FERC's RTO initiative...
- Will the Commission accept a series of “mini-RTOs” for the region (Southern, GridSouth, GridFlorida, TVA-led PPRTG)?
- Some in region (TVPPA, Central Electric Co-op) already calling for FERC to require a real SE collaborative--no more “cake and coffee” meetings

It Really Boils Down To...

- All these questions and issues are really different ways of saying the same thing:
 - Is the Commission (finally) ready to take on transmission and generation market power and require those who have it to modify/mitigate their behavior?

Chairman Hoecker's 5/1/00 Speech:

- “If the opportunities of the next few months are missed, I do not believe that we can conscionably or even legally allow the uncertainties surrounding bulk power developments or the competitive inequalities in the current market structure to persist.”
 - May 1, 2000 Speech to Cambridge Energy Resource Associates (CERA) Forum

FERC Musical Chairs?

- Already one open seat on the Commission
- Chairman Hoecker's term will be up any day--will he stay on a recess appointment?
- If Gore wins, will the new Administration stay the course?
- If Bush wins in November, will EEI or Enron have the ear of the new Chairman? Either way, do Transcos rule?

Conclusions

- The first fruits of FERC's voluntary policy: a very mixed bag of October filings, some of which clearly challenge the Commission to either fish or cut bait
- Bad RTOs may be worse than no RTOs
- If results of Order No. 2000 are TO-dominated, too small, anticompetitive RTOs, please "include me out"