

**UNITED STATE OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Remediating Undue Discrimination through</b>	)	
<b>Open Access Transmission Service and</b>	)	<b>Docket No. RM01-12-000</b>
<b>Standard Electricity Market Design</b>	)	

**JOINT COMMENTS OF THE NORTH AMERICAN RTOs AND ISOs**

The California Independent System Operator Corporation, the Independent Electricity Market Operator (“IMO”), ISO New England Inc., Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”), New York Independent System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool, Inc. (“SPP”), collectively (the “North American RTOs and ISOs” or the “RTOs and ISOs”), are jointly submitting these comments on the Commission’s Notice of Proposed Rulemaking (“NOPR”)¹ in Docket No. RM01-12-000.

**EXECUTIVE SUMMARY**

These comments² first identify those key areas of the NOPR where the North American RTOs and ISOs support the Commission’s proposals, including:

- the implementation of a Standard Electricity Market Design (“SMD”);
- the utilization of Network Access Service;
- flexibility in the development of a rate design for the recovery of the fixed charge component of transmission charges;

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<sup>1</sup> *Remediating Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, Notice of Proposed Rulemaking, 67 Fed. Reg. 55451 (July 31, 2002), FERC States. and Regs. (2002) (“SMD NOPR”).

<sup>2</sup> Each signatory to this filing reserves the right to file, and is likely to file, its own separate comments.

- adoption of a single tariff to integrate transmission and market issues;
- recognition of the need for independence of the Independent Transmission Provider (“ITP”) from market participants; and
- explicit acknowledgement of security requirements.

The RTOs and ISOs then identify those areas where the Commission should either clarify aspects of the NOPR or make modifications. These areas include:

- the role of the states and the Regional State Advisory Committee (“RSAC”);
- the role of the North American Electric Reliability Council (“NERC”) and the North American Energy Standards Board (“NAESB”);
- the role and structure of the entity or staff conducting market monitoring;
- the recognition of regional differences and the need for flexibility with respect to implementation timelines and methods;
- the need for software modularity;
- the need for inclusion of proper limitations of liability standards in the *pro forma* tariff; and
- clarification that the overall operational authority and the congestion pricing methodology, under the SMD regime, can reside only at the ITP, not in an Independent Transmission Company (“ITC”).

The IMO, a Canadian entity, is a signatory to this filing. Its separate regulatory and legislative context dictates different governance, rate approvals and standards adoption processes. Therefore, opinions on proposals in the NOPR dealing with these matters will be addressed by the IMO within its specific regulatory and legislative context.

**I. THE NORTH AMERICAN RTOs AND ISOs SUPPORT THE KEY ELEMENTS OF THE NOPR**

The RTOs and ISOs support the major elements of the NOPR. They endorse the Commission's proposals to: (1) provide an SMD for wholesale electric markets, (2) utilize a new single flexible transmission service, referred to as Network Access Service, (3) permit continued use of license plate rates for recovery of the fixed charge component of transmission charges, (4) adopt a single tariff to integrate transmission and market issues, (5) recognize the independence of the ITP and, (6) acknowledge new security requirements.

Many of the RTOs and ISOs have real life experience in the operation of markets similar to those called for in the NOPR. They have seen tangible proof that operation of efficient competitive wholesale markets has:

- increased the efficiency and improved the availability of generating units;
- led to the siting of transmission and generation in places where it provides maximum benefit to the users of the grid; and
- increased choices for customers.

Because of that real world experience, the RTOs and ISOs hope that these comments will be considered by the Commission as not merely raising theoretical concerns or issues, but also reflecting knowledge of day-to-day efficient functioning of a grid and the marketplace.

**A. The Commission Should Implement the Key Elements of the Standard Market Design with the Basic Characteristics Proposed in the NOPR**

The Commission's proposal to standardize wholesale electric market design in conjunction with standardized transmission service, referred to as SMD, should, as the Commission has anticipated, result in more efficient wholesale power markets.<sup>3</sup> As those

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<sup>3</sup> SMD NOPR at P 9.

RTO/ISOs that have been utilizing systems similar to the SMD can attest, such systems can also fully accommodate bilateral contracts and trading.

