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CLEARY, GOTTlieb, STEEN & HAMILTON

2000 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006-1801

(202) 974-1500

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(202) 974-1999

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RUE DE LA LOI 23  
1040 BRUSSELS

CITY PLACE HOUSE  
55 BASINGHALL STREET  
LONDON EC2V 5EH

ROBERT C. BARNARD  
FRED D. TURNAGE  
DANIEL S. SILVER  
OF COUNSEL

MAIN TOWER  
NEUE MAINZER STRASSE 28  
60311 FRANKFURT AM MAIN

PIAZZA DI SPAGNA 18  
00187 ROME

39TH FLOOR, BANK OF CHINA TOWER  
ONE GARDEN ROAD, CENTRAL  
HONG KONG

SHIN KASUMIGASEKI BUILDING  
3-8, KASUMIGASEKI 3-CHOME  
CHIYODA-KU, TOKYO 100-0013

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J. EUGENE MARANS  
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KEVIN A. GRIFFIN

SPECIAL COUNSEL  
JOYCE E. MCCARTY  
SENIOR ATTORNEY

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DAVID S. SHYDER  
PATRICIA J. WALSH  
CHARLIE X. WANG  
WILBERT H. WATTS, JR.

\*ADMITTED IN NEW YORK AND BRUSSELS

\*ADMITTED ONLY TO A BAR OTHER THAN THAT OF THE DISTRICT OF COLUMBIA, WORKING UNDER THE SUPERVISION OF PRINCIPALS OF THE WASHINGTON OFFICE

November 20, 2000

BY HAND

The Honorable David P. Boergers  
Secretary  
Federal Energy Regulatory Commission  
Dockets Room, Room 1A  
888 First Street, N.E.  
Washington, D.C. 20426

Re: TransConnect, LLC; Docket No. RT01-15-000

Dear Secretary Boergers:

Enclosed for filing please find an original and fourteen (14) copies of the Comments of Industrial Consumers to TransConnect, LLC's Compliance Filing in the above-referenced proceeding.

We ask that two copies of this document be date-stamped and returned for our records. Thank you for your assistance.

Sincerely,

Sara D. Schotland

Enclosures

FILED  
OFFICE OF THE SECRETARY  
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FEDERAL ENERGY  
REGULATORY  
COMMISSION

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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Avista Corporation )  
The Montana Power Company )  
Nevada Power Company )  
Portland General Electric Company )  
Puget Sound Energy, Inc. )  
Sierra Pacific Power Company )

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Docket No. RT01-15-000

COMMENTS OF INDUSTRIAL CONSUMERS  
TO RTO COMPLIANCE FILING OF  
TRANSCONNECT LLC

November 20, 2000

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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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Avista Corporation )  
The Montana Power Company )  
Nevada Power Company )  
Portland General Electric Company )  
Puget Sound Energy, Inc. )  
Sierra Pacific Power Company )

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Docket No. RT01-15-000

The Electricity Consumers Resource Council (ELCON), the American Iron and Steel Institute (AISI), American Chemistry Council (ACC) and the American Forest and Paper Association (AF&PA) (together, Industrial Consumers) hereby file the following comments on the compliance filing made by TransConnect, LLC (TransConnect).

EXECUTIVE SUMMARY

**A. General Comments on RTO Filings**

The first wave of Regional Transmission Organization (RTO) filings reflects, with some exceptions, minimum compliance with Order 2000, which set forth the parameters and requirements for RTO formation and operation. Because the commitments made are insufficient to promote economic efficiency or to assure reliability-the objectives of Order 2000- FERC's response should not be to rubber-stamp these filings. Rather, FERC should assess the filings by asking whether the commitments offered on key characteristics and functions are sufficient to enhance competition and promote reliability. And perhaps most importantly, FERC

must ask whether the filing addresses a first principle of RTO structure: Does the proposal mitigate market power?

In these comments, Industrial Consumers address certain key issues raised by the RTO filings.<sup>1</sup> Industrial Consumers identify those filings with features that represent proposed best practices and those which are most inadequate. Industrial Consumers also recommend specific areas where FERC needs to give additional guidance because Order 2000 was vague or indefinite. Unfortunately, to date FERC has passively approved single-state ISOs and seems inclined to allow gerrymandered RTOs. Industrial Consumers believe that none of the RTO proposals are complete and deserve unqualified approval. Each proposal raises serious concerns that must be addressed and resolved in subsequent compliance filings, and after adequate input and support from stakeholder groups in the region served by a proposed RTO. These initial RTO filings represent the last best chance for FERC to forge RTOs that are large enough, independent enough, and sufficiently coordinated with their neighbors to achieve efficiency and reliability objectives and mitigate market power. FERC must assure that RTOs provide workable platforms for truly competitive regional electricity markets.

#### *Characteristics 1 – Independence*

- The RTO filings vary in their governance structure from pure ISO structures to transcos to hybrid Independent System Operator-Independent Transmission Company (ISO/ITC) structures. Some are quite odd, such as the SPP/Entergy “partnership”. We commend the RTO West proposal for its independent non-stakeholder board and ISO-type RTO structure. We deem this proposal a “best practice.” From filings to date it appears that RTO

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<sup>1</sup> Industrial Consumers have not endeavored a comprehensive set of comments on every characteristic and function in each filing in the short term allowed, but have focused on key issues.

West and TransConnect will avoid the type of fragmentation of functions that raises concern in hybrid models. FERC should encourage the “hybrid” structure whereby the ITC is subsumed under an ISO—exemplified by the RTO West/TransConnect model. As FERC has recognized in connection with the California debacle, stakeholder boards are too cumbersome and can be vulnerable to external influence. Should the Commission deem any stakeholder board acceptable, such stakeholder boards should be required to transition to independent boards by a date certain.

- While RTO West governance represents a proposed “best practices,” the SeTrans RTO proposal is our nominee for “worst practice.” At this late stage, it is still the case that Southern Companies, which seems consistently behind the times in RTO development, has not selected basic RTO governance. Most RTO proposals made efforts at some collaborative process prior to the submission of its compliance filing. Southern Companies has not. Most RTOs feature a stakeholders' advisory committee (however de minimus), but Southern Companies does not. Small wonder that the SeTrans proposal offers little improvement over the status quo.

- Whatever the type of governance structure, FERC must insist on a pristine initial board selection process. Regrettably, the initial selection process of the GridSouth, GridFlorida and SeTrans proposals allow transmission owner-dominated selection of initial directors.

- Several RTO proposals—GridSouth, Entergy, GridFlorida—follow the passive ownership transco model and include the bare-bones Order 2000 fiduciary duty commitment that the transco will not favor the generation interests of transmission owners. Transcos inherently have the problem of discriminating against non-transmission solutions to

congestion. This is why the RTO as an ISO structure is preferable. Industrial Consumers urge FERC to go farther and ensure that in decisions to relieve congestion by redispatch and/or transmission expansion, the structure of the transco-as-RTO will sufficiently mitigate any potential to exercise market power. At a minimum, FERC should require that the audit functions of RTOs closely scrutinize the choices made by transcos.

- Any Transco-as-RTO proposal that does not involve the absolute divestiture of transmission assets (e.g., due to capital gains concerns) should be required to operate as an ITC under the operational authority of an independent RTO as ISO. To do otherwise would simply preserve existing market power of vertically integrated utilities.
  
- FERC has repeatedly affirmed that to assure independence, the RTO must have unique ability to make Section 205 filings for changes in transmission tariffs. Most RTO filings conform to this aspect of Order 2000. However, Southwest Power Pool (SPP) unjustifiably provides for individual utility Section 205 filings in violation of FERC's final rule.<sup>2</sup> FERC should enforce its rule and reject efforts by SPP and others to ignore plain requirements that RTOs must make Section 205 filings.
  
- Time is of the essence in implementing effective independent RTOs of sufficient scope to mitigate market power. Proposals that have advanced an independent board with an impartial initial board selection process should be directed to get the board in place and let them begin making decisions to ready the RTO for start up December 31, 2001.

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<sup>2</sup> Of course Order 2000 is a final rule notwithstanding that EEI and certain other utilities have sought judicial review of FERC's requirement that RTOs have exclusive Section 205 filing rights.

### *Characteristic 2 – Scope And Regional Configuration*

- The primary test for adequacy of RTO scope and configuration is the ability to mitigate market power. As the antitrust agencies have warned, and as FERC initially recognized, RTOs are necessary (i) to broaden geographic markets and enable trading over a large area—defeating horizontal market power; and (ii) to assure nondiscriminatory access to transmission—defeating vertical market power. Southern Companies and Entergy cannot be allowed to avoid the thrust of this characteristic by invoking a square miles-test vis-à-vis the Commission’s prior approval of PJM as an ISO. FERC must reject RTO proposals that are limited to a single-company and proposals limited to a single state or equally small geographic area. Among the October applicants, SeTrans, GridSouth and SPP have insufficient scope to mitigate market power.<sup>3</sup> As FERC recognized in the November 1, 2000 decision in San Diego Gas & Electric<sup>4</sup>, even California is too small for a single-state RTO. The crisis in the California and Western markets this past summer more than proved this point.

