UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Preventing Undue Discrimination and Preference in Transmission Service	))	Docket Nos. RM05-25-000 and RM05-17-000

COMMENTS OF THE ISO/RTO COUNCIL ON NOTICE OF PROPOSED RULEMAKING

I. EXECUTIVE SUMMARY

Description of IRC

The ISO/RTO Council ("IRC") members[1] have utilized market mechanisms and independent planning as key tools to ensure non-discrimination in the provision of transmission service. Consistent with the goals of Order Nos. 888 and 2000, ISO/RTO

[1] The nine functioning Independent System Operators and Regional Transmission Organizations ("ISOs" and "RTOs" respectively) in North America formed the IRC in April 2003. The IRC is comprised of the Independent System Operator operating as the Alberta Electric System Operator ("AESO"), California Independent System Operator Corporation ("CAISO"), Electric Reliability Council of Texas ("ERCOT"), the Independent Electricity System Operator of Ontario ("IESO"), ISO New England Inc. ("ISO-NE"), Midwest Independent Transmission System Operator, Inc. ("MISO"), New York Independent System Operator, Inc. ("NYISO"), PJM Interconnection, L.L.C. ("PJM"), and Southwest Power Pool, Inc. ("SPP"). The IRC's mission is to work collaboratively to develop effective processes, tools and standard methods for improving competitive electricity markets across North America. In fulfilling this mission, it is the IRC's goal to provide a perspective that balances reliability standards with market practices so that each complements the other. In considering these comments, the Commission should be mindful that the markets of the individual IRC members are at varying stages of development.

These comments necessarily reflect the collective views and concerns of the IRC members as a group. In addition, many of the IRC members will also be submitting individual comments to address issues of specific interest/concern. (continued)

markets have developed, or are in the process of developing, bid-based security constrained economic dispatch systems or other methods that provide a transparent means to maximize use of the transmission grid and ensure open, non-discriminatory access to this vital resource.

Proper Goals of Regulatory Reform

In considering reforms in the post-Order No. 888 environment, the Commission's focus should be on those non-organized market areas that lack the transparency, mechanisms, and structural protections inherent in ISO/RTO markets. For example, the Commission's May 19, 2006 "Notice of Proposed Rulemaking" ("NOPR") identifies a host of concerns that arise where an entity is both the transmission provider and a market participant. In such circumstances, the Commission expressed the view that additional protections -- beyond those provided in the Order No. 888 pro forma Open Access Transmission Tariff ("OATT") -- were necessary given that "transmission providers retained both the incentive and the ability to discriminate against third parties,

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For example, ISO-NE joins in these comments with regard to its administration and provision of transmission service over regional network facilities (referred to in the ISO OATT as "Pool Transmission Facilities" or "PTF"), and not with regard to the manner in which transmission service is provided over either: (a) lower-voltage, local transmission facilities (referred to as "non-PTF"), or (b) those transmission facilities whose costs are not included in regional rates that provide interties with neighboring control areas (referred to as "Merchant Transmission Facilities" or "Other Transmission Facilities"). ERCOT has elected not to join in these comments. The IESO and AESO are not subject to the Commission's jurisdiction and their endorsement of these comments does not constitute agreement or acknowledgement that either can be subject to this Commission's jurisdiction. Nevertheless, the Commission's proposed changes to the Order No. 888 pro forma tariff could impact these Canadian entities, as described in previously filed comments. See AESO Comments in response to "Notice of Inquiry," Preventing Undue Discrimination and Preference in Transmission Services, 112 FERC ¶ 61,299 (2005) ("NOI").

particularly in areas where the pro forma OATT left the transmission provider with significant discretion." NOPR at P 2.

This proceeding provides an opportunity for the Commission to harmonize the worlds of organized and non-organized markets in a manner that encourages competition, promotes non-discriminatory access, and maximizes the flow of electricity across various ISO/RTO and non-ISO/RTO regions. In the existing regulatory environment, a non-ISO/RTO utility can sell into, or purchase from, an ISO/RTO market even though the non-ISO/RTO utility operates under tariff rules that are less open and transparent, particularly in terms of access to generation resources and pricing/system information, than their intra-ISO/RTO competitors. Such asymmetry operates as an impediment to fair and non-discriminatory transmission access and management of grid congestion.

The IRC members do not seek to impose their market designs on the rest of the nation. The IRC is instead advancing modest proposals that respond to Congressional directives calling for greater price and data transparency in order to protect competition and "the integrity of [electricity sale and transmission] markets."[2] In this regard, meaningful reform should ensure a level of transparency in non-ISO/RTO regions that can assist the flow of electricity and enhance reliability and planning in both ISO/RTO and non-ISO/RTO regions. Transparency of both prices and the dispatch utilized by non-ISO/RTO vertically-integrated entities is needed so as to enable ISOs and RTOs to enter into coordination agreements with non-ISO/RTO entities at the seams in areas where these agreements do not exist. These agreements will allow ISOs/RTOs to utilize tools

[2] See Energy Policy Act of 2005, section 1281.

such as redispatch to address reliability and economic concerns, interregional planning and interregional cost allocation with non-ISO/RTO entities.[3]