The SMD proposed by the Commission would include bid-based, security constrained spot markets operating in two time frames, day ahead and real time.<sup>4</sup> A market-based locational marginal pricing (“LMP”) transmission congestion management system would be included as a suitable mechanism for allocating scarce transmission capacity to those who value it most.<sup>5</sup>

Finally, the SMD would use Congestion Revenue Rights (“CRRs”), a form of tradable financial right, as a means to lock in a fixed price for transmission service. CRRs are similar in concept to the Transmission Congestion Contracts (“TCCs”) and Firm Transmission Rights (“FTRs”) that are already in place. Transmission service accompanied with CRRs permits market participants to obtain the greater certainty the Commission seeks with respect to delivery and price.

As noted above, several of the signatories operate markets based upon LMP that utilize CRR-type financial hedging mechanisms. The Commission has carefully analyzed those markets and has found that they work well. All of the above features are appropriate for inclusion in the final SMD rule.

**B. Network Access Service Is Appropriate Under Locational Marginal Pricing**

Network Access Service offers flexible use of the grid, similar to that offered by Network Integration Transmission Service.<sup>6</sup> With Network Access Service, the ITP can “integrate,

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<sup>4</sup> The RTOs and ISOs urge the Commission to permit additional time frames where a region finds such additional time frames to be a useful addition to the design.

<sup>5</sup> *SMD NOPR* at P 10.

<sup>6</sup> *Id.* at P 139.

dispatch and regulate the customer's current and planned resources to serve its load.”<sup>7</sup> The Commission has recognized that, when Network Access Service is utilized in the context of an LMP regime, the ITP will evaluate all transactions on an economic basis and redispatch available generation to accommodate all requests for service, so that customers that value transmission service the most will get it.

All customers seeking physically feasible service will receive it, although, because of congestion, uncertainty can arise with respect to their total cost. The Commission's proposed use of CRRs enables market participants to obtain, through hedges, greater price certainty.<sup>8</sup> When implemented in the context of security-constrained unit commitment and dispatch, the model the Commission has chosen should provide operating and scheduling flexibility, while permitting efficient use of the transmission system.

C. **The Commission Has Recognized the Need for Flexibility in the Rate Design for Recovery of the Fixed Charge Component**

1. **The Commission Should Allow License Plate Rates to Continue**<sup>9</sup>

The Commission acknowledges that, historically, the charge to recover a transmission owner's embedded costs has taken the form of a license plate rate or a postage stamp rate.<sup>10</sup> The Commission proposes to permit continuing use of license plate rates where they are in effect within ISOs,<sup>11</sup> but seeks comments on whether the Commission should require the elimination of license plate rates over time. The RTOs and ISOs believe that the Commission should allow

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at P 144.

<sup>9</sup> The Midwest ISO and SPP are not participating in Sections I.C.1 and I.C.2.

<sup>10</sup> *SMD NOPR* at PP 165, 169.

<sup>11</sup> *Id.* at P 174.

license plate ratemaking to continue without artificial termination deadlines and should not impose postage stamp rates in areas where they do not already exist.

In numerous parts of the country, stakeholders have had lengthy discussions in an effort to eliminate license plate rates. Those discussions have focused on the protection of the transmission owners' revenue requirement while, at the same time, avoiding rate shifting among transmission customers. Although the difficulty in eliminating license plate rates is likely to be a function of the magnitude of the variations in relative transmission facilities' costs among the utilities in a region, the Commission should not underestimate the substantial time, effort, and policy challenges, involving RTOs and ISOs, transmission owners, other stakeholders and state regulators, that will be required to move from license plate to postage stamp rates over a large region. Indeed, the time and effort required to implement postage stamp rates may far exceed any benefits to be gained by such implementation.

The Commission should recognize that the use of postage stamp rates is not required to meet its objective of eliminating pancaking within a region. License plate rates, such as those approved for the Midwest ISO, NYISO and PJM, provide for equal access to all resources for all loads within the region, while avoiding cost shifting among loads.

In this proceeding, the Commission should not make any final determination that postage stamp or license plate ratemaking is superior or require that either be phased out, but instead should allow the regions to address this issue with their state commissions and market participants.