- There is an essential tradeoff between the requirement of Characteristic 2 and Function 8. If the RTO isn’t big enough to meet the standards under Characteristic 2, greater stringency is required for Interregional Coordination under Function 8. FERC must strictly enforce this complementary principle if it intends to procure expansive regional electricity markets. The weaker an RTO proposal is assessed under Characteristic 2, the stronger the showing required under Function 8. Given the laws of physics and the innate nature of competitive markets, it would seem illogical to approve an RTO geography that is truly a fraction of an interconnection.

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<sup>3</sup> GridFlorida is a justifiable single-state RTO.

<sup>4</sup> 93 FERC 61,121 (2000).

### *Characteristic 3 – Operational Authority*

- The RTO West/TransConnect model represents a proposed “best practice” in that RTO West intends to exercise operational authority over all essential transmission facilities avoiding fragmented control with transmission owners. Essential to this arrangement, TransConnect has unequivocally assigned to RTO West the responsibility for operating its transmission assets so that it can concentrate on its core business of building and maintaining transmission assets.

- FERC should reject SPP and Entergy’s RTO filings and require them to merge with neighboring RTO proposals. Not only is Entergy too small (and too self-serving) for RTO status but its separate existence eviscerates SPP as Entergy is the larger and more integral part of the SPP-Entergy region. Operational authority is unduly retained by transmission assets under the GridSouth proposal. This is a bad practice and should be rejected.

- It is not necessary that RTOs operate a single control area. For example, the GridFlorida hierarchical control area operation may be an acceptable structure provided Order 2000 requirements are met. Other RTO proposals—GridSouth, SeTrans and Desert Star—should not pursue single control area operation absent a clear demonstration that it will improve market operation and benefit consumers.

### *Characteristic 4 – Short-Term Reliability*

- Order 2000’s requirement that RTOs manage interchange schedules must be implemented so that the RTO has sole authority to administer important commercial practices, including scheduling, tagging, TLR and congestion management (“redispatch authority”). RTOs

must exercise such authority to avoid discriminatory behavior and to avoid improper disclosure of commercially sensitive information.

- RTOs should exercise authority over generation maintenance with caution.

In this particular respect, SeTrans represents a “best practice.” It is inappropriate for RTOs to assert absolute control over the planned maintenance outages of generation (including QFs) or to mandate the redispatch of such facilities absent contractual arrangements to do otherwise. In the case of generators that are QFs, such interference can seriously disrupt or damage industrial production or process equipment, can adversely even affect the facility’s environmental compliance, or endanger work safety. Generation associated with a steam host cannot be expected to operate with the same flexibility as a purely merchant unit.

- To enable the smooth transition to the optimum state of interconnection-wide RTOs, two or more RTOs should consider sharing a common independent security coordinator.

#### *Function 1 – Tariff Administration And Design*

- FERC should limit use of license-plate rate design to a five-year transition period.<sup>5</sup> Five years is ample time to mitigate most cost-shifting concerns.
- Industrial Consumers accept using existing QATT rates as initial zonal access charges and establishing zones as existing service territories of transmission owners

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<sup>5</sup> A license plate rate is a single rate for loads within a geographic area that may vary based on where the customers are located. See Regional Transmission Organizations, 65 Fed. Reg. 810, 916 (January 6, 2000).

subject to the five-year transition period limitation. Wheeling through and wheeling out rates should be the weighted-average of zonal rates.

- GridFlorida proposes to assign transmission services for bundled native load under the RTO tariff. Industrial Consumers deem this a “best practice.”

### *Function 2 – Congestion Management*

Industrial Consumers believe that the flowgate physical transmission rights model is the ideal market structure for congestion management and for addressing other market functions. The benefits include:

- A decentralized and efficient solution to the congestion management problem.
- Properly defined (physical and tradable) firm transmission rights (FTRs) provide only a right to schedule; if not used, they are worthless and holders have no incentive to hoard FTRs.
- Secondary markets for these rights mitigate potential exercise of market power in transmission.
- The model more readily facilitates creation of Ancillary Services (“A/S”) and Balancing Energy markets.
- The model eliminates the need to grandfather existing long-term contracts by providing a market mechanism for converting contract rights into FTRs.

- The model is simple to understand and more intuitively market oriented, and therefore imposes lower transaction costs on customers.
- The flow-based features of the model address problems of parallel flows.
- The model inherently creates a market structure that encourages forward contracting. The recent California experience highlights the risks of excessive reliance on spot markets.

- RTO West proposes a “best practices” solution for congestion management: a flow-based, physical transmission rights congestion management model. RTO West plans to grant to each participating member FTRs to replace firm rights under existing long-term agreements.

- The RTO West congestion management hierarchy: (i) relies on FTRs; (ii) then on redispatch of resources using incremental and decremental adjustments of generation and loads; (iii) then allowing recall of FTRs; and (iv) as a last resort, curtailment of schedules.

*Function 3 -- Parallel Flows*

- This serious problem can only be solved by abandoning the “contract path” method for reserving and scheduling transmission service and moving to a flow-based process.

- RTO West’s flow-based/physical rights model applied over a large region represents a “best practice.”

- Parallel flows are far more efficiently addressed through large RTOs and interconnection-wide reliability entities (for example, security coordinators assigned to multiple RTOs).

#### *Function 4 – Ancillary Services*

- There is a crying need for uniformity of ancillary services requirements across seams. There is a growing inconsistency in the number of ancillary services. For example, within the Western Interconnection, Cal ISO has 6; Desert STAR proposes 12; RTO West proposes 10.

- The flow-based physical rights model is part of the solution to ancillary services and energy balancing because the model accommodates these services in a manner that is intuitively market-oriented.

- There is a need for a new ancillary service that is dedicated to transactions that “source” at loads. The crisis in California has heightened interest in establishing programs that allow retail customers of any size to bid loads into the market. Traditionally, loads are considered “sinks.” But loads that are curtailable (“price elastic”) or that include on-site generation (distributed generation or QFs) are capable of responding to real-time prices, solicitations for incremental or decremental bids for congestion management, and solicitations into day-ahead and hour-ahead markets. This is often called “demand response.” Industrial Consumers prefer to call this concept “curtailable load response” to distinguish it from utility DSM programs.

Like other ancillary services, RTOs would facilitate the market for load decrements (DECs), on-site generation increments (INCs), or a combination of the two. In essence, the RTO would be acting as an aggregator of these load decrements (with or without on-site generation increments), and allocate the resource, at its discretion, to other markets (e.g., spinning or non-spinning reserves). Accordingly, Industrial Consumers urge FERC to consider a new OATT ancillary service dedicated to curtailable loads. We urge RTOs to consider adding this feature in future compliance filings.

*Function 5 – Oasis And Calculation Of ATC And TTC*

- One-stop shopping must be the objective. FERC should encourage models that resemble the Travelocity.com® web-site, which offers one-stop shopping for airline reservations.
- The flow-based physical rights model resolves this concern if applied consistently throughout the interconnection.
- RTO West obligates transmission owners to maintain transfer capability of facilities under the RTO's operational control—this represents a best practice.
- GridFlorida has the authority to independently verify data provided by transmission owners. This also represents a best practice.

*Function 6 – Market Monitoring*

- Cal ISO's Market Surveillance Committee which reports to the Cal ISO board correctly identified market design flows that plagued the California market. Warnings are

only useful if heeded. FERC should address why the California unit's warnings were not heeded, and how to avoid repetition of this problem in the formation of RTOs.

- Market monitoring units (MMUs) should report to the RTO Board and to FERC, not to RTO staff. FERC should ensure resource adequacy. Every MMU unit must have a funding mechanism that immunizes the MMU from undue influence of the RTO, transmission owners, or other market participants.

- FERC should consider whether there might be efficiencies if multiple RTOs were served by a single market-monitoring unit.

- MMUs serve a valuable transitional role. They must not be allowed to become permanent de facto regulatory agencies.

#### *Function 7 – Planning and Expansion*

- RTOs should be able to finance additional transmission capacity. RTOs should be responsible for expanding the system where that need is clearly identified.

- RTO West/TransConnect proposes a “best practice” because it (i) will be responsible for operational planning; (ii) will be responsible for long-range planning with opportunity for broad input; and (iii) is granted backstop authority to construct or upgrade transmission facilities where participating transmission owners decline to build.

- It is desirable to centralize the planning function with an RTO; piecemeal planning by Transmission Owners places too much reliance on coordinating or rationalizing the

results (this is where we are now). It is a bad practice for Transmission Owners to retain the planning function and limit the RTO to the passive role of publishing the report.

