DENISE A. BODE
Commissioner

BOB ANTHONY
Commissioner

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OKLAHOMA CORPORATION COMMISSION
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Joyce Davidson, Acting Director
Public Utility Division

December 13, 2001

The Honorable David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First St., N.E., Room 1-A
Washington, DC 20426

Re: Accession # 200112075089 and Accession # 200112075091
Docket Nos. RM01-12-000; RT01-15-000; RT01-35-000; RT01-85-000; RT01-87-000; RT01-88-000; RT01-99-000; RT01-100-000; EL02-9-000; RT02-1-000.

Dear Sir:

On December 7, 2001, Accession # 200112075089 was e-filed to you. Unfortunately, the Signature Page and the Certificate of Service were inadvertently omitted. The Certificate of Service was filed separately under Accession # 2001112075091, but without a cover letter. I am hereby resubmitting Accession # 200112075089 (Comments) with the appropriate signature page. I am also attaching the Certificate of Service for Accession 200112075089, which was separately e-filed as Accession # 200112075091.

Please advise if you have questions or if you need additional information.

Sincerely,

/s/Lynn L. Williams
Lynn L. Williams
Assistant General Counsel
Oklahoma Corporation Commission

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On November 20, 2001, the Federal Energy Regulatory Commission (Commission or FERC) sent a letter to state public utility commissions regarding wholesale market activities outlined in RM01-12-000. The Commission requested that answers to the questions posed be confined to the specific geographic location of concern to the answering parties and where applicable, that the parties file a summary of previously filed comments regarding these same questions. Accordingly, the Oklahoma Corporation Commission (OCC) is filing a summation of all prior comments, as they pertain to this particular rulemaking; and reserves its right to submit additional comments and/ or protests after the Commission has rendered a final decision regarding Regional Transmission Organizations.

Question:

> **Parties have proposed the development of a separate organization to perform some wholesale market activities, some of which were specified as RTO functions under Order No. 2000, and some of which have been raised as additional activities to enable vibrant and efficient wholesale markets. These wholesale market activities include: (1) congestion management; (2) ancillary services; (3) administration of a balancing market; (4) OASIS administration, including total transmission capacity and available transmission capacity calculations; (5) security coordination; (6) market monitoring; (7) regional transmission facility planning; and (8) tariff administration and design. If these activities are shared or coordinated among separate organizations within an RTO region, how would you suggest that these functions be apportioned?**

Response:

Based on prior comments filed by the Oklahoma Corporation Commission (OCC), it is the position of the OCC that the **Midwestern Region** should have a single independent, not-for-profit RTO.[1] This RTO should be responsible for all of the functions outlined in Order No. 2000; as well as those additional activities outlined in the request for comments in RM01-12-000, or resulting there from.

If these activities are to be delegated, the OCC submits that this should only be done at the RTO's discretion, where ultimate responsibility for any delegations lies completely with the RTO.[2] Further, the OCC has reservations concerning any delegations of the following functions/ activities, including but not limited to: congestion management, ancillary services, administration of a balancing market, OASIS administration, including total transmission capacity and available transmission capacity calculations, security coordination, market monitoring, regional transmission facility planning, tariff administration/ design, parallel path flow and interregional coordination.[3]

RTO Minimum Characteristics

Order No. 2000 establishes that before an entity can be considered for administration of the eight functions required of an RTO, it must first satisfy the four minimum characteristics of an RTO.[4] They are: independence from market participants; appropriate scope and regional configuration; possession of operational authority for all transmission facilities under the RTO's control; and the exclusive authority to maintain short-term reliability.[5] It is the position of the OCC that only a not-for-profit RTO is likely to gain the requisite independence necessary to oversee and maintain a reliable and market responsive transmission system.

To begin with, independence is the key to the other three characteristics of an RTO.[6] Without it, scope and configuration, operational authority and short-term reliability maintenance could be jeopardized by other conflicting interests.

Secondly, FERC created the RTO model to ensure higher transmission efficiency in order to promote reliability at the least cost to consumers.[7] For-profit-entities are driven by, *inter alia*, profits and high fiduciary duties to their investors; which may indirectly

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[1] *Joint State Comments of the Michigan Public Service Comm'n, ET AL*, on FERC's RTO Questions, Docket Nos. RT01-88-000, ET AL, at 2 (Filed November 30, 2001).

[2] *Joint State Comments of the Iowa Utilities Board, ET AL*, Docket Nos. EC01-156-000 and ER01-3154-000 at 2 (Filed December 3, 2001).