## **2. The Commission Recognizes the Difficulties of Eliminating Rate Pancaking Between Regions**

The RTOs and ISOs also agree that the benefits of eliminating "rate pancaking" between ITP service areas are likely to be significant. What is sometimes referred to as an "exit charge"

or a “through and out” charge may well impede “the ability of distant generators to compete with nearby generators.”<sup>12</sup> Indeed, the elimination of an exit charge, especially one imposed on individual inter-regional transactions, should encourage trade among regions and increase competition. Yet immediate elimination of those charges may pose a challenge.<sup>13</sup>

Invariably, discussions involving the elimination of pancaking devolve into determining the most effective means of ensuring a reasonable opportunity for transmission owners to earn their revenue requirements, without causing undue cost shifting among customers.<sup>14</sup> These concerns then raise further issues concerning retail ratemaking and the effects of legislative or regulatory rate caps or freezes. Additionally, until non-jurisdictional transmission owners are persuaded to join an RTO/ISO within their region, transmission rate pancaking will continue to be an issue whenever a transaction flows across a non-jurisdictional entity’s transmission facilities.

Although RTOs, ISOs and ITPs could play a facilitating role, the Commission should not assign the task of resolving these complex issues to them. Instead, the Commission should look to the state regulatory commissions and other interested participants, including the transmission owners, to find an acceptable solution. No single solution may work in all regions of the country. The RTOs/ISOs have facilitated such discussions and will continue their participation to ensure consistency with the wholesale market design, but are not in a position to take the lead in resolving these issues. Control over revenue requirement issues, by law, lies in the hands of

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<sup>12</sup> *Id.* at PP 170, 179.

<sup>13</sup> *Id.* at P 184.

<sup>14</sup> *Id.* at P 179.

the transmission owners and their respective regulatory commissions at the state, provincial and federal levels.

**D. The North American RTOs and ISOs Support the Commission's Proposed Use of a Single Tariff to Integrate Transmission Service and Market Services**

The RTOs and ISOs agree with the Commission's proposal to utilize a single Standard Market Design *Pro Forma* Open Access Transmission Tariff that integrates transmission service with provisions for day-ahead and real-time market services based on LMP pricing. Having such provisions in a single document should eliminate possible inconsistencies that can result from having two separate tariffs both of which address closely related issues.

**E. The Commission Has Correctly Recognized the Importance of the Independence of an ITP and the Advisory Role of Stakeholders<sup>15</sup>**

The independence of the ITP and the advisory role of the stakeholders are the lynchpins of a successful ITP, as the Commission has recognized.<sup>16</sup> "Stakeholders have an important role in advising the boards of Independent Transmission Providers."<sup>17</sup> Nevertheless, several of the requirements proposed to be imposed on the ITP's board of directors may be overly restrictive and may prevent the ITP from obtaining and retaining the best board members.

The RTOs and ISOs further suggest that, where established governance structures are already in place and working with respect to existing RTOs/ISOs, the Commission should consider allowing them to continue. The NOPR's discussion regarding governance appears primarily designed to address the initial development of regional entities, because there are

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<sup>15</sup> The IMO declines comment on the matters discussed in Section I.E. These matters concern governance and, as indicated previously, will not be addressed by the IMO in this filing.

<sup>16</sup> *SMD NOPR* at P 556-557.

<sup>17</sup> *Id.* at P 560 (emphasis added).



regions that have encountered startup difficulties in the area of governance design.<sup>18</sup> It may be more beneficial for the Commission to allow an existing regional governance framework to continue rather than imposing strict new sector structures, voting procedures, and the like on all existing RTOs/ISOs.

**1. The Expertise Requirements for Members of a Board of Directors Are Too Restrictive**

The Commission's desire to ensure that Boards are populated by members with significant career experience is to be commended. Such experience provides resources for management as well as the assurance to stakeholders and the marketplace that the RTO/ISO embraces sound business practices. The Commission provides an apparently exclusive list of the areas of experience, at least one of which a candidate for the board should possess.<sup>19</sup> The Commission should not require that board members satisfy specific expertise requirements. The RTOs and ISOs suggest that the Commission should, instead, revise the language to clarify that the list simply provides guidelines on the areas of expertise a board member ought to have. An illustrative list should be expanded, at a minimum, to include such areas as economics, management, operation of markets, insurance, human resources, and engineering fields in addition to electrical engineering. Regional flexibility would permit skill sets particularly required for that region. For example, hydroelectric experience might be particularly valuable in the Northwest.

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<sup>18</sup> *See, id.* at P 557.

<sup>19</sup> *Id.* at P 563.