- Incumbent transmission owners should not be vested with a “right of first refusal” to build RTO approved transmission upgrades or new facilities. An open bidding process should be followed that allows an incumbent transmission owner to submit a counter offer to any lower bid.

- The RTO must have sole authority over generation interconnection policies; NOT the transmission owners or for-profit transcos who may be inclined to discriminate against potential competition.

#### *Function 8 – Interregional Coordination*

- FERC has recognized the interrelationship between Characteristic 2 and Function 8. Now is the time for FERC to move ahead and insist either that RTOs achieve adequate size or that they eliminate seams with neighboring RTOs, including rate reciprocity to avoid burdensome “tollgate” pancaking.

- It is not surprising that RTOs are so vague about seams commitments given the lack of milestones in Order 2000. FERC should convene a two-day FERC Technical Conference or mini-rulemaking to work out a compliance template for Function 8.

- FERC should demand a resolution of seams within 18 months or show cause why consolidations should not be mandated such as:

- PJM ISO; NY ISO; ISO-New England

- GridSouth/SeTrans/GridFlorida and perhaps SPP
- MISO/Alliance and perhaps MAPP
- RTO West/Desert Star/Cal ISO

- Industrial Consumers commend RTO West for its efforts to implement Function 8. RTO West has entered into an agreement with British Columbia that serves as a model for tangibly addressing seams issues. RTO West/BC IGO agreement is a “best practice” because RTO West achieved seams resolution across an international border. Unfortunately, other RTOs have nothing to offer beyond promises to meet and confer or self-serving reports than they have discussed, but not implemented, seams measures with neighboring RTOs.

## Industrial Consumers' Summary Table Of RTO Proposed "Best Practices"

### Characteristics

1. Independence. RTO West/TransConnect ITC subsumes a for-profit ITC under an independent ISO-type structure.
2. Scope & Configuration. RTO West has the largest square miles within its scope.
3. Operational Authority. GridFlorida will exercise hierarchical control over multiple control areas.
4. Short-Term Reliability. SeTrans maintenance practice avoids disruption to generators.

### Functions

1. Tariff Administration and Design. GridFlorida will place bundled retail load under the RTO tariff.
2. Congestion Management. RTO West's flow-based physical rights model eliminates incentives to hoard transmission rights.
3. Parallel Path Flow. RTO West's flow-based model eliminates the contract path concept.
4. Ancillary Services. RTO West's flow-based model facilitates efficient delivery of ancillary services and energy imbalance.
5. OASIS; Calculation of ATC/TTC. RTO West obligates transmission owners to maintain transfer capability of facilities under the RTO's operational assistance. GridFlorida has the ability to independently verify data provided by transmission owners.
6. Marketing Monitoring Unit. Nobody listened, but Cal ISO's Market Surveillance Committee warned of an impending crisis.
7. Transmission Planning and Expansion. RTO West will be responsible for operational planning; for long-term planning; and has backstop authority to construct or upgrade transmission facilities where transmission owners decline to build.
8. Interregional Coordination. RTO West's resolution of international seams with BC IGO is a best practice.

Industrial Consumers have prepared a master set of comments to allow FERC to consider within the framework of evaluating each RTO filing proposed “best practices” of other RTOs so FERC can compare and contrast the application to other filings.

In reviewing these filings, Industrial Consumers urge FERC to proceed cautiously in granting declaratory judgment approvals. Experience from early ISO and transco filings shows that this vehicle can be abused by incipient RTOs to obtain premature approval of non-conforming RTOs. FERC should examine each filing not only for minimal conformity with Order 2000 but for an assessment against proposed best practices adopted by other RTOs. If one RTO can address seams responsibly, why can't others?

## COMMENTS ON RTO FILINGS

### CHARACTERISTIC 1--INDEPENDENCE COMMITMENTS

#### A. Review Of The Independence Demonstration Filed By RTOs

Independence is the sine qua non RTO characteristic. Below we review aspects of the independence demonstration for each of the RTOs that have filed to date.

##### 1. **GridSouth**

GridSouth Transco LLC is a for-profit transco. GridSouth will have a seven-member independent nonstakeholder board, advised by a stakeholder advisory committee. The founding utilities do not seek any active ownership interest. Passive owners retain a right to vote on extraordinary business decisions.

The Applicants<sup>6</sup> will transfer functional control of their transmission facilities to GridSouth. The Applicants remain subject to bundled retail service obligations in the Carolinas, and neither North Carolina nor South Carolina has made a move towards electric retail choice.

GridSouth will have the exclusive right to propose changes to the OATT under Section 205.

#### *Comments On The GridSouth Independence Commitment*

Board Selection. The search for initial GridSouth board members is delegated to an independent search firm. All stakeholders may recommend candidates to fill initial positions. The founding utilities can reduce the slate of candidates to no fewer than two for each position. The founding utilities, after obtaining comment on the candidates, can select the board subject to

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<sup>6</sup> Carolina Power & Light, Duke Energy, and South Carolina Electric & Gas.

FERC approval. Industrial Consumers' concern is that the founding GridSouth utilities can control the board selection process by recommending more than two candidates for each position. While the recruiting firm and other stakeholders have the right to nominate additional individuals, the founding utilities can control selection by their ability to narrow the list of candidates to two individuals for each slot. It is also of concern that former utility employees can become Board members: how can they have independent perspective?

Fiduciary Duty Commitment. Like the other transcos, GridSouth includes minimal language on fiduciary duty providing that the transco board may not consider the generation business of its owners. This is insufficient. The guidance that FERC has provided to date on the fiduciary duty issue fails to address the inherent conflict arising from the fact that the transco board may have as its ultimate duty maximization of transmission revenues as opposed to the best interests of the grid. In a choice related to relieving transmission congestion through redispatch or facility expansion, versus collecting congestion rents, the transcos may make choices in its self-interest. Such choices may be extremely inefficient and not in the best interest of the market. While Order 2000 approves for profit transcos as RTOs, Industrial Consumers encourage the use of independent auditors to prevent this potential conflict. The transcos are silent as to how it will resolve this conflict, at a minimum choices on relieving congestion should be subject to audit.

Advisory Committee. GridSouth is to be commended for proposing a non-stakeholder board. However, the advisory committees are not sufficiently balanced. GridSouth has no industrial representative on the advisory committee. Public sector consumer advocates do not represent the same interests or offer the same business perspective as industrial consumers who also are stakeholders.

## 2. GridFlorida

GridFlorida LLC will be a hybrid transco, owning transmission facilities where owners choose to divest such facilities and exercising operating control over those transmission facilities which the owners do not choose to divest.

GridFlorida will own and operate transmission facilities. GF Inc. will hold the managing member interest in GridFlorida giving it voting rights. GF Inc. will own active voting interest in GridFlorida.

GridFlorida will have an independent nonstakeholder board advised by a stakeholder advisory committee.

GF Inc. would issue two classes of stock. Market participants can only hold nonvoting stock except that large financial institutions can hold voting stock. The structure is intended to create GF Inc. to access the capital markets.

GridFlorida will be the sole administrator of its transmission tariff and have the sole authority to make Section 205 filings.

### *Comments On GridFlorida Independence Commitment*

Board Selection. GridFlorida's Board selection committee is dominated by IOU interests and devoid of industrial consumer interests. The initial GridFlorida Board will be selected by a committee comprised of (i) representatives from each utility that contributes transmission facilities to GridFlorida; (ii) one representative from a transmission owner in Florida that does not contribute such facilities; (iii) one wholesale public power representative; (iv) one generation sector representative; (v) one power marketer/broker representative; and (vi) government and non-profit organizations who are intended to represent consumer interests.

This committee will select an executive search firm, which in turn will nominate a pool of eight candidates and four alternatives. The Board Selection Committee can replace up to four of the eight candidates with alternates.

Fiduciary Duty. As with the other transcos, the passive owner fiduciary duty commitment does not address the transco's inherent conflict in relieving congestion.

Advisory Committee. While GridFlorida is to be commended for having an independent stakeholder board, its advisory committee is unbalanced. Seven out of thirteen members of the GridFlorida board represent transmission owning utilities. The advisory committee lacks any industrial retail consumer representative; nonstakeholder consumer advocates and NGO's are no substitutes for industrial consumers. Industrial Consumers must have their own place at the table because they are market participants and in some instances will have perspectives different from other ratepayers.

### **3. Southern Companies (Se Trans)**

Gridco will have operational authority over Southern Company transmission facilities but will not own these facilities. Southern Companies has not yet decided on governance, but states that it will meet the independence requirement under alternative structures.

*LLC Model:* Under this approach, Gridco would be an LLC governed by an independent nonstakeholder board. Market participants that own the LLC will be limited to a passive ownership interest. Management will uniformly disregard the interest of passive owners in any business, asset or liability other than the LLC, and the LLC will under no circumstance be used to protect any such present or future interest. The LLC will not be able to take

extraordinary actions without the approval of the passive owners. The Board will be comprised of seven directors that will serve staggered terms.