[3] *Joint State Comments of the Michigan Public Service Comm'n, ET AL*, on FERC's RTO Questions, Docket Nos. RT01-88-000, ET AL, at 5 (Filed November 30, 2001).

[4] FERC Order 2000, 89 FERC ¶ 61,285 at 124 & 129 (1999).

[5] 89 FERC ¶ 61,285 at 152.

[6] *Id*. at 152. (To obtain absolute independence three conditions must be met: First, the RTO, its employees, and any non-stakeholder directors must not have any financial interests in any market participants. Second, the RTO must have a decision-making process that is independent of control by any market participant or class of participants. Third, the RTO must have exclusive and independent authority to file changes to its transmission tariff with the Commission under section 205 of the FPA).

[7] 89 FERC ¶ 61,285 at 2-3.

contravene FERC's intended purposes. Thus, the independence of these entities may be compromised by conflicts between necessary RTO activities, investor demands, the best interests of the region and/ or the end results to consumers.[8]

Another problem lies within the functions of an RTO. Because of the afore-mentioned concerns regarding for-profit entities not all of these functions (e.g. market monitoring, congestions management, etc.), can be accomplished due to the lack of complete independence on the part of these entities. Accordingly, this inability to perform each and every required function of an RTO combined with an overpowering lack of independence, equates to insufficient scope and authority.

Finally, the highest of fiduciary duties owed by the entity responsible for RTO functions must be to the region and no others. It is extremely improbable that any entity not completely independent (owes no higher fiduciary duties elsewhere), could gain full authority over all transmission assets within its region. The end result then, will be that short-term reliability and/ or promotion of uniform security measures cannot be ensured.

Functions of an RTO

Only an entity that satisfies the above four characteristics, will be in the best position to carry out the eight functions outlined in Order No. 2000,[9] as well as any other functions that may become necessary – including those additional activities described in FERC's request for comments in RM01-12-000. The OCC, in a previous joint filing, addressed the heightened need for the independence of any entity that would seek to perform the functions of an RTO.[10] Specifically, while some functions could be delegated to subordinate organizations, an RTO itself must retain ultimate responsibility for these functions and must, therefore, be uncompromisingly independent.[11] Additionally, where a lack of independence exists in a subordinate organization, the delegation of functions may not be possible.

For example, in order to gain any meaningful management of congestion, practices must be consistent within the region.[12] To obtain this consistency, Order No. 2000, dictates that non-market participants such as RTOs, must handle congestion management.[13] Otherwise, a lack of independence on the part of subordinate organizations entrusted with this task, could work to forestall the necessary management techniques. Similarly, the problems with parallel path flows within the region (as well as across regions) must also be dealt with consistently. As too, should ancillary services. However, due to their essential nature, ancillary services must also be handled by an independent entity that can establish fair procedures and costs for the provision of these services.[14]

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[8] FERC Order 2000, 89 FERC カ 61,285 at 90 (1999).

[9] 89 FERC カ 61,285 at 151.

[10] *Joint State Comments of the Iowa Utilities Board, ET AL*, Docket Nos. EC01-156-000 and ER01-3154-000 at 2 (Filed December 3, 2001).

[11] *Id*. at 2.

[12] 89 FERC カ 61,285 at 33.

[13] 89 FERC カ 61,285 at 380.

[14] FERC Order 2000, 89 FERC カ 61,285 at 420 (1999).

Another function where independence plays a critical role is OASIS site administration for all transmission facilities within a particular region. Reliable and current data that is easy to access and apply, as well as enables transactions to be carried out more efficiently are key to this responsibility.[15] Given the central importance of ATC and TTC calculations and the potential for their manipulation these calculations could be used to limit access to a transmission system rather than bolster it through access to reliable and current data. As such, only an entity that is answerable to the region at large, instead of one or a select few market participants, should be entrusted with this undertaking.

Regional uniformity of tariffs is another function that requires independence. Per Order No. 2000, the RTO must stand as the sole tariff administrator.[16] It is only where this sole provider is truly independent that such uniformity and non-discriminatory access to the regional transmission system can be assured.[17] Further, where a multi-tiered structure is allowed to exist, the threat of undue discrimination and market domination may be more likely to occur and the playing field will no longer be level.

Moreover, by setting up a regional structure, FERC attempted to implement ONE rate that would be applicable to the entire region. Such a rate structure would stop seams issues from developing within the region and allow for *interregional* coordination; thus greatly improving seams issues between the regions as well.