## **2. The Annual Financial Disclosure Statement May Reduce the Pool of Qualified Board Members**

The Commission has also established a set of rules designed to ensure that board members and their immediate families do not have any ties to market participants. As an enforcement mechanism, the Commission would require board members, their immediate families and senior management to fill out annual financial disclosure statements to be available for audit by the Commission.<sup>20</sup> The Commission does not address the scope or level of detail of the annual financial disclosure statements or the extent to which such statements would become public documents. The RTOs and ISOs are concerned that a requirement for a financial disclosure statement as detailed as that required for senior Federal officials<sup>21</sup> could sharply reduce the pool of qualified individuals willing to serve as directors of an ITP.

If the Commission concludes that an enforcement mechanism is required, a sworn affidavit or signed compliance statement from a board member certifying that neither he or she nor any immediate family member has any of the prohibited ties should be adequate, without being as intrusive into the individual's private finances. Several of the ISOs have such requirements today.

## **3. The Commission Should Permit the Chief Executive Officer to Serve as a Non-Voting Member of the Board**

The Commission should permit the Chief Executive Officer of the ITP to be a non-voting member of the board. The Chief Executive Officer brings a level of knowledge and experience to the board, especially concerning the day-to-day operation of the ITP, that the other board members are not likely to have. Moreover, as a member of the board the Chief Executive

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<sup>20</sup> *Id.* at P 564.

<sup>21</sup> *See* 5 U.S.C. § 102 (2002) (required content of disclosure reports).

Officer would be permitted to attend all Board meetings, even those that may be closed. Chief Executive Officers of corporations typically serve as a member of the board. The special public interest obligations of RTOs, ISOs and ITPs should not preclude them from following principles of sound corporate governance.

**F. The RTOs and ISOs Endorse the Need for Security Standards**

With respect to security, the Commission is proposing to establish “minimum standards for public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce as well as entities that use these facilities.”<sup>22</sup> The standards would be administered through an annual self-certification.<sup>23</sup>

The RTOs and ISOs recognize the need for the establishment of security measures. Such measures cannot be static, but must be revised and refined, as the Commission has proposed to do, in light of changes in technology and operational experience.<sup>24</sup> The Commission should, however, make clear that the ITP has no independent obligation to verify the accuracy of a self-certification submitted by market participants. As indicated below in the discussion of the need for *pro forma* tariff provisions limiting the liability of ITPs, any such obligation should not unfairly expose ITPs to additional potential liability in this area. Indeed, the Commission may want to consider whether such self-certifications should be filed directly with the Commission or some other appropriate governmental agency.

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<sup>22</sup> *SMD NOPR* at P 575.

<sup>23</sup> *Id.* at P 576.

<sup>24</sup> *Id.* at P 579.

## II. SEVERAL ASPECTS OF THE NOPR REQUIRE CLARIFICATION OR MODIFICATION

Several aspects of the NOPR require clarification of the Commission’s intent. If the Commission’s intent is not consistent with the views expressed below, then the rule should be modified as suggested.

### A. The Commission Should Clarify the Role of the RSAC

The Commission should clarify that the establishment of a Regional State Advisory Committee (“RSAC”) is intended largely to formalize the “best practice” processes in place today in many ISOs by which the states “engage in . . . dialogue with the independent entity that will operate the electric grid under Standard Market Design.”<sup>25</sup> Formalizing the RSAC can provide many benefits. The RSAC can bring a valuable regional perspective to issues such as resource adequacy standards, transmission planning and expansion, rate design and revenue requirements, market power and market monitoring, demand response and load management, distributed generation and interconnection policies, energy efficiency and environmental issues.<sup>26</sup> The states have a significant interest in the operation of electric markets because of their responsibility and authority over retail ratemaking. State entities that participate in the RSAC, therefore, should serve as advisors to the ITP, which makes the decisions.

The RTOs and ISOs believe, however, that the Commission needs to clarify its intent as to whether the RSAC would be truly “advisory,” as the name implies, or would have some greater decision-making role in ITP policies and activities.<sup>27</sup> In areas clearly within the scope of

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<sup>25</sup> *Id.* at P 551.

<sup>26</sup> *Id.* at P 552.

<sup>27</sup> These comments are not intended to address the role of the states in implementing their statutory authority, for example, with respect to siting of transmission lines.

the Commission's jurisdiction, the Commission should avoid suggesting that the RSAC has separate legal authority. To do otherwise might run afoul of the fiduciary obligations of the ITP to be independent and, in the words of the NOPR, accountable to the Commission.<sup>28</sup>

The RTOs and ISOs believe that a role for RSAC in the management of the ITP or the establishment of its budget,<sup>29</sup> other than an advisory one, could have a significant adverse impact on the independence of the ITP.