*Newco Model:* There are two variations of the Newco model. (i) An LLC made up initially of transmission owners will be formed, but Newco is selected to manage the LLC as the managing partner: Newco may or may not have an equity interest in the LLC. (ii) No LLC will be formed. Newco will be both the owner and operator of Gridco. The transmission owners will have no interest in Gridco; rather, Newco will have non-market participant shareholders who will select a board to which the management of Newco will be responsible. Newco could be an already existing company with a board and management in place or take the form of a new company.

#### *Comments On Southern Companies' Filing*

Lack of Stakeholder Process. Southern Companies had no meaningful stakeholder process prior to forming an RTO.

Advisory Committee. Southern Companies has no meaningful stakeholder Advisory Committee, much less a balanced committee.

Board Selection. Southern Companies' board selection process is flawed. Southern Companies also reserves to itself "the opportunity to strike...candidates without cause." Industrial Consumers see no reason why transmission owners who found a utility should reserve to themselves a preemptive strike to remove candidates selected by an independent search firm. Prior to selection of the board, the transmission owners will select an interim CEO who can appoint a management team.

Passive Ownership. Under FERC precedent, passive owners retain a right to vote in certain extraordinary transactions such as proposed changes in the transco's business from transmission business, sale of assets, liquidation, dissolution, voluntary bankruptcy, and mergers. Alliance, 91 FERC ¶ 61,152 (May 18, 2000). However, the Southern Company LLC proposal allows passive owners to: (i) Dilute or change a member's ownership interest in the LLC; and (ii) Amend the initial incentive plans for the Board or managing member and officers within the first two years of operation. Southern Companies appears to violate FERC's Alliance order, which disapproved clauses allowing the transmission owners veto privileges relating to issuance of membership interests which may dilute the value of a member's interest. Alliance, 89 FERC ¶ 61,298 (Dec. 20, 1999).

Void for Vagueness. A single-utility RTO is an oxymoron. How can Southern Companies be independent of itself? The Southern Companies, who have stalled so long on RTO formation, now offer a vague and confusing proposal, seeking a declaratory order approving one of many alternative structures. Due to the dizzying array of alternatives, the filing is deficient and should be dismissed unless and until Southern Companies provides a more specific proposal.

#### 4. RTO West

##### a. RTO West RTO Filing

RTO West/TransConnect is a hybrid structure subsuming an ITC within a broader regional ISO. RTO West will have exclusive right to operate and control bulk transmission facilities.

Any legal entity may be a member. RTO West has five distinct member classes: major transmitting utilities; TDUs; non-utility entities; retail customers; and state utility commissions/tribal authorities/non-aligned entities.<sup>7</sup> RTO West is a state non-profit corporation along an ISO model. Members have the exclusive right to elect the members of the trustee selection committee, be members of the board and advisory committee, and amend the by-laws.

RTO West will be managed by a nine-member board of trustees, supplemented by an advisory committee consisting of stakeholders. RTO West will have an independent nonstakeholder board. Its decision making process is independent of control by market participants. The advisory committee can include all members, has no fixed size limit, and will ensure adequate opportunity for all RTO members to propose any issue for the committee's consideration.

RTO West will administer its own tariff and make Section 205 filings except that during a "company rate period" RTO West will not have the right to change provisions concerning company rate design.

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<sup>7</sup> Avista, Bonneville Power Administration, Idaho Power, Montana Power, Nevada Power, PacifiCorp, Portland General Electric, Puget Sound Electric, and Sierra Pacific Corp.

b. TransConnect ITC Declaratory Judgment Filing

TransConnect is an ITC that has some but not all the characteristics of an RTO applying the criteria of Order 2000. TransConnect/RTO West follow the hybrid model.

TransConnect LLC will be formed by members who contribute assets. TransConnect Corporate Manager will serve as the managing member of the LLC. The Corporate Manager will have an independent board of directors.

Members will have no ability to independently determine or to veto either the initial slate of candidates for the Board of Directors, or the subsequent selection or removal of directors. The Members will be one of five classes on the Board Selection Committee: the Members' class will have two votes; the other four classes will each have one. Since it will require four votes out of a total of six for a majority, the Members cannot either control the outcome or unilaterally veto a potential board member.

As part of their passive interest, Members and Class B stockholders are accorded certain limited voting rights.

The TransConnect Corporate Manager, Inc. directors, officers, and employees may not hold any financial interests in any market participant.

Market participants may hold up to five percent of the total Class A stock of TransConnect for a period of five years. No class of market participants may hold more than 15 percent of the total Class A shares.

TransConnect will develop its own plans for expanding transmission. However, RTO West will have primary responsibility and final decision-making authority over facilities that impact bulk transmission to assure that reliability of the grid is not impaired. RTO West must not unreasonably delay or withhold approvals for transmission expansions and modifications requested by TransConnect.

TransConnect will file its own rate schedules within the RTO West tariff.

*Comments On The RTO/TransConnect Independence Commitment*

Hybrid Model: Best Practice. RTO West appears to have optimal RTO structure: an independent RTO supervising a for-profit ITC where critical characteristics and functions are reserved to RTO West.

**5. Southwest Power Pool**

SPP<sup>8</sup> has attempted to address the independence concerns that, among other factors, led FERC to reject its prior ISO filing on May 17, 2000. (91 FERC ¶ 61,137.) Notably, transmission owners will relinquish operational control of transmission facilities to SPP.

The new SPP by-laws retain the same governance principles previously criticized by FERC and by intervenors: a 21-person board composed of seven transmission-owning directors, seven transmission using directors, and seven non-stakeholder directors. There is a 2/3 approval requirement. SPP explains that this tripartite board structure was approved during SPP's collaborative process following the May 17, 2000 order. SPP states that no one class can veto a decision reached by the rest of the board and no two classes can force through a decision

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<sup>8</sup> AEP/CSW's Southwest Power Administration; CLECO Corp.; Kansas City Power & Light; UGPE Elec. Services; Southwestern Public Service Co.; Empire Dist. Elec. Co., Utilicorp, PECO Energy, and Western Resources.

opposed by the rest of the board – consistent with Order 2000. SPP further explains that the transmission-owning sector comprises four directors who represent transmission owners and three directors who represent public power interests. The non-transmission owning directors consist of two munis, two co-ops, two marketers, and one IPP.

The agency relationship between SPP and the transmission owners which FERC rejected has been replaced by a limited fiduciary obligation to all members. The SPP RTO may act in its own interests without regard to the interests of individual transmission owners.

SPP will continue to administer its OATT. Both SPP and transmission-owning utilities have the right to file Sec. 205 tariffs changes.

#### *Comments On SPP's Independence Commitment*

Section 205 Filing. SPP seriously flouts Order 2000 because individual utilities are allowed to make Section 205 filings. §3.10 of the SPP RTO membership agreement provides:

Each [utility] shall possess the unilateral right to file with FERC to change the rates or rate structure for transmission service over its tariff facilities and to submit proposals or filings governing new construction with FERC. No SPP approval is required for such filings although the transmission owners shall notify SPP in advance of the filing of its intention to submit a filing with FERC and provide SPP with a copy of the filing.

FERC states in Order 2000-A (Order on Rehearing):

As an initial matter, some parties question whether, to ensure independence, it is necessary for the RTO to have exclusive and independent authority with respect to filing changes to its tariff. We find the need to be clear. The tariff establishes the rates, terms, and conditions under which the RTO will provide transmission service to

transmission customers. If the RTO does not have the independent right to seek appropriate changes to its tariff, it is difficult to see how that RTO could be viewed as providing a transmission service that is independent from market participants . . . .

Those requesting rehearing, however, insist that transmission owners will be at risk for not recovering their allowed payments from the RTO, because the RTO either will not have an appropriate rate design or will not have the incentive to collect revenues from transmission customers sufficient to cover the payments to transmission owners. These arguments have no merit. There is nothing in the Final Rule that precludes transmission owners from seeking to assure recovery of their allowed payments from the RTO through appropriate mechanisms in the agreement establishing the RTO. For example, they may provide for a contractually enforceable obligation for the RTO to pay the owners their full revenue requirement as determined by the Commission, and they may even provide for some sort of true-up mechanism if an RTO fails to recover the costs it owes to the owners in a particular period.

In addition, nothing in the Final Rule precludes the transmission owners from participating in the RTO's designing of rates to transmission customers, as long as they are not given veto authority over, or otherwise control, what the RTO ultimately seeks to file under section 205. The Commission did not intend to preclude transmission owners from being involved in rate design proposals prior to the RTO filing them.