Of additional significance, is the market monitoring function. The purpose of this function, is to ensure that the markets within the region covered by the RTO do not result in wholesale transactions or operations that are "unduly discriminatory or preferential or provide opportunity for the exercise of market power."[18] Effective market monitoring by an independent party is essential to FERC's attempts to wipeout such discrimination and cannot be accomplished by market participants.[19]

Transmission planning and expansion are also important in the debate over whether or not RTO functions can be delegated. The OCC submits that a single, independent RTO is the only entity that could and should shoulder the ultimate responsibility for both transmission planning and expansion within its region. First, it is only with this independence, that the provision and coordination with the appropriate state and federal authorities of efficient, reliable and non-discriminatory services can occur.[20] Second, the powers of eminent domain and condemnation have "traditionally" been left to the States and it is unclear whether or not the Federal Power Act grants even an RTO, such powers. Thus, the entity performing this function must have the requisite independence that is essential to its working in conjunction with the States and other regulatory bodies.

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[15] 89 FERC ¶ 61,285 at 432 .

[16] *Id*. at 324.

[17] *Id*. at 330.

[18] *Id*. at 462.

[19] *Joint State Comments of the Michigan Public Service Comm'n, ET AL*, on FERC's RTO Questions, Docket Nos. RT01-88-000, ET AL, at 8 (Filed November 30, 2001). *See also*, *Joint State Comments of the Iowa Utilities Board, ET AL*, Docket Nos. EC01-156-000 and ER01-3154-000 at 2 (Filed December 3, 2001); and the *Oklahoma Corporation Commission's Market Monitoring Comments*, Docket No. RT01-87-000, Cover Memo at 1 (Filed November 2, 2001).

[20] 89 FERC ¶ 61,285 at 485.

Additionally, entities not falling within the jurisdiction of the State Commissions have little incentive to cooperate with the States regarding transmission planning and expansion. Given this lack of incentive to cooperate as well as the highly uncertain nature of any true authority to address this function, it is unlikely that any entity other than an RTO could successfully assume the "ultimate responsibilities" outlined above. The OCC submits that this is especially possible where that entity operates for profit and owes its highest of fiduciary duties elsewhere.

Hybrid RTO's

While Order No. 2000 allows for hybrid RTOs,[21] it is the consensus of the Midwestern States that the greater the degree of passive ownership by market participants the less their level of independence and the fewer functions they should be allowed to perform within an RTO.[22] Thus, a hybrid RTO comprised of a high number of market participants, no matter how passive, is not likely to gain the independence vital to acquiring appropriate operational control over the transmission services within its region.[23] Accordingly, such an entity would fail to meet the minimum characteristics of an RTO, which would seem to disqualify it from existing as such a regional superpower.[24]

Respectfully submitted,

/s/Joyce Davidson

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[21] *Id*. at 124.

[22] *Joint State Comments of the Michigan Public Service Comm'n, ET AL*, on FERC's RTO Questions, Docket Nos. RT01-88-000, ET AL, at 4 (Filed November 30, 2001).

[23] *Joint State Comments of the Michigan Public Service Comm'n, ET AL*, on FERC's RTO Questions, Docket Nos. RT01-88-000, ET AL, at 4 (Filed November 30, 2001).

[24] 89 FERC ¶ 61,285 at 193. (Independence is the bedrock upon which [an RTO] must be built and must apply to all RTOs, whether they are ISOs, transcos or **variants of the two**. Such independence must be in both reality and perception).

UNITED STATES OF AMERICA BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Electricity Market Design and Structure	Docket No. RM01-12-000
Avista Corporation Montana Power Company Nevada Power Company Portland General Electric Company Puget Sound Energy, Inc. Sierra Pacific Power Company	Docket No. RT01-15-000
Avista Corporation Bonneville Power Administration Idaho Power Company Montana Power Company Nevada Power Company PacifiCorp Portland General Electric Company Puget Sound Energy, Inc. Sierra Pacific Power Company	Docket No. RT01-35-000
California Independent System Operator Corporation	Docket No. RT01-85-000
Midwest Independent System Operator	Docket No. RT01-87-000
Alliance Companies	Docket No. RT01-88-000
Regional Transmission Organizations	Docket No. RT01-99-000
Regional Transmission Organizations	Docket No. RT01-100-000
Arizona Public Service Company El Paso Electric Company Public Service Company of New Mexico Tucson Electric Power Company WestConnect RTO, LLC	Docket Nos. RT02-1-000 EL02-9-000

CERTIFICATE OF SERVICE

I, Lynn L. Williams, certify that a copy of the Comments of the Oklahoma Corporation Commission has been served on all parties of record to date, postage prepaid by U.S. mail on this 7th day of December, 2001.

/s/ Lynn L. Williams
Lynn L. Williams
Assistant General Counsel
Oklahoma Corporation Commission