Prior to the formation of an RSAC or in the absence of consensus, even in areas the Commission may assign exclusively to the RSAC, the ITP, in carrying out its responsibilities, should be permitted to continue to maintain the long-term and short-term reliability of the system consistent with North American electric reliability standards.

Finally, in the context of transmission planning, the Commission refers to Multi-State Entities.<sup>30</sup> The RTOs and ISOs urge the Commission to clarify whether such an entity is the same as the RSAC and the role it would play.

**B. The Commission Should Acknowledge the Relationship of ITPs with NERC**

In the NOPR and elsewhere, the Commission has recognized the role of the North American Electric Reliability Council ("NERC") to ensure the reliability of the bulk electric system throughout North America. Existing ISOs and RTOs have already been active participants in the NERC Regional Councils, and NERC has provided for continued meaningful participation by the ISOs and RTOs within its restructured committees.

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<sup>28</sup> *Id.* at P 558.

<sup>29</sup> *Id.* at P 554.

<sup>30</sup> *Id.* at P 339.

While the RTOs and ISOs expect to continue their individual participation within NERC and the Regional Councils, they are also actively discussing with NERC the establishment of an additional forum for providing their collective input to NERC via a Memorandum of Understanding. This process will serve to ensure that the RTOs and ISOs will continue to provide timely and expert guidance, thus assisting NERC in the development of future reliability rules that will be consistent with the needs of an efficient wholesale electric market.

**C. The Commission Should Clarify the Relationship of ITPs to NAESB**

The Commission has indicated that it would expect the Wholesale Electric Quadrant of the North American Energy Standards Board (“NAESB”) to produce business practice and electronic communication standards.<sup>31</sup> The Commission needs to clarify its statement that NAESB would work “closely with Independent Transmission Providers who would collectively serve in an advisory capacity to the board [of NAESB].”<sup>32</sup>

NAESB is to be run by stakeholders who have a direct business interest in the standards to be developed. The RTOs and ISOs, as the independent entities that are responsible for ensuring the efficient operation of markets and the reliable operation of the transmission grid, would be required to implement those standards. In turn, NAESB should have a specific obligation to take into account the input of the RTOs and ISOs during its standards development process. The RTOs and ISOs have designated representatives to meet with NAESB in order to develop an appropriate working relationship for the future.<sup>33</sup> It is important that the

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<sup>31</sup> *Id.* at P 116.

<sup>32</sup> *Id.*

<sup>33</sup> The first meeting of the group was held on November 4, 2002.

Commission, in evaluating any NAESB standards, provide for the direct input of the views of RTOs and ISOs to the Commission.

The Commission should also clarify the interrelationship of NAESB to the individual ongoing ITP stakeholder processes. The NAESB process should be structured to serve to enhance SMD-compliant actions being undertaken at the individual RTOs and across large inter-RTO markets such as in the PJM/Midwest ISO region.

**D. Internal Staff, Reporting to ITP Management, Is Needed to Perform Market Monitoring Functions**

The Commission should clarify its description of the individuals, groups or entities that will be conducting market monitoring. The Commission acknowledges that “the market monitoring unit may be located within the offices of the Independent Transmission Provider, to permit easy access to the market data and operations personnel,”<sup>34</sup> but does not appear to recognize explicitly that individuals engaged in market monitoring may be employees of the ITP, reporting administratively to the management of the ITP.

**E. The Commission Should Recognize the Need for a Reasonable Transition in Reaching SMD Compliance and for Regional Flexibility**

In a number of aspects of the SMD, the Commission should explicitly recognize the need for regional variations. These comments provide examples of areas where regional flexibility is required.