65 Fed. Reg. 12,088, 12,097 (2000). SPP's filing blatantly conflicts with Order 2000.

## **6. Entergy**

Entergy has made an RTO filing that seeks RTO status in its own right and recognition of its SPP Partnership. Under the SPP Partnership RTO proposal, a Transco owning or controlling the transmission assets of the Entergy Operating Companies and other transmission owners, will operate under the oversight, and within the umbrella, of the SPP.

The Transco will be an LLC under Delaware law that is managed by the Managing Member. The Entergy Operating Companies, and others, will contribute their

transmission assets to the Transco in return for passive ownership interests in the Transco. The Managing Member will have all the voting rights of the LLC, except for certain limited rights, which will be subject to the vote of all of the members of the LLC.

The Managing Member will be run by an independent nonstakeholder board. The board will consist of seven members serving three-year, staggered terms. The directors will be independent of any Market Participant and will have neither financial interest in, nor affiliation with, any Market Participant.

Market Participants will have no active ownership of the Transco. The ownership rights of the transmission-owning members of the Transco will be “passive”. Transmission owners will retain the right to vote on certain fundamental corporate actions which include the merger or sale of all or substantially all of the assets of the Transco, the dissolution of the Transco, or initiation of bankruptcy proceedings. The Transco’s board is prohibited from considering the interests of the passive owners outside the Transco’s business.

Under a MOU between SPP and Entergy, “the SPP RTO is responsible for (1) acting as the regional Security Coordinator for the SPP and Transco systems; (2) performing ATC/TTC calculations; (3) fostering input by Market Participants into the Transco policies; (4) overseeing the regional transmission expansion planning process; and (5) providing a forum for market monitoring and dispute resolution.”

#### *Comments On The Entergy Independence Commitment*

Section 205 Filing. Entergy proposes to control those aspects of the tariff that affect commercial terms and conditions for transmission over its facilities. Entergy will be able

to make filings to FERC to propose rate changes for service to load within Entergy's own service territory. Entergy can propose transmission charges and new transmission services not contained in the RTO tariff. Entergy transco must give 30 days notice to SPP before filing transmission changes.

Because SPP and Entergy do not meet the RTO characteristics, Entergy should not be a RTO in its own right. Rather, SPP/Entergy should follow a responsible binary model such as the RTO West/TransConnect ITC structure. It is SPP, not Entergy, that should be making the Section 205 Tariff filings. This RTO should follow the RTO West/TransConnect model (see above).

#### **7. Desert STAR**

Desert STAR has not yet made its RTO filing which is projected to be made on December 29, 2000. The October 15, 2000 filing may be considered a status report by Desert STAR and six jurisdictional utilities.<sup>9</sup>

Under the By-Laws, the Board of Directors consists of five unaffiliated voting directors elected by the Advisory Committee and one non-voting director elected from each of eight member classes (transmission owners, load-serving entities, generators, TDUs, power marketers, large retail customers, small retail customers, and utility commissions). An additional non-voting director represents the Federal Power Marketing Administrations, if any, who are members.

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<sup>9</sup> Arizona Public Service, El Paso Electric, Public Service Co. of Colorado, Public Service Co. of New Mexico, Trans New Mexico Power, and Tucson Electric Power.

The Advisory Committee, which consists of two members of each Class, has among its duties: (i) to advise the Board of Directors, including making recommendations on the annual budget; (ii) to elect the voting Directors; and (iii) to determine a competitive compensation for voting directors of the Board.

The voting members of the Board govern the business affairs of DSTAR, including: (i) the establishment of policy and directions; (ii) the hiring and termination of employment of a Chief Executive Officer; (iii) amendment of the By-Laws except for those portions reserved for amendment by the members; and (iv) review of recommendations from the Advisory Committee. The Board is required to consider the advice of, and input from, the Advisory Committee with respect to all of its duties and powers.

DSTAR states that it is independent of any Market Participant; its employees will not have, and its voting non-Stakeholder directors do not have, any financial interests in any Market Participant. The decision-making process is independent of control by any Market Participant or class of participant.

DSTAR will be the sole provider of transmission service for the facilities of its members and will be the sole administrator of the tariff.

*Comment On The DSTAR Independence Commitment*

Industrial Consumers believe that DSTAR's inability to timely file its RTO proposal is attributable to their stakeholder-dominated governance structure. Industrial Consumers believe that, over time, an independent board will achieve more efficient governance, both because of its smaller size and its independence from stakeholders.

## CHARACTERISTIC 2—SCOPE AND CONFIGURATION

One of the primary goals of the Order 2000 initiative was to enhance economic efficiency, mitigate market power, and improve reliability through large RTOs. In theory, Order 2000 recognizes regional configuration factors to assess the adequacy of RTO size and configuration: making accurate and reliable ATC determinations over a large area; resolving loop flow issues; managing transmission congestion; creating the broadest possible energy trading area by eliminating pancaked transmission rates; improving operations through single OASIS operator and one-stop shopping; planning and coordinating transmission expansion. The most important of these factors is the mitigation of market power. FERC must stringently apply Characteristic 2 or else achieve the same goals through vigorous and detailed implementation of Function 8.

Just one RTO has been rejected as too small: SPP.<sup>10</sup> SPP has re-applied as an RTO without curing the problem. The instant RTO filings represent an important challenge to FERC because SPP and Entergy have both sought RTO status in lieu of joining a single RTO.

The issue of market power from Entergy's transco is sufficiently serious that FTC's Bureau of Competition Staff has intervened both at FERC and in state proceedings to point out the danger. SPP and Entergy have dared FERC to enforce Characteristic 2 of Order 2000, in lieu of adopting the hybrid structure of RTO West/TransConnect ITC. As discussed below, in the case of SPP and Entergy, the independence and effective operation of SPP is threatened because key functions are stripped by Entergy.

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<sup>10</sup> See Southwest Power Pool, Inc., 91 FERC 61,137 (2000).

### CHARACTERISTIC 3—OPERATIONAL AUTHORITY

Industrial Consumers share the concerns of Commissioner Massey as expressed in the Commonwealth Edison/ITC decision<sup>11</sup> about fragmentation of authority over control areas between the RTO and the ITC. There is a “best practices” and a “worst practices” among the hybrid model RTO filings. RTO West/TransConnect is appropriately designed so that the RTO, not the ITC, exercises operational authority. In contrast, Entergy would strip SPP of operational control.

TransConnect plans to exercise fewer functions vis-a-vis RTO West than the ComEd ITC vis-a-vis MISO. Unlike the MISO/ComEd ITC, RTO West will have operational authority over all transmission facilities, as well as responsibility for short-term reliability of the grid. TransConnect wants to concentrate on its core business of building and developing transmission assets. Several important functions such as congestion management, OASIS management, calculation of ATC and TTC, parallel path flow and market monitoring will be performed by RTO West—significant differences from the MISO ITC. TransConnect will file its own rate schedules within the RTO West tariff. The filing of individual company license plate rates or zone rates will be consistent with RTO West’s rate design. RTO West’s customers will have the benefit of one stop shopping for all transmission service throughout the RTO West grid.

It is useful to contrast the RTO West/TransConnect filing with the SPP/Entergy filing. SPP/Entergy represent an abuse of the “hybrid” model because (i) SPP and Entergy individually seek RTO status; and (ii) Entergy would usurp critical RTO functions of SPP.

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<sup>11</sup> See Commonwealth Edison Company, 90 FERC 61,192, 61,629 (2000).

Entergy transco will have the right to order redispatch. Entergy transco will also implement the short-term reliability function by exercising exclusive authority over interchange schedules.

Entergy transco will operate its own control area. As discussed above, Entergy should be subsumed with the SPP RTO.

GridSouth also represents a “bad practice” deviating from Minimum Characteristic 3 because transmission owners will retain operational control over bulk facilities.

#### CHARACTERISTIC 4—SHORT TERM RELIABILITY

FERC has vested in the RTO authority over “interchange schedules.” This authority must be fleshed out and appropriately includes authority over important commercial practices: scheduling, tagging, TLR and congestion management (“redispatch authority”). RTOs must be the entities who exercise such authority in order to avoid abuse and inappropriate sharing of commercially sensitive information.

RTOs should exercise authority over generation maintenance with caution. In this particular respect, SeTrans represents a best practice. It is inappropriate for RTOs to assert absolute control over maintenance outages of QFs or to mandate the redispatch of such facilities. Such interference can seriously disrupt or damage industrial production or process equipment, and can even affect the facility’s environmental compliance and endanger work safety. Generation associated with a steam host cannot be expected to operate with the same flexibility as a purely merchant unit.

## FUNCTION 1—TARIFF DESIGN

### A. Discussion Of Individual RTO Pricing Proposals

#### 1. **GridSouth**

Under the transmission pricing proposal in this filing, GridSouth would use a license plate design for its transmission rates based on the OATT rates of each respective transmission owner. Each particular license plate rate would apply to transmission transactions based on the zone of delivery within GridSouth. A weighted average of the three license plate rates would apply to wheeling out and wheeling through transactions.