This rulemaking provides the vehicle for the Commission to put those tools in place through modest but targeted changes to the Order No. 888 pro forma OATT. The more tailored approach to OATT reform, as suggested herein by the IRC, would not require ISOs and RTOs to re-justify tariff provisions that have already been found to satisfy stringent neutrality and independence standards. ISOs and RTOs operate under organizational charters and tariffs that provide intrinsic protections going directly to the Commission's discrimination and impartiality concerns, as the Commission itself acknowledges.[4] This is because, as part of their confirmation process, ISOs and RTOs are required to satisfy strict structural and governance conditions established by Order Nos. 888 and/or 2000, including, among other things, demonstration of complete independence from all market participants. Specifically, ISOs and RTOs do not have affiliates who take transmission service or provide generation services and they are generally not-for-profit entities. In addition, all ISOs and RTOs engage in formal and informal stakeholder processes and follow industry best practices in their transmission planning and transmission access protocols. The IRC members, in separate and individually-filed comments, provide more detail on their specific practices.

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[3] Similar inter-ISO/RTO arrangements have been developed and approved by the Commission to promote reliability and effective trading between regions. See Midwest Indep. Transmission Sys. Operator, Inc., 106 FERC ¶ 61,251, order on reh'g, 108 FERC ¶ 61,143 (2004); Southwest Power Pool, Inc., 109 FERC ¶ 61,008 (2004), order on reh'g, 110 FERC ¶ 61,031 (2005).

[4] See, e.g., NOPR at P 2; 100-101; 384.

Learning From the Success of the ISO/RTO Model

The compliance procedures applied to ISOs and RTOs to date have achieved their intended goal – i.e., approval of organizational documents and OATTs that meet regional needs while ensuring operational independence and the promotion of efficient, competitive markets. The Commission-approved OATTs that ISOs and RTOs currently have in place are, in fact, more advanced than the relevant pro forma OATT reforms proposed in the NOPR. Existing ISO/RTO structures, thus, already better address the problems that Order No. 888 was designed to solve more effectively than will be the case in non-ISO/RTO regions even after the NOPR's reforms are implemented.

In the area of transmission planning, for example, Commission-approved ISO/RTO planning processes have worked (and continue to work) effectively to identify infrastructure needs in an open and transparent way. As detailed herein and as more fully developed in Appendix A hereto, these processes already meet all of the eight planning principles proposed by the Commission. There is no record support for changes in this area.

In other respects, the Commission's proposed OATT reforms are inapplicable to (or incompatible with) the ISO/RTO model. Proposed operational penalties, designed to curb discriminatory or preferential behavior, have no logical application where the transmission operator is, by organizational charter, fully independent from all potential users of the system. Similarly, Available Transfer Capability ("ATC") – a centerpiece issue of the NOPR – is a non-issue in those ISO/RTO regions where ATC is not calculated within the ISO/RTO footprint because transmission service is not based on physical transmission reservations. The IRC does acknowledge, however, that greater standardization in the general framework for a common "methodology" for

determining/calculating ATC may have some benefits in terms of addressing cross-border coordination issues. In addition, the IRC asks that the Commission consider redispatch to address reliability and economic concerns and other tools to better manage congestion problems on adjacent systems.[5]

In short, the regulatory and organizational evolution of ISOs and RTOs, under the oversight of the Commission, has led to the adoption of numerous market mechanisms and structures grounded in independence, transparency and neutrality. These characteristics of ISOs and RTOs prevent undue discrimination and preferential treatment. To address those circumstances where these intrinsic safeguards are not in place, the IRC offers a series of proposed OATT remedies designed to promote reciprocity between organized and non-organized markets and, in the process, the development of a seamless transmission grid and a more competitive wholesale market.

II. DISCUSSION

A. THE NEED FOR REFORM OF ORDER NO. 888 (NOPR III)

1. The Commission's OATT Reforms Should Focus on Impediments to Competition Attributable to the Structural and Operational Differences Between Organized and Non-Organized Markets.

Roughly two-thirds of the nation's electricity infrastructure is independently operated by ISOs and/or RTOs. Within organized ISO/RTO electricity markets, both energy commodity and transmission service transactions are coordinated through the ISO/RTO.[6] Offers to sell and bids to buy electric energy and/or ancillary services are

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5 Other tools may be more appropriate in Alberta.

6 As noted in footnote 1, supra, not all IRC members have currently implemented fully operational markets.

received by the ISO/RTO from multiple sellers and buyers, with the ISO/RTO responsible for determining which sales and purchases are completed and at what price.

Nevertheless, organized markets must co-exist with non-organized markets. This dichotomy gives rise to potential market inefficiencies and discrimination concerns where, e.g., market participants from non-ISO/RTO regions seek to transact with an ISO/RTO market. ISOs and RTOs operate under rules and protocols that, per Commission mandate, are more open, transparent and market-responsive than their non-ISO/RTO counterparts. These operational distinctions create potential inefficiencies that, among other things, can impede access to pricing and system information in the non-organized markets and undermine efforts to effectively manage congestion on the transmission grid.