**1. Changes in Market Design Will Require a Transition Period**

Many of the RTOs and ISOs have operating markets. Those markets, as the Commission is aware, vary in the extent to which they are similar to the SMD proposed by the Commission. The Commission will need to work with these entities to develop detailed procedures so as to

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<sup>34</sup> SMD NOPR at P 429.

permit those markets to continue to operate, without interruption, and indeed be modified or improved, during a transition to SMD. The RTOs and ISOs currently operating markets suggest that the independent operators of those markets, with input from their market participants, should be permitted to recommend to the Commission how that transition should occur and how rapidly it can occur subject to policy guidance by the Commission. The Commission should particularly allow flexibility to avoid market design mandates that require particular issues to be dealt with on schedules that are too tight, at much higher cost, and that will only marginally improve the markets, when a more deliberate process might allow the market improvement to be implemented at much lower cost. That being said, the Commission is obviously concerned about having some kind of definitive schedule and clear pathway to go forward. In order to provide a clear roadmap for the future, the RTOs and ISOs suggest that the transition on a regional basis should separately address the following steps:

- development of a regional planning process for system improvements;
- development of appropriate infrastructure including state estimators for operation of a marketplace;
- development of a workable LMP-based congestion management system;
- development of a spot energy market;
- development of ancillary service market; and
- implementation of market-based solutions for capacity adequacy.

An appropriate transition along these lines would also enable market participants in existing wholesale markets to adjust their strategies and investment decisions to the new market design.



## **2. The Commission Should Recognize Variations in the Ancillary Services Markets**

The RTOs and ISOs also urge the Commission to provide flexibility with respect to the specific types of ancillary services markets to be provided. While the RTOs and ISOs agree with the design recommended by the Commission as the desirable end-state, it has been the experience of some of the RTOs and ISOs that development of this type of integrated market can be a complex problem that will take time to accomplish (particularly for large, previously unintegrated control areas). Therefore, while the RTOs and ISOs agree with the integrated nature of the ancillary services component of the markets, it urges the Commission to adopt a flexible approach to its implementation in regions where such markets are not yet in place.

The Commission should confirm that its primary goal is the rapid establishment of large, robust energy markets across the country and that regions which do not have an immediate need for integrated ancillary services markets should be allowed a reasonable transition period in which to implement them.

## **3. Regions that Have Developed an Approach to Grandfathered Contracts Should be Allowed to Keep that Approach**

Many regions have already developed a consensus or settlement approach to grandfathered contracts or, where the settlement process has failed, engaged in litigation.<sup>35</sup> The Commission should permit those regions to build on the extensive work already undertaken without imposing any new or inconsistent requirements.<sup>36</sup>

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<sup>35</sup> See, for example, *Atlantic City Electric Co. et al. v. FERC*, D.C. Cir. No. 97-1097 (July 12, 2002) and *Central Hudson Gas & Elec. Corp.*, 100 FERC ¶ 61,023 (2002).

<sup>36</sup> *SMD* NOPR at P 172.

#### **4. The Commission Should Not Require a Reallocation of Previously Allocated CRRs**

The NOPR does not appear to address whether regions which have already allocated CRRs (by whatever name is currently utilized) must undertake a new allocation of CRRs consistent with the approaches proposed in the NOPR.<sup>37</sup> The RTOs and ISOs submit that no new allocation is necessary where the allocation has already been approved by the Commission. The settled certainty of the currently used approach is more important than compliance with a newly developed method.

#### **5. Mitigation Measures Should Vary by Region**

The Commission has recognized that market power mitigation may take different forms and vary by region.<sup>38</sup> The approaches to market power mitigation should reflect conditions in the particular region. Such recognition of regional differences should not be limited, however, to what the Commission describes as the fourth and voluntary market power mitigation measure,<sup>39</sup> but should apply as well to each of the proposed mandatory measures. For example, different bid caps could apply in different regions depending on the market conditions that exist in each region. Recognizing regional differences, the Commission has approved a \$250/MWh bid cap in California while approving \$1000 caps in the Northeast. Similarly, whether participating generator agreements are needed to address locational market power situations could be determined regionally depending on market conditions. In some regions, a market rule or rules of general applicability might be sufficient.

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<sup>37</sup> *Id.* at PP 248, 249.

<sup>38</sup> *Id.* at PP 406-417.

<sup>39</sup> *Id.* at P 415.

**F. Software Modularity**

The Commission properly recognizes the importance of establishing software standards that will expand and encourage competition in a very specialized market. However, it is important to proceed carefully in mandating standards so as not to stifle innovation or the ability for suppliers to differentiate themselves. As such, standards should not be so definitive as to restrict architectural and implementation decisions, but rather should be aimed at common interfaces and overall levels of system performance. The Commission should focus its attention on three areas where standards can provide clear and immediate benefit to market participants, ITP implementation and maintenance efforts and to the planning and R&D efforts of vendors:

- the market participant interface to the ITP for bidding and scheduling;
- extension of a common information model (CIM) to include market data models;  
and
- facilitation of the software audit process.