GridSouth will charge single access charges (i.e., either a zonal rate or a regional rate) for transmission service over the facilities that it controls. A transmission customer delivering power to load located within a particular GridSouth zone (i.e., an intra-zonal, drive-in or drive-within transaction) will pay a “license plate” zonal rate, with no multiple access charges. A transmission customer who takes service through or out of GridSouth to serve loads outside GridSouth will pay a single regional through and out rate, with no multiple access charges.

#### 2. **GridFlorida**

GridFlorida transmission owners have reached consensus on three important issues: (1) The cost of transmission facilities installed as of the date an entity joins the RTO (“Existing Facilities”) should initially be recovered through zonal charges, rather than a single system charge. (2) Zonal charges should be phased out no later than 10 years after commencement of RTO operations. (3) The cost of transmission investment made after an

entity joins GridFlorida (“New Facilities”) should be recovered through a single system charge, not zonal charges.

A compromise was reached on four issues on which there is a lack of complete consensus among all stakeholders. The compromise provides: (i) Each utility (with the exception of TDUs) shall form its own zone. (ii) Zonal charges will be phased out in Years 6-10 of RTO operations. (iii) GridFlorida will have pancaked rates in years 1-5. To address the concern of municipals that provide long-term transmission service to others, the pricing compromise matches the transition period for both issues i.e., zonal charges and Existing Contracts are phased-out on the same schedule, Years 6-10. This transition period is intended to maximize the participation of all transmission owners in the RTO. (iv) TDUs have the option of (a) an automatic phase-in of their facilities into zonal charges without a requirement that they demonstrate that those facilities meet the integration standard, or (b) an immediate roll-in of their facilities into zonal charges if they can demonstrate that they meet the integration standard.

### **3. Southwest Power Pool**

One issue raised by the Commission’s May 17 Order in SPP<sup>12</sup> involves the continued use of license plate rates. Order 2000 allows use of license plate rates but the Commission wants a justification for the use of license plate rates beyond some initial period. See Regional Transmission Organizations 65 Fed. Reg. at 917. The currently effective SPP Tariff contains license plate rates without any phase-out or without any stated time to reevaluate such rates.

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<sup>12</sup> 91 FERC 61,137 (2000).

Under the SPP RTO proposal, for load within a zone, the transmission charge to that load will be based on the costs of transmission facilities within that zone. This will be the only base transmission charge paid by the transmission customer for service to loads within that zone. The use of license plate rates allows customers to continue to pay rates based on the rates of their historic zone of service. Therefore, it is a rate mechanism to minimize cost shifting.

By February 1, 2005, SPP will have completed an evaluation as to whether license plate rates should be continued and make a filing with the Commission. However, a change could be made prior to February 1, 2005.

SPP's current Tariff establishes two sequential five-year transition periods. The first period commenced on February 1, 2000 when the comprehensive Tariff became effective providing SPP Network Service for the first time. During that period the Tariff must be used for point-to-point service and service to wholesale loads where transmission has been unbundled or unbundling has been required by the Commission.

During the second five-year period, all retail load with choice must be served under the SPP Tariff. After the end of ten years all native load must be served under the SPP Tariff. These transition periods do not apply to grandfathered agreements and certain federal transmission contracts which continue for their term.

#### **4. Entergy/SPP**

There will be no pancaking of rates in the SPP's and the Entergy Transco's region. SPP and Entergy Transco agree to a reciprocal waiver of access charges for transactions scheduled on one system that terminate on the other system. Also, for transmission service on

both the Transco's and the SPP's systems to load outside the system (i.e., for wheeling through and wheeling out transactions), Entergy Transco and SPP will develop and file with the Commission a joint rate that includes a rate formula that compensates both the Transco and the SPP for their proportionate contribution to the transaction.

## **5. Southern Companies**

The bulk of the Gridco's revenues is expected to come from an access charge paid by wholesale transmission (both network and point-to-point) customers.<sup>13</sup> The access charge will reflect:

1. the transmission service revenue requirement for all transmission owners (including possibly the Gridco itself) associated with both existing transmission assets as well as projected new transmission investments, plus
2. administrative costs associated with the Gridco's own activities, minus
3. contributions that the Gridco receives from other sources (e.g., a percentage of short term and nonfirm transmission revenues as discussed below), plus or minus
4. the effects of incentive mechanisms.

## **6. Desert STAR**

DSTAR's information filing reflects that no consensus has yet been reached among its members. The filing utilities have proposed an area "access fee" which resembles other license plate approaches. Customers would be charged a single area access fee for the area

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<sup>13</sup> In addition to the access charge, transmission customers will pay for congestion management and ancillary services purchased from the Gridco.

in which their load is located. DSTAR has yet to develop a detailed proposal for wheeling out/wheeling through transmission service.

## 7. RTO West

RTO West has deferred filing its tariff proposal until its Stage 2 filing. In concept, the applicants have agreed to address cost shifting through a single non-pancaked load-based access charge, plus congestion costs, payment for transmission losses and allocation of RTO West operating costs.

Until December 14, 2001, the load-based access charge will be a company-rate that consists of the transaction costs of the filing utility, with adjustments for the transfer of long-term transmission agreements, short-term transmission services and lost revenue recovery.

### B. Comments On Tariff Design Proposals

A load based access fee should become the industry standard to facilitate unpancaked rates.<sup>14</sup> Those paying for the use of the transfer capability of the grid pay for the embedded cost of the system today. In exchange for continuing to pay these costs through an access fee, grid users should be able to use the transfer capability of the entire transmission system subject to payment of congestion costs.

Industrial Consumers support use of a license plate rate design for a five-year transitional period. Unfortunately, some of the proposals extend beyond five years. FERC

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<sup>14</sup> To avoid "AND" pricing, revenues collected from auctions of congestion rights must be offset against the revenue requirement of the utilities. This allocation can be utility specific or pro-rata based on load.

should not allow RTOs to postpone adoption of a postage stamp rate beyond five years merely because some potential for cost-shifting remains after that time.

It is appropriate for existing service territories of transmission owners to constitute zones and to use existing OATT rates as initial zonal access charges. Wheeling-through and wheeling-out rates should be the weighted-average of zonal rates. Much of the concern over how to treat existing contracts can be addressed by a flowgate model which allows conversion of existing contracts into FTRs.

Industrial Consumers identify as a best practice GridFlorida's filing which includes transmission service for bundled native load under the RTO tariff. FERC Staff acknowledged in its November 1, 2000 report on Bulk Power markets in the Midwest region that requiring that native load be served under the same tariff provision as other transmission services will reduce the advantages of network service over point-to-point service.<sup>15</sup>

It is a bad practice for RTO's to establish RTO's initial rate design and subject it to a multi-year rate moratorium.

Tariff design such as that of the SeTrans RTO incorporates the Southern Companies status quo and does not give consumers any benefit from formation of the putative RTO. Rather the most likely effect of SeTrans' filing is to the benefit Southern Companies, which is licking its chops over the prospect of incentive pricing.

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<sup>15</sup> Staff Investigations of Bulk Power Markets – Midwest Region, November 1, 2000 (Staff Report) at 55.

## FUNCTION 2—CONGESTION MANAGEMENT

### A. Discussion Of Individual RTO Congestion Management Provisions

#### 1. **RTO West**

RTO West proposes a flow-based physical rights congestion management model.

RTO West will manage access to congested flowpaths primarily by issuance of transmission rights.<sup>16</sup> RTO West will determine the total transfer capability (TTC) for each flowpath. In order to schedule across flowpaths, customers will be required to purchase firm transmission rights, recallable transmission rights or non-firm transmission rights. If congestion cannot be resolved through transmission rights, RTO West will redispatch resources, repurchase rights, and as a last resort curtail. FTRs will be granted to each participating member to replace firm rights under pre-existing long-term transmission agreements, and to serve its load obligations.

Remaining FTRs will be auctioned off.

#### 2. **Southern Companies (SeTrans)**

SeTrans will utilize a locational marginal pricing methodology to determine the net congestion cost using hourly bids for incremental and decremental generation. Congestion costs are allocated first to customers without FTRs, then to customers with FTRs. Redispatch will be an option to avoid curtailment. Participants may use firm transmission rights to mitigate congestion costs. FTRs will be allocated to customers based on flowgates. FTRs may be reassigned to any other party.

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<sup>16</sup> Flowpaths are defined as transmission paths which experience commercially significant congestion.

### **3. GridSouth**

No extensive congestion management system is needed beyond generation redispatch to maintain firm service.

### **4. GridFlorida**

GridFlorida will follow a flowgate approach. Market participants submit physical transmission rights (PTRs) in order to utilize flowgates. Ordinarily market participants with PTRs do not have to pay congestion costs. Where there is unused capacity on a flowgate, excess capacity will be auctioned. PTRs that are not scheduled in the day ahead process can be auctioned.