In order to ensure a vibrant and competitive wholesale market that provides a vehicle for all generators to access a wide range of buyers in both organized markets and remaining areas, the operative standard should be verifiable, open, and non-discriminatory access to the grid. The IRC respectfully submits that meeting this standard, while respecting the Commission's mandate of making membership in organized markets voluntary, requires adoption of guidelines that reflect the following concepts:

Proposed Guiding Principles:

- Access to real-time information on dispatch sequence and pricing is as critical today as access to the transmission grid itself. Access to real-time dispatch information is a critical tool to ensure that the grid is being operated in an unbiased and non-discriminatory manner;[7]

[7] In Alberta, AESO posts "system marginal price", the marginal energy block volume, and the current supply and demand; however the energy market merit (continued)

- Effective planning requires sufficient transparency in control area dispatch to be able to assess whether an upgrade is needed or a less costly solution such as redispatch (including redispatch across control area boundaries) will address the constraint; [8]

- Reciprocity is essential to ensuring a seamless grid and avoiding the discrimination that remains under the Order 888 paradigm; and

- The final rule should address the market, reliability, and discrimination issues that arise when a non-ISO/RTO utility sells into or purchases from an ISO/RTO market while, at the same time, limiting access to its own dispatch of generation resources and the pricing and system information needed to ensure fair and non-discriminatory management of congestion on the grid.

Proposed Changes to the OATT

The IRC further recommends that the following proposals be included in the final rule:

- Transparency of Dispatch and Interregional Coordination: Require non-ISO/RTO entities with control over dispatch to provide sufficient transparency of their dispatch to enable neighboring control areas to enter into suitable coordination arrangements.[9] Such agreements can provide the foundation for the deployment of state of the art tools such as redispatch to clear congestion across boundaries, to manage loop flows and provide a superior means to address congestion and avoid the impacts of transmission loading relief ("TLR").[10]

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order, including participant offer/bid prices and volumes, is not posted in real-time.

[8] Alberta's system is structured through legislation as an unconstrained transmission system.

[9] In Alberta, these types of agreements and jurisdictional business practices would be entered into across provincial jurisdictions, and would comply with appropriate provincial legislation.

[10] Because ISO/RTO dispatch and prices are transparent, there is no need for a similar directive applied to ISOs and RTOs. These entities have already entered into a variety of agreements to utilize their inherent transparency to manage transactions and reliability at the seams. See, e.g., Midwest Indep. Transmission Sys. Operator, Inc., 106 FERC ¶ 61,251, order on reh'g, 108 FERC ¶ 61,143 (continued)

In order for effective coordination to occur, price transparency is needed to ensure appropriate compensation[11] to the redispatched generator through either a cost-based or bid-based system.

- Loop Flow: Require the development and utilization of transparent pricing and coordination tools to address both loop flow and ATC issues between ISO/RTO and non-ISO/RTO control areas. Both loop flow and ATC issues result from a failure to consider the impacts of a neighboring system's dispatch due to the lack of transparency and a lack of tools that can recognize and resolve adverse impacts from neighboring systems.

- Regional Planning: Planning needs to be coordinated among neighboring control areas to avoid potentially more costly solutions than might be needed to resolve the reliability or economic issue identified.[12] Planning decisions need to be coordinated, transparent, and independent to ensure the integrity of the outcome.

  As the Commission moves to encourage major new transmission projects, the rules should allow for cross-border identification of beneficiaries and cost allocation of given transmission projects.

- Market Monitoring: The Commission should require comparable independent market monitoring services in the pro forma OATT for non-ISO/RTO utilities.

The Commission has determined, based on experience under Order No. 888, that opportunities for discrimination remain due principally to the breadth of discretion available to transmission providers under the existing pro forma OATT. This discretion,

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(2004); Southwest Power Pool, Inc., 109 FERC ¶ 61,008 (2004), order on reh'g, 110 FERC ¶ 61,031 (2005).

[11] The AESO does not pay lost opportunity costs when a generator is constrained down for transmission constraint reasons.

[12] The Commission need not spend time trying to define "regions" for purposes of this directive. By directing that these elements be included in coordination agreements among neighboring control areas, the Commission would have in place requirements that can bind a number of control areas through a series of contractual arrangements each of which contain these key elements.

in the Commission's view, continues to permit transmission providers to treat affiliated market participants differently from non-affiliated third-parties. The final rule in this proceeding provides an opportunity for the Commission to take critical steps to remedy that discrimination through proven tools and focused regulatory measures.

B. APPLICABILITY OF THE PROPOSED RULE (NOPR IV.C.)

1. The Record in this Rulemaking Does Not Generically Support Requiring Functioning ISOs and RTOs to Re-File Tariff Provisions and Requiring Such Re-Filings Would Add Unnecessary Administrative Costs and Create Uncertainty in the Provision of Transmission Services in these Areas.

The NOPR (at P 100) requires existing ISOs and RTOs to submit a compliance filing pursuant to Federal Power Act ("FPA") section 206 that (i) reflects the non-rate terms and conditions of the final rule; or (ii) demonstrates that the ISO/RTO's existing tariff provisions are consistent with or superior to the revised provisions of the pro forma OATT. The NOPR further provides that any future changes to the ISO/RTO's tariff under FPA section 205 will be subject to the same standards – i.e., strict compliance with the new rule's OATT requirements or demonstration of consistency/superiority relative to such requirements.

The IRC believes that, in the absence of specific evidence demonstrating that an ISO's or RTO's existing OATT provisions are unjust and unreasonable, the compliance filing requirement should not apply to ISOs and RTOs. The record developed in this proceeding, and as discussed further herein and in individual IRC member comments also filed today, confirms that ISOs and RTOs operate under approved tariff provisions that are already comparable to, or more advanced than, the OATT revisions proposed in the NOPR.