Standards in the CIM and market interface design areas should present no significant likelihood of stifling innovation, but would enable it. Each of these areas has substantial financial leverage on costs incurred by stakeholders. In addition, while establishing standards is never easy, these are areas where it should be possible to achieve consensus with vigorous Commission support.

**G. Limitations on Liability**

The Commission has invited comments on the need to include limitation of liability provisions in the *pro forma* tariff and on the circumstances under which liability protection should be included in the tariff.<sup>40</sup> The RTOs and ISOs urge the Commission to include such

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<sup>40</sup> *Id.* at P 389.

provisions and to make them applicable to any services provided under the tariff and any claims from third parties.

The Commission has permitted limitations on liability with respect to the Midwest ISO tariff.<sup>41</sup> The liability provisions in the *pro forma* tariff should not be limited to situations where such protection is not available through state tariffs. Any protections under state tariffs may not be applicable to transmission service, assuming such transmission service is the sole province of the Commission. Protections under state tariffs are clearly not available to RTOs, ISOs and ITPs that do not have state-approved tariffs at all. Thus, limitation of liability language, similar to that available to most utilities under state law or state-approved tariffs, should be provided in the Commission's *pro forma* tariff. The *pro forma* tariff should explicitly limit the liability of ITPs. The limitation of liability would protect the ITP from liability for any damages, except to the extent the ITP is found liable for gross negligence or intentional misconduct. Without regard to the standard of care adopted by the Commission, the tariff should also make clear that the ITP is not liable, under any circumstances, for any special, indirect, incidental, consequential or punitive damages.

Because protections previously afforded to transmission service by virtue of state tariffs are no longer available, entities like RTOs, ISOs and ITPs that have operating authority with respect to transmission assets are no longer protected from liability for service interruption. Without a liability limitation, RTOs, ISOs and ITPs could be exposed to millions of dollars in potential damages for service interruptions. That liability would translate into higher rates from higher insurance costs, if such insurance is available at all.<sup>42</sup> Higher rates would also result if

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<sup>41</sup> *Midwest Independent Transmission System Operator, Inc.*, 100 FERC ¶ 61,144 (2002).

<sup>42</sup> The Commission cannot assume insurance is available in adequate quantities and at a reasonable price. Where insurance is available, it is becoming increasingly expensive.

insurance coverage is inadequate and to the extent damage claims and deductibles are allowed to be passed through to customers in rates.<sup>43</sup>

States such as Texas, Pennsylvania and Maryland that have analyzed liability limitation provisions have concluded that such provisions are beneficial to ratepayers. Those conclusions should apply equally to entities such as RTOs, ISOs and ITPs regulated by the Commission.

**H. Where ITCs are Developed, the ITP Must be the Single Operational Authority under an SMD Model**

The Commission has sought comments on the functions that an independent transmission company (“ITC”) should perform under SMD and whether the Commission should retain the same delegation of functions that was approved in *TRANSLink*.<sup>44</sup> The SMD model requires a single operational authority and a single congestion pricing methodology. That overall operational authority, as noted by the Commission, is integrated with the marketplace and cannot be split with an ITC located within its region.

For effective RTO operations, regional trading, and one-stop shopping, a single transmission provider must have overall authority and ultimate responsibility for transmission service in the region. We further believe that the security-constrained, economic dispatch needed for an efficient and reliable market is best operated by an independent regional transmission provider.<sup>45</sup>

Where SMD markets do exist, the Commission should clarify that overall operational authority and the congestion pricing methodology can only reside at the ITP. The Commission recognized in *TRANSLink* that it would need to revisit the functions that could be delegated to an ITC where markets and operations are integrated, as under an SMD model.

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<sup>43</sup> If such costs cannot be passed through to customers, bankruptcy of the ITP is the likely alternative.

<sup>44</sup> *TRANSLink Transmission Co., L.L.C., et al.*, 99 FERC ¶ 61,106 (2002) (“*TRANSLink*”).

<sup>45</sup> *Id.* at p. 61,463.

COPIES OF CORRESPONDENCE

Copies of correspondence concerning these comments should be served on the individuals listed on Attachment I hereto.

CONCLUSION

WHEREFORE, the Commission should clarify its proposal as suggested in these comments and make the proposed modifications to the NOPR so as to more effectively accomplish its objectives.