### **5. SPP**

SPP will use a hybrid approach of LMP and tradable physical transmission rights. LMP will be used for real-time market clearing of energy imbalance and congestion. Congestion and marginal pricing will be determined at each node for generators and at each zone for loads (unless nodal is requested). In addition, there will be a forward market in tradable physical transmission rights.

### **6. Desert STAR**

DSTAR will identify constrained "FTR interfaces" and auction off FTRs authorizing transmission customers to schedule transmission across the interfaces. Unused FTRs will be available on a recallable basis. FTRs will be available through periodic auctions. The purchasers of an FTR can sell it. Redispatch will be used to manage intra-zone configuration.

B. Comments On Congestion Management

The holder of a flowgate right is granted a reservation or scheduling priority for using flowgates. Flowgate capacity and thus the number of flowgate rights are knowable and relatively stable over time. The holder may exercise transmission rights by using them to schedule transactions; if unused, the rights are worthless to the holder. There is no incentive on the part of the holder to exercise market power or preclude others from utilizing transmission capacity that the holder does not need. The flowgate system facilitates forward markets since the rights are tradable. Holders have both a hedge against financial risk and a scheduling priority for physical movement of power.

Industrial Consumers commend RTO West for its flowgate approach. RTO West plans to grant to each participating member FTRs to replace firm rights under long-term agreements. The RTO West congestion pricing hierarchy: (i) relies on physical rights; (ii) then on redispatch of resources including incremental and decremental adjustments of generators and loads; (iii) then allowing recall of FTRs; and (iv) as a last resort, curtailment of schedules.

Industrial Consumers are gratified that except for the Northeast, most of the eastern interconnection and the western interconnection are moving in the direction of a physical rights model.

FUNCTION 3—PARALLEL FLOWS

This serious problem can only be solved by abandoning the “contract path” method for reserving transmission service and moving to a flow-based process. Parallel flows are far more efficiently addressed through large RTOs and interconnection-wide reliability entities.

## FUNCTION 4—ANCILLARY SERVICES

It is difficult to comment on the RTOs' compliance with Function 4 until a tariff is filed.

There is a crying need for uniformity of ancillary services requirements across seams: Within the Western Interconnection, Cal ISO has 6 ancillary services requirements; Desert STAR proposes 12; RTO West proposes 10. Flow-based physical rights models are part of the solution.

FERC should consider a new ancillary service that is dedicated to transactions that “source” at loads. Traditionally, loads are considered “sinks.” But loads that are curtailable or that include on-site generation (distributed generation or QFs) are capable of responding to:

- (1) Real-time prices,
- (2) Solicitations for incremental or decremental bids for congestion management, and
- (3) Solicitations into day-ahead and hour-ahead markets.

This is often called “demand response.” Industrial Consumers refer to the concept “curtailable load response,” to distinguish from existing DSM concept. The crisis in California has heightened interest in establishing programs that allow retail customers (primarily large industrial or commercial customers) to bid loads into the market. Rather than develop a DSM-type utility program to implement this concept, it may be more effective to develop markets for this resource that are similar to the way RTOs are required to foster markets for other ancillary services under FERC Order 2000.

Absent an ancillary service (preferably administered by RTOs) dedicated to this service, entities offering curtailable loads or excess on-site generation (or a combination of the two) have to simulate a large generator and conform to one of the traditional ancillary services or otherwise make the transaction look like a transaction that sources from a generator. This is inefficient and will discourage the entry of price-elastic load into the market place.

Like other ancillary services, RTOs would facilitate the market for load decrements (DECs), on-site generation increments (INCs), or a combination of the two. In essence, the RTO would be acting as an aggregator of these load decrements (with or without on-site generation increments), and allocate the resource, at its discretion, to other markets (e.g., spinning reserves, regulation, reactive power, and balancing energy).

FERC should consider a technical conference to explore the development of an ancillary requirement for load response. Industrial Consumers urge RTOs to consider addition of this feature in future compliance filings.

#### FUNCTION 5—OASIS AND CALCULATION OF ATC AND TTC

One-stop shopping must be the objective. FERC should encourage models analogous to Travelocity web-site – one-stop shopping for airline reservations. Flow-based physical rights models solve this concern if applied consistently throughout the interconnection.

RTOs must have the sole authority to operate the OASIS and calculate TTC and ATC. While Order 2000 pays lip service to this principle, it must not be compromised. RTOs should submit the basis and methods for calculating ATC and TTC, as well as standardized criteria for curtailment. In addition, because such standardized criteria might not “get to the root

of the problem” – that the individual control areas still control generation – the Commission should require that each RTO set a date certain by which it will create one control area. See Staff Report at 54. Regardless of the implementation of these two options, the Commission should standardize ATC and TTC methodology. The RTO must have authority to independently verify data provided by transmission owners. In this respect, GridFlorida represents a best practice. Industrial Consumers commend RTO West for their best practice of obligating transmission owners to maintain transfer capability.

#### FUNCTION 6—MARKET MONITORING

Cal ISO’s market surveillance unit which reports to the Cal ISO board correctly identified market design flaws that plagued the California market. FERC must address why the warnings of the California market monitoring unit weren’t heeded and events were allowed to reach crisis proportion. It is a necessary, but not sufficient, condition to set up a market monitor; adequate attention must be devoted by FERC to enable effective oversight.

Lean, mean market monitoring units should report directly to RTO boards and to FERC —not to RTO staff. If an MMU monitors the performance of multiple neighboring RTOs, the unit may be more efficient and better able to address seams issues and other concerns.

#### FUNCTION 7—PLANNING AND EXPANSION

RTOs should be able to finance additional transmission capacity. RTOs should be responsible for expanding the system where that need is clearly identified. RTO West/TransConnect earns the “best practice” award. RTO West (i) will be responsible for operational planning; (ii) will be responsible for long-range planning with opportunity for broad

input; and (iii) is granted backstop authority to construct or upgrade transmission facilities where participating transmission owners decline to build. It is desirable to centralize the planning function with an RTO; piecemeal planning by transmission owners places too much reliance on coordinating or rationalizing the results. There should be no “right of first refusal” to build generation.

As FERC recognized in its November 1, 2000 decision in San Diego Gas & Electric<sup>17</sup>, the RTO must have sole authority over generation interconnection policies; NOT the transmission owners. This is especially important in the case of RTO transcos who may be inclined to discriminate against competitors.

#### FUNCTION 8—INTERREGIONAL COORDINATION

##### A. The Importance Of Function 8

FERC has recognized the interrelationship between Characteristic 2 and Function

8. In Order 2000, FERC relied on Function 8 to address the problems of too small RTOs:

We are receptive to flexible and innovative ways for an RTO to achieve sufficient scope. Where a proposed regional transmission entity may be of sufficient scope for some RTO purposes, but not others, an RTO may be able to achieve sufficient “effective scope” by coordination and agreements with neighboring entities, or by participating in a group of RTOs with either hierarchical control or a system of very close coordination. We do not foreclose the possibility that an RTO may satisfy some of the minimum characteristics and functions by itself, while satisfying others through a strong cooperative agreement with neighboring RTOs to create a “seamless trading area.” The functions of a large RTO may be met by eliminating the affect of seams.

65 Fed. Reg. at 863.<sup>18</sup>

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<sup>17</sup> 93 FERC 61,121.

<sup>18</sup> In its December 20, 1999 Alliance Order, 89 FERC ¶61,298, FERC urged cooperation with neighboring RTOs:

Order 2000 is quite specific about the showing that is required for interregional coordination. Order 2000 identifies seams issues involved in integration of reliability practices and in integration of market interface practices:

(8) Interregional Coordination: The Regional Transmission Organization must ensure the integration of reliability practices within an interconnection and market interface practices among regions.

An RTO proposal must explain how the RTO will ensure the integration of reliability and market interface practices. An RTO may ensure the integration of these practices either by developing integration practices itself or by cooperating in the development of integrated practices with an independent entity that covers all regions or, for reliability practices, covers an entire interconnection . . . .

This provision does not mean that all RTOs necessarily must have a uniform practice, but that RTO reliability and market interface practices must be compatible with each other, especially at the "seams." RTOs must coordinate their practices with neighboring regions to ensure that market activity is not limited because of different regional practices. . . .

The integration of reliability practices involves procedures for coordination of reliability practices and sharing of reliability data among regions in an interconnection, including procedures that address parallel path flows, ancillary service standards, transmission loading relief procedures, among other reliability-related coordination requirements in this Final Rule.