More specifically, the principles of Order Nos. 888 and 2000 require that the governance of ISOs and RTOs be impartial and fully-independent.[13] Further, ISOs and RTOs do not have affiliates who participate in the ISO/RTO markets or who take transmission service from the ISO/RTO. In addition, there is some form of stakeholder consultation in place in all ISO and RTO markets.[14]

ISO/RTO tariffs are necessarily crafted to address regional circumstances and issues. To that end, and consistent with the goal of serving the broadest consensus of the ISO/RTO membership, the tariffs of ISOs and RTOs are customized in an effort to meet the regional needs of the ISO/RTO's constituent members and their state regulators. To the extent that such regional circumstances give rise to non-conforming tariff provisions, such provisions are reviewed and approved by an independent governing body, and ultimately made subject to the Commission's filing, notice, comment, and approval processes.

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13 See Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. [Reg. Preambles 1996-2000] ¶ 31,089, at 31,061-076 (1999), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. [Reg. Preambles 1996-2000] ¶ 31,092 (2000) (stating independence from market participants is a bedrock principle in the ownership and governance of ISOs and RTOs); Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. [Reg. Preambles 1991-1996] ¶ 31,036, at 31,730-31 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. [Reg. Preambles 1996-2000] ¶ 31,048 (1997) (stating an ISO's governance must be independent of any individual market participant or any one class of participants).

14 See Order No. 2000 at 31,074 (noting the stakeholder committees must have balanced representation to prevent domination by one class); Order No. 888 at 31,730-31 (stating that "[a] governance structure that includes fair representation of all types of users would help to ensure that the ISO formulates policies, operates the system, and resolves disputes in a fair and non-discriminatory manner").

Other competitive safeguards are inherent in the ISO/RTO model. Because all transmission service is arranged through the independent ISO/RTO, concerns regarding possible motivation and/or opportunity for discrimination are substantially eliminated. Where real-time operational and system data is provided by ISOs and RTOs -- such as posted costs of congestion and current and day-ahead spot market prices -- market participants are better equipped to make fully-informed economic decisions. The security constrained economic dispatch process generally used by ISOs and RTOs provides another layer of protection by meeting load requirements based on prices determined by competitive bids and offers which recognize physical transmission constraints. In ISO and RTO markets, resource dispatch is never based on asset ownership.

It is against this backdrop that the Commission's NOPR must be considered. The principal regulatory objectives described in the NOPR (at P 3) – i.e., remedying discrimination by strengthening the pro forma OATT through "increasing clarity and transparency of the rules applicable to the planning and use of the transmission system" – are matters already addressed as part of the ISO/RTO confirmation and compliance processes.

The only statements offered by the Commission with respect to the possible need for ISO/RTO reforms concern exclusively the issues of transmission planning and ATC calculations. But even there the Commission has made no specific findings that the existing planning provisions and/or ATC calculations that are currently part of the ISO/RTO tariffs are unjust and unreasonable. Instead, the Commission relied on general (and somewhat equivocal) observations contained in comments filed on the NOI – observations that were unaccompanied by any empirical evidence. Moreover, a careful review of the transmission planning shortcomings identified by the Commission,

including perceived opportunities for discriminatory behavior, points principally to regions without independent transmission planners, and not to ISOs or RTOs. Compare NOPR at P 208 and 209 (expressing concern that current planning processes may allow a transmission provider to favor its own generation/loads by developing transmission plans "with limited or no input from affected market participants") with NOPR at P 211 ("[E]ach of the Commission-approved RTOs in the Northeast, Midwest and Southwest, as well as the CAISO, provide for a coordinated and regional planning process with stakeholder input from each industry segment").

The organizational and operational features that serve to distinguish ISOs and RTOs from more traditional transmission providers were acknowledged by the Commission in the NOPR (at P 2) and have been cited in other contexts to support different treatment of ISOs and RTOs. See, e.g., Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 626, III FERC Stats. & Regs. [Reg. Preambles] ¶ 31,216, at P 16 (2006) (recognizing that ISOs and RTOs conduct business in very different ways than traditional public utilities); Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. [Reg. Preambles 2001-2005] ¶ 31,146, at P 698, 701 (2003), order on reh'g, Order No. 2003-A, FERC Stats. & Regs. [Reg. Preambles 2001-2005] ¶ 31,160, at P 691 (2004) (finding that independent structure of an ISO or RTO provides no incentive to treat customers differently and acknowledging need for greater flexibility to permit ISOs and RTOs to propose customized interconnection procedures); Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, FERC Stats. & Regs. [Reg. Preambles 2001-2005] ¶ 31,180, at P 40, 447, order on reh'g, Order No. 2006-A, FERC Stats. & Regs. [Reg. Preambles 2001-2005] ¶ 31,196 (2005) (recognizing

the same need for flexibility for ISOs and RTOs). The same rationale should guide the Commission here. [15]

2. Because ISOs and RTOs Already Meet the Non-Discrimination, Transparency, and Planning Goals Set Forth in the Proposed Rules, the Commission Should Clarify that Any Compliance Filing Required of ISOs and RTOs Need Address Only New Pro Forma Requirements.