Respectfully submitted,

THE CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION

By: Charles F. Robinson / a1140  
Charles F. Robinson  
General Counsel

INDEPENDENT ELECTRICITY MARKET  
OPERATOR

By: Amir Shalaby / a1140  
Amir Shalaby  
Manager of Regulatory and  
Government Affairs

ISO NEW ENGLAND INC.

By: Kathleen A. Carrigan / a1140  
Kathleen A. Carrigan  
Senior Vice President, General Counsel  
and Secretary

MIDWEST INDEPENDENT TRANSMISSION  
SYSTEM OPERATOR, INC.

By: Stephen G. Kozey / a1140  
Stephen G. Kozey  
General Counsel

NEW YORK INDEPENDENT SYSTEM  
OPERATOR, INC.

By: Arnold H. Quint  
Arnold H. Quint  
Counsel

PJM INTERCONNECTION, L.L.C.

By: Harry S. Spector / a1140  
Harry S. Spector  
Counsel

SOUTHWEST POWER POOL, INC.

By: Nicholas A. Brown / a1140  
Nicholas A. Brown  
Senior Vice President

Dated: November 12, 2002

**Names and Addresses of Those  
to Whom Correspondence Should Be Sent**

California Independent System Operator Corporation

Charles F. Robinson, General Counsel  
Anthony J. Ivancovich, Sr. Regulatory Counsel  
California Independent System Operator Corp.  
151 Blue Ravine Road  
Folsom, CA 95063  
(916) 608-7135

The Independent Electricity Market Operator

Mr. Amir Shalaby  
Manager of Regulatory and Government Affairs  
Independent Electricity Market Operator  
655 Bay Street, Suite 410  
P.O. Box 1  
Toronto, Ontario M5G 2K4  
CANADA  
Tel: (416) 506-2821  
Fax: (416) 506-2847  
amir.shalaby@theIMO.com

ISO New England Inc.

James H. Douglass  
Senior Regulatory Counsel  
ISO New England Inc.  
One Sullivan Road  
Holyoke, MA 01040-2841  
Tel: (413) 540-4559  
Fax: (413) 535-4379  
jdouglass@iso-ne.com

Howard H. Shafferman  
Ballard Spahr Andrews & Ingersoll, LLP  
601 13<sup>th</sup> Street, NW  
Suite 1000 South  
Washington, DC 20005  
Tel: (202) 661-2200  
Fax: (202) 661-2299  
hhs@ballardspahr.com

Midwest Independent Transmission System Operator, Inc.

Stephen G. Kozey  
General Counsel  
Midwest Independent Transmission  
System Operator, Inc.  
701 City Center Drive  
Carmel, IN 46032  
Tel: (317) 249-5400  
Fax: (317) 249-5912  
skozey@midwestiso.org

New York Independent System Operator, Inc.

Robert E. Fernandez, General Counsel  
and Secretary  
Belinda F. Thornton, Director of  
Regulatory Affairs  
Mr. John Buechler  
New York Independent System Operator, Inc.  
3890 Carman Road  
Schenectady, NY 12303  
Tel: (518) 356-6000  
Fax: (518) 356-4702  
rfernandez@nyiso.com  
bthornton@nyiso.com  
jbuechler@nyiso.com

Arnold H. Quint  
Hunton & Williams  
1900 K Street, N.W.  
Suite 1200  
Washington, DC 20006  
Tel: (202) 955-1542  
Fax: (202) 778-2201  
aquent@hunton.com

PJM Interconnection, L.L.C.

Mr. Craig Glazer  
Vice President - Governmental Policy  
PJM Interconnection, L.L.C.  
1200 G Street, NW, Suite 600  
Washington, DC 20005

Barry S. Spector, Esq.  
Wright & Talisman, P.C.  
1200 G Street, NW, Suite 600  
Washington, DC 20005  
Tel: (202) 393-1200  
Fax: (202) 393-1240  
spector@wrightlaw.com

Southwest Power Pool, Inc.


Nicholas A. Brown  
Senior Vice President  
Southwest Power Pool, Inc.  
415 N. McKinley, Suite 900  
Little Rock, AK 72205  
Tel: (501) 614-3213  
nbrown@spp.org



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing have been served upon each person on the official service list and the restricted service list in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C. this 12<sup>th</sup> day of November, 2002.



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Arnold H. Quint  
on behalf of  
the North American RTOs and ISOs