The integration of market interface practices involves developing some level of standardization of inter-regional market standards and practices, including the coordination and sharing of data necessary for calculation of TTC and ATC, transmission reservation practices, scheduling practices,

One option would be for Applicants to form or join an RTO that satisfies the regional scope and configuration requirements of the RTO Final Rule. [Order 2000] introduces the concept of effective scope, and discusses the possibility that, through coordination and agreements with neighboring RTOs or adopting hierarchical control, the seams can be managed in a way that simulates greater scope. For example, it may be possible that Alliance, Midwest ISO and PJM could negotiate procedures and rate treatments that would eliminate the toll-gate aspect of Alliance's configuration, deal with loop flow issues, and eliminate concerns about reliability impairment that arise as a result of the lack of symmetry between these institutions and the NERC councils.

and congestion management procedures, as well as other market coordination requirements covered elsewhere in this Final Rule.

65 Fed. Reg. at 911.

While the goal of Function 8 is laudable, Function 8 does not spell out how interregional coordination is to be achieved. The three ISOs in the Northeast region of the United States have failed to coordinate with each other on such basic matters as defining common ramping rates, whether there are one or two busses at their interconnections, and scheduling time-frames.

Seams issues represent a panoply of sub-issues. These can include simple definitional issues (e.g., naming busses differently), business model issues, (e.g., dealing with resetting schedules dues to changes after day-ahead optimization has been planned), how different RTOs deal with ramping, and dealing with different congestion management models. Similarly, the industry has not adequately taken into account the impact of loop flow and the failure of elections to conform to the transmission. A consequence is the frequency of Transmission Loading Relief curtailments over the last few years.

B. Review Of Individual RTO Function 8 Commitments

1. **RTO West**

RTO West formed a work group to address seams issues with other RTOs, control areas, and transmission-owning utilities that are within the RTO West service area but not part of it. The work group coordinated its activities with those of the Western Market Interface Committee. The work group addressed, among other issues, reciprocal elimination of pancaked transmission charges between RTO West, California ISO, Desert STAR, and other RTOs that

may operate in the Western Interconnection, and operational compatibility with respect to scheduling, congestion management, and other processes.

In addition, RTO West and the California ISO agreed to create a technical group to work on interregional coordination issues together. There are currently efforts within the Western Interconnection to form the Western Interconnection Organization (the "WIO") to perform interconnection-wide reliability and market interface functions and to coordinate between regional entities within the Western Interconnection.

Industrial Consumers identify as a proposed "best practice" under Function 8 RTO West; achievement of interregional coordination over an international boundary.

In its compliance filing, RTO West describes its seams coordination with British Columbia as follows:

Briefly, this framework would consist of the development of an Independent Grid Operator in British Columbia ("BC IGO") in parallel with the formation of RTO West. BC IGO would meet the independence standards of Order 2000, although it would be under the jurisdiction of the British Columbia Utilities Commission. The business practices for RTO West and BC IGO would be uniform and include a single OASIS site operated by RTO West. RTO West would operate a uniform congestion management procedure across all facilities controlled by RTO West and BC IGO would also act as provider-of-last-resort for ancillary services in the greater region. A single Security Coordinator would cover both RTO West and BC IGO, and electronic data communication between RTO West and BC IGO control centers would allow them to efficiently operate in tandem.

In practice, it is expected that this framework will present to all transmission customers an essentially seamless grid with standardized business and closely coordinated system operation. This proposal is the result of consensus among participating representatives of British Columbian entities and the filing utilities.

Alberta has also expressed interest in participating in RTO West.

## 2. SPP

The SPP Board has approved an option for One Stop Shopping (“OSS”) across RTO boundaries to be made available for Reservation/OASIS and Scheduling/Tagging involving any RTO or transmission provider interconnected with the SPP RTO. Under this option only one reservation system and OASIS number would apply to a transaction between two regions.

Short-term, SPP will review alternative rate proposals that reduce or eliminate rate pancaking while minimizing revenue shortfalls and unequal distribution of revenues.

SPP recognizes that the preferred approach is to standardize between adjacent regions both the analysis for identifying congestion and the procedures to relieve it followed by joint implementation by both regions.

SPP recognizes that transmission planning, and system expansions should include the impacts on adjacent regions. Loop flow impacts, cost assignments, and recovery of revenue requirements should be dealt with as part of the procedures and protocols for planning and system expansion with other RTOs.

SPP states that some information is already being exchanged concerning outages of equipment for maintenance. Proper interregional security requires full coordination of maintenance outages which should be accomplished through coordination by the appropriate Security Coordinators.

On congestion management, the Midwest ISO is moving in the same direction as SPP. The Midwest ISO losses method imitates the SPP method. Both the Midwest ISO and SPP have license plate rate models and very similar open access tariff. The SPP and expected

Midwest ISO methods for calculating ATC will be similar. Therefore, SPP is a long way toward managing the seams with MISO.

### **3. GridSouth**

GridSouth promises to work with its neighbors regarding issues such as sharing information, developing common practices and coordinating operations among neighboring RTOs. The Applicants have begun discussions with other RTOs to address procedures for rate discounting, inter-RTO planning, control area inadvertent settlement, and inter-RTO market monitoring for certain transactions involving multiple RTOs.

### **4. GridFlorida**

GridFlorida will have the duty to coordinate with other regions either by developing integration practices itself or by cooperating with other regional entities. The Applicants also have agreed to meet with representatives of the Southern Companies RTO to discuss regional seams issues.

### **5. Southern Companies**

Southern Companies commit to work with other utilities and RTOs to coordinate scheduling, ramp rate requirements, and ancillary service requirements.

### **6. DSTAR**

As indicated above, Desert STAR will become a member of the Western Interconnection Organization (WIO). WIO is expected to provide a comprehensive forum for addressing reliability issues and other interface issues within the Western Interconnection.

Desert STAR is exploring other mechanisms to deal with other interregional issues and will provide the milestones for satisfying this function as a part of its December 29, 2000 filing.

C. Comments On Individual RTO Function 8 Commitments

RTO West has made the most progress in addressing seams issues with its exemplary efforts with British Columbia. SPP has identified specific measures to address seams issues — perhaps because its scope and configuration has previously been found deficient. In particular, we commend SPP for its efforts to avoid rate pancaking with its neighbors applying reciprocity principles. A primary purpose of RTOs is to mitigate market power and improve economic efficiency by broadening geographic markets. A sine qua non to broadening geographic markets is elimination of rate pancaking:

we [FERC] affirm that the RTO tariff must not result in transmission customers paying multiple access charges to recover capital costs. . . .

This duplication can severely restrict the area in which generation can economically be secured. A main reason that an RTO can expand the marketplace for generation to a large region is that an RTO can implement non-pancaked rates for each transaction. A wider area served by a single rate means more generation is economically available to any customer which means greater competition for energy.

Regional Transmission Organizations, 65 Fed. Reg at 915. Removal of rate pancaking is, accordingly a critical seams issue.

None of the other RTOs make any commitment beyond “we agree to talk” with other RTOs — with no date certain for implementation. Most RTO proposals reflect a failure either to expand geographic scope or to go beyond vague cooperative agreements. FERC cannot rely on vague promises to cooperate in the development of solutions to seams issues. In their RTO filings utilities pat themselves in the back for agreeing to promise to get together to discuss

cooperation but there are no milestones for accomplishment of concrete objectives. This “push” must come from FERC. FERC should insist that all stakeholders – not just transmission-owning utilities sit at the table when elimination of seams issues is discussed. FERC should convene a technical conference to develop a specific template for seams resolution which RTOs would be required to meet or be compelled to show cause why they should not be merged.

#### DESCRIPTION OF FILING ENTITIES

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: steel, aluminum, chemicals, petroleum, 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.

The American Forest and Paper Association (AF&PA) is the national trade association of the forest, paper and wood products industry. They represent member companies engaged in growing, harvesting and processing wood and wood fiber, manufacturing pulp, paper and paperboard products from both virgin and recycled fiber, and producing engineered and traditional wood products. AF&PA members include manufacturers of over 80 percent of the paper, wood and forest products produced in the United States.

#### NOTICES AND COMMUNICATIONS

Notices and communications should be addressed to:

Dr. John Anderson  
Executive Director  
The Electricity Consumers Resource Council  
1333 H Street, N.W.  
The West Tower, 8th Floor  
Washington, D.C. 20005

Tom Choman  
American Chemistry Council  
1300 Wilson Boulevard  
Arlington, VA 22209

Sara D. Schotland, Esq.  
Cleary, Gottlieb, Steen & Hamilton  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Respectfully submitted,



Sara D. Schotland

CLEARY, GOTTLIEB, STEEN &  
HAMILTON

2000 Pennsylvania Avenue, N.W.

Washington, D.C. 20006-1801

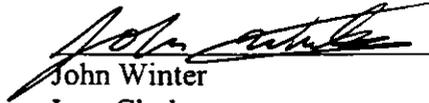
202-974-1500

Dated: November 20, 2000

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., this 20<sup>th</sup> day of November, 2000.



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John Winter

Law Clerk

Cleary, Gottlieb, Steen & Hamilton

2000 Pennsylvania Avenue, N.W.

Washington, D.C. 20006-1801

(202) 974-1500