At P 100, the NOPR states that "[w]ith respect to an RTO or ISO, we recognize that such an entity may already have tariff terms and conditions that are superior to the pro forma OATT." However, the NOPR goes on to require RTO and ISO transmission providers to submit FPA section 206 compliance filings – a requirement that the IRC considers unnecessary and inappropriate, for the reasons described above.

Nonetheless, in the event that the Commission's final rule retains a compliance filing requirement for ISOs and RTOs, the Commission should, at a minimum, clarify that ISOs and RTOs need only address new tariff provisions prescribed by the final rule. The Commission should not require ISOs/RTOs to re-justify the multitude of specific provisions in their tariffs which have been developed through their respective governance

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[15] In adopting compliance filing procedures for ISOs and RTOs, the Commission must adhere to the burden requirements of FPA section 206. A substantial question exists as to whether the record in this proceeding provides a reliable basis to support revisiting previously approved ISO/RTO tariff provisions. The IRC submits that, consistent with the statutory framework of the FPA, the Commission should require any party seeking tariff modifications to demonstrate that a particular provision(s) of the ISO/RTO's existing tariff is unjust and unreasonable and that a proposed replacement provision is just and reasonable. See Florida Municipal Power Agency v. FERC, 315 F.3d 362, 365 (D.C. Cir. 2003) (stating that the substantial evidence standard requires more than a scintilla of evidence); Transmission Access Policy Study Group v. FERC, 225 F.3d 667, 688 (D.C. Cir. 2000) (stating that under section 5 of the Natural Gas Act ("NGA"), the parallel of section 206 of the FPA, the Commission cannot rely solely on "unsupported or abstract allegations").

and stakeholder processes, previously approved by the Commission, and which the Commission does not propose to modify in the NOPR.[16] The IRC believes its reading of the rulemaking comports with the Commission's intent, but respectfully requests this clarification in order to eliminate any potential ambiguity.

Similar clarification is requested with respect to the requirement of ISOs and RTOs to "submit filings under FPA section 205 proposing rates for the services provided for in their tariffs." NOPR at P 100. While the quoted directive suggests that ISOs/RTOs are not required to re-file or re-justify existing rates, but only revised rates deemed necessary as a result of the final rule, the IRC asks that the Commission specifically confirm this interpretation.

Finally, the IRC recognizes that the 90 day compliance filing deadline (NOPR at P 100) may present problems for some ISOs and RTOs due to stakeholder processes. Accordingly, the IRC asks that the Commission extend the compliance filing deadline to 120 days.

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[16] In any event, the Commission has not determined that existing ISO/RTO tariffs and the regional variations they reflect are unjust, unreasonable, unduly discriminatory or unduly preferential. See Nantahala Power & Light Co. v. FERC, 727 F.2d 1342 (4th Cir. 1984) (where the agency questions the justness and reasonableness of an existing rate authorization, it bears the burden of showing, by substantial record evidence, the illegality of the existing condition and the justness and reasonableness of any proposed remedy); see also AGA v. FERC, 428 F.3d 255, at 263 (D.C. Cir. 2005) (stating that when acting under section 5 of the Natural Gas Act ("NGA") the Commission must demonstrate by substantial evidence that an existing rate or tariff is unjust and unreasonable); and see FPC v. Sierra Pacific Power Co., 350 U.S. 348, 350-51 (1956) (recognizing section 206 of the FPA is "substantially identical" to section 5 of the NGA).

C. TRANSMISSION PLANNING – COORDINATED, OPEN AND TRANSPARENT PLANNING (NOPR V.B.)

1. Empirical Evidence Confirms that ISO/RTO Transmission Planning Processes Are Producing Needed Transmission Infrastructure.

The experiences of ISOs and RTOs in planning for and implementing system enhancements confirm that the existing transmission planning processes are functioning in the manner contemplated by the NOPR. ISO and RTO transmission planning procedures represent industry best practices and have resulted in substantial infrastructure expansions and upgrades over the past several years, including nearly $20 billion in actual or planned transmission investment over the past five years. See IRC NOI Comments at 23.

In responding to the Commission's NOI, the IRC provided specific examples of regional planning results of ISOs and RTOs. The Commission is respectfully referred to those comments. Among the more significant planning accomplishments are PJM's approval of over $4 billion in new transmission, which has contributed in holding PJM's congestion costs to between 7 and 9 percent of total electricity costs. The planning processes of the CAISO, ISO-NE, SPP, NYISO, and MISO have also produced similar positive results, with billions of dollars of new transmission infrastructure built or approved for construction. See id. at 22-24; Appendix A at 1-3.

In Appendix A hereto, the IRC provides additional empirical data demonstrating the effectiveness of ISO/RTO transmission planning procedures and how such procedures comply with the coordinated and regional planning principles outlined in the NOPR. As depicted in Appendix A, there are several common elements to the planning process that help promote competitive markets and reliable operations. For example, comprehensive

system planning within an ISO or RTO requires active engagement with stakeholders and the examination of all system drivers and potential solutions to identify the most efficient means to meet the needs of the region. In the process, ISOs and RTOs examine reliability requirements and transmission constraints, consider the effects of generation and demand response resources, and address other operational considerations. In contrast, there is no evidence in this proceeding supporting the Commission's assertion that ISO/RTO planning processes are not "sufficiently robust." NOPR at P 35. As explained above, the Commission based this assertion on comments that are, at best, vague and equivocal. See supra section II.B.1.

Additionally, most ISOs and RTOs use an internal process to coordinate system enhancements/upgrades with their transmission-owning members. These members assume responsibility for building transmission projects that enhance reliability and, in certain regions, are also obligated to build economic projects as well.[17] As new generation is added to the grid, corresponding transmission upgrades are being completed to meet load requirements. See Appendix A (detailing ongoing planning activities for individual ISOs and RTOs).

There are other compelling reasons for not disturbing the existing ISO/RTO planning processes. Investors may demand higher returns if they perceive that the planning process where a transmission project was approved may itself need new approval and certification by the Commission. The industry is at a critical juncture, with many new projects in development. Efforts to attract capital to fund these projects will

[17] The Alberta legislative framework and policies requires the AESO and the Alberta Energy and Utilities Board ("EUB") to look at reliability and economic aspects of transmission projects.

be severely undermined to the extent that the NOPR threatens to reopen and disrupt settled planning processes. In many ISOs and RTOs, resolution of planning issues, including contentious cost allocation and recovery issues, has entailed the commitment of significant time and resources.[18] The prospect of revisiting these issues creates the potential for further uncertainty and delay associated with the implementation of the proposed allocation in the midst of a fully functioning regional planning processes. Thus, while the IRC agrees with the Commission that successful development of new transmission infrastructure depends, in large part, on the adoption of equitable cost allocation and recovery principles, the IRC requests that the Commission not disturb pricing policies that have been developed and approved for use by ISOs and RTOs.[19]

Consideration of the other inquiries posed in the NOPR highlights additional planning distinctions between ISOs and RTOs and more traditional transmission providers. For example, the Commission invites comment on whether a specific study process – involving the participation of all interested/affected parties and non-discriminatory evaluation of resource options – should be adopted to identify opportunities for grid enhancements beyond those required for reliability or congestion management purposes. The IRC endorses long-range study processes, and reminds the Commission that within the ISO/RTO planning framework, procedures are already in place to provide for stakeholder participation, transparency, and independent evaluation

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[18] See Southwest Power Pool, Inc., 111 FERC ¶ 61,118 (2005) (resolving SPP's prolonged dispute over a regional transmission upgrade cost allocation plan); New England Power Pool and ISO New England Inc., 110 FERC ¶ 61,003 (2005) (accepting cost allocation procedures for New England).

[19] In Alberta and Ontario, approval of cost allocation and recovery is the responsibility of the provincial regulators.

of infrastructure needs. Thus, there is no need or justification for disrupting the existing planning constructs of functioning ISOs and RTOs. Appendix A provides specific examples of the success of these planning processes and a description of actual and planned upgrades and system enhancements within each of the existing ISOs and RTOs and also demonstrates how the ISO/RTO planning processes already meet the Commission's proposed planning principles.

D. CONSISTENCY AND TRANSPARENCY OF ATC CALCULATIONS (NOPR V.A.)

1. ISOs and RTOs Provide Transparent and Fair Access to Transmission Customers That Wish to Complete Transactions Within Their Organized Markets; Improvement is Needed in the Definition of ATC at Borders With Other Markets and Non-Market Transmission Owners.

The Commission raised a host of issues concerning the need for improved consistency in the calculation of ATC. According to the Commission, current OATT requirements permit too much discretion in this area, allowing opportunity for a transmission provider to discriminate to the potential "disadvantage of competitors and the market." NOPR at P 116.

The NOPR offers no evidence of real or potential discrimination within ISO/RTO regions with respect to the calculation of ATC. In fact, the Commission notes that the NOPR is not intended to "redesign approved, fully-functional RTO or ISO markets" and that "we would not expect our reforms to ATC to require changes to the way in which such RTOs or ISOs assess whether capacity for traditional network or point-to-point service is available within their footprints." NOPR at P 101. The IRC agrees with this approach as many ISOs/RTOs do not calculate ATC within their footprint because transmission service is not based on physical transmission reservations.

Nonetheless, the IRC notes that there is a need for more transparency and consistency in the determination of ATC at the borders between regions. In its NOPR, the Commission has indicated that it intends to pursue development of standardized ATC principles through the North America Electric Reliability Council ("NERC") and the North America Energy Standards Board ("NAESB"). The IRC asks that the Commission direct all parties to the Joint Memorandum of Understanding ("MOU")[20] — NERC, NAESB as well as the IRC — to participate in defining the consensus assumptions for use in any standardized methodology based on the following principles:

- First, there must be transparency in the process and procedures used to calculate ATC. This can be achieved by making such processes and procedures as well as all non-market sensitive data (excepting critical energy infrastructure information ("CEII")) publicly available for review and discussion. This obligation helps ensure that market participants will be able to verify ATC inputs, assumptions and calculations. Moreover, all process inputs must be consistent with the entity's own planning and operating criteria.

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[20] The Joint MOU, dated November 30, 2002 and filed in Docket No. RM01-12 on December 16, 2002, and later modified on May 15, 2003 to include the IRC, established the "Joint Interface Committee" ("JIC"). The JIC is staffed by representatives of NERC, NAESB, and the IRC. The objective of the JIC is to work to ensure that the development of wholesale electric business practices and reliability standards is harmonized and that every effort is made to minimize duplication of effort between NERC and NAESB. See "Comments of the North American Energy Standards Board on the Second Technical Conference," Docket No. RM05-30-000 (filed Dec. 22, 2005). The JIC would be an effective forum to ensure that practices regarding electric business standards, reliability standards, and wholesale markets are harmonized.

- Second, the goal should be a common 'methodology' for determining ATC. Methodology here refers to a general framework, not to specific procedures or calculations. Individual Control Areas may have different operating procedures to calculate ATC and different practices to comply with those ATC limits. The Commission should ensure that ATC determinations are transparent, consistent, and easily understandable. Most importantly, any approved standard methodology must allow for procedural differences resulting from regulatory-approved market operations such as those that the Commission has already approved, i.e., the MISO-PJM Joint Operating Agreement and MISO-SPP Joint Operating Agreement.[21]
- Where non-standard assumptions (e.g., use of single contingency by one entity and multiple contingencies by the other entity) preclude a common solution, then the most constraining limit should be recognized by both parties. The Commission has already approved such protocols on a case-by-case basis.[22]
- Finally, an effective process should be in place to permit FERC to address common facility issues, flow-gate disagreements and other contested matters on an expedited basis. Once an ATC dispute surfaces, the matter cannot be allowed to drag on without timely Commission intervention.

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[21] See supra note 3.

[22] Id.

E. OTHER ISSUES – PROPOSED TARIFF MODIFICATIONS

1. Tariff Inclusion of Rules, Standards and Practices (NOPR V.D.9.)

The IRC strongly supports the Commission's determination (NOPR at P 452) to not expand the OATT posting and filing requirements to include all rules, standards and practices of the transmission provider. As the Commission properly recognized, the case for more expansive postings and filings has not been made. The question of determining which rules, standards and practices must be posted, and which need not, poses practical problems that are not offset by any meaningful benefits. Accordingly, the Commission should adhere to the NOPR findings and not adopt any additional posting requirements as part of any final rule.

2. Penalties (NOPR V.C.4.)

The Commission properly recognized that there is no need or justification for imposing operational penalties on ISOs and RTOs for failing to meet 60-day due diligence deadlines for processing system impact and facilities studies, as prescribed in sections 19.3, 19.4, 32.3 and 32.4 of the pro forma OATT. See NOPR at P 384. This is because, as the Commission observed, independent ISOs and RTOs have no incentive to selectively neglect processing obligations.

The Commission did not expressly find that other operational penalties would apply to ISOs and RTOs. However, the Commission's stated rationale for imposing any operational penalty is the same – i.e., to curb potential discriminatory behavior. Thus, it is unclear whether or how financial penalties in this context would serve the Commission's goal given the Commission's finding that ISOs and RTOs have no incentive to engage in discriminatory behavior.

3. FERC Form 715 (NOPR V.B.)

Furthermore, the IRC believes the data provided in FERC Form 715 are generally inadequate to conduct all necessary planning studies. See NOPR at P 214. For example, FERC Form 715 does not contain data needed to conduct stability, short circuit, other transmission studies, resource adequacy studies, and economic evaluation analysis. That being said, the IRC strongly urges the Commission not to attempt to develop "standardized forms" for these and other types of data. Such standardization will either be insufficient, especially with the incorporation of new technologies, such as Flexible AC Transmission System ("FACTS") controllers, or become overly burdensome to some stakeholders resulting in a decrease in the quality of the most vital data that may be necessary for a particular study. Instead, the ISO/RTO procedure of posting business practices or reports outlining planning assumptions and practices, and making models and data available subject to CEII and confidentiality requirements presents a best practice that should be maintained.

4. Other NOPR Provisions (NOPR V.D.)

A host of other NOPR provisions and proposed reforms have little, if any, relevance to organized ISO/RTO markets. As the IRC indicated in its NOI comments (and as further developed in the individual NOI and NOPR comments filed by IRC members), most ISOs and RTOs offer services that are superior to those contemplated in the proposed OATT revisions.[23] Thus, in established ISO and RTO markets, issues

[23] See IRC NOI Comments at 9-16. IRC members who have yet to implement bulk power markets have not yet fully considered or resolved issues concerning congestion management and/or embedded cost recovery. These issues will be addressed as these entities transition to day-ahead and real-time markets.

concerning, e.g., tariff compliance review, reservation priority and curtailment, obligations to expand, resource load designations, hourly firm transmission service, redirects and rollover rights have either been fully addressed in the ISO's or RTO's tariff, or overtaken by market mechanisms and structural changes within the ISO or RTO. The Commission should take these market developments into account in any final rule.

III. CONCLUSION

For the reasons set forth above, the IRC requests that the Commission consider the foregoing comments in the development of any final rule in this proceeding.

Respectfully submitted,

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APPENDIX A

APPENDIX A TO IRC COMMENTS

I. TRANSMISSION PLANNING PROCESS

Most IRC members have developed coordinated, independent, and transparent processes to address transmission planning requirements. These open, non-discriminatory processes represent industry best practices that have been examined by the Commission and found to be just and reasonable.[1]

In previous comments, the IRC has already shown that the ISO/RTO transmission planning processes have worked, and continue to work, to meet the Commission's policy goals of facilitating transmission infrastructure development. For example,

- Between 1999 and 2004, PJM approved more than $1 billion in new transmission investment.
- Since 1998, CAISO has approved $3.32 billion in grid expansion projects.
- In 2005, MISO identified 615 planned or proposed transmission facility additions and enhancements representing about $2.9 billion in transmission investment through 2009.

See IRC NOI Comments at 22-23. The IRC provides the following additional examples as further evidence of how the ISO/RTOs' planning processes have resulted in the development of new transmission investment.

Alberta Electric System Operator

The AESO prepares a 10-year transmission plan and a 20-year outlook. The 20-year outlook document is intended to create a foundation for future transmission system development for the industry and is filed with the provincial regulator, the EUB, for information and use in assessing future transmission project need applications. It also sets the context for the more specific 10-year transmission plan, sets the stage for shorter term actions to be taken to facilitate provision of transmission in the longer term, facilitates generation development, meets future load growth requirements reliably, identifies

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[1] See, e.g., PJM Interconnection, L.L.C. et al., 96 FERC ¶ 61,061, at 61,240 (2001) (approving PJM's planning process); Midwest Indep. Transmission Sys. Operator, Inc., 97 FERC ¶ 61,326, at 62,520 (2001) (approving MISO's planning process); ISO New England, Inc. et al., 106 FERC ¶ 61,280, at 210, order on reh'g, 109 FERC ¶ 61,147, at 61,593 (2004) (approving RTO-NE's planning process); Southwest Power Pool, Inc., 108 FERC ¶ 61,003, at 115, 117 (2004), order on reh'g, 110 FERC ¶ 61,138, at 30 (2005) (approving SPP's planning process); New York Indep. System Operator, Inc., 109 FERC ¶ 61,372 (2004), order on reh'g, 111 FERC ¶ 61,182 (2005) (approving NYISO's planning process).

potential alternative transmission system developments to account for the uncertainty of generation development, and facilitates merchant or independent developments to neighboring jurisdictions.

The Edmonton to Calgary 500 kV project represents a total estimated cost of $450 million (Cdn.). In addition, other approved projects that will reinforce the transmission system in Alberta represent $185 million (Cdn.) in investment, with an additional $300 million (Cdn.) before the Alberta regulator for approval.

California Independent System Operator Corporation

From 2000 through 2004, the California ISO's planning process authorized 237 transmission project upgrades representing $2.4 billion of infrastructure investment of which $1.8 billion in transmission projects were ultimately completed. In addition, over 10,000 MW of new generation projects and 2,500 MW of demand response were added in California during the same time period.

ISO-New England, Inc.

Since 2002, the system planning process in New England has resulted in approximately $430 million in new transmission built and placed in service. In addition, over 9,700 MW of new generation has been interconnected to the regional system. New England's 2005 Regional System Plan authorized approximately $3.0 billion for 272 transmission projects in New England over the next ten years.

Midwest Independent Transmission System Operator, Inc.

Since the start of operations in 2002, the Midwest ISO's planning process has identified $4.3 billion in transmission projects, including more than 390 transmission projects primarily for reliability purposes. By the end of 2004, over $400 million of these planned and proposed projects had been completed. During this same period, the Midwest ISO interconnected 6,400 MW of new generation involving $81 million of new network upgrades. The Midwest ISO also expects to expand its system with 5,123 miles of transmission line upgrades projected through 2009.

New York Independent System Operator, Inc.

The NYISO's Comprehensive Reliability Planning Process ("CRPP") evaluates the reliability needs of the New York bulk power system, and solicits and analyzes transmission, generation and other resource solutions to those needs over a ten-year study period. The New York ISO's planning process has reviewed or has under review several major transmission projects to maintain system reliability which will come on line between now and 2007 representing approximately $1.5 billion in new transmission investment. The New York ISO has also reviewed and approved over 10,000 MW of new generation of which more than 4,500 MW is in service or is under construction. In addition, the New York ISO's interconnection queue has over 5,000 MW of wind generation under review. Finally, the New York ISO has reviewed and approved two

merchant transmission projects: the Cross Sound Cable which is in service and the Neptune Project which is currently under construction.

PJM Interconnection, L.L.C.

From 2000 through June, 2006, PJM's planning process authorized over $4 billion in transmission upgrades of which $547 million has been completed. The completed transmission upgrades accommodated the interconnection of over 18,000 MW of now in-service generating resources representing over 140 projects and will accommodate another 3,700 MW of generation presently under construction. PJM's planned transmission system upgrades also include over $3 billion for baseline reliability to serve growing load.

Southwest Power Pool, Inc.

Since 2001, SPP planning has worked with stakeholders to implement over $300 million in transmission expansion projects. In April 2005, the SPP Board of Directors approved the SPP RTO Expansion Plan which included $552 million of projects through 2010 which were the least cost solutions to address reliability needs. In 2005, SPP members completed numerous transmission expansion projects which represented a total investment in excess of $140 million. In addition to reliability projects, SPP members are sponsoring economic/requested upgrades in 2006 to improve system efficiencies. Base Plan Upgrades are being implemented in SPP and cost allocations are being assigned per the provisions of the SPP OATT. SPP is developing a 2006-2016 Expansion Plan which will include significant projects to maintain reliability standards. Long-range expansion opportunities are being evaluated with stakeholder groups for over 30 economic projects, including 765kV alternatives. SPP evaluates transmission service requests using an aggregate study process. SPP has recently completed a facilities study that included 15 requests for 1295 MW of new transmission service and 34 projects which amount to almost $246 million which would be required to maintain reliability. Since 1998, SPP has completed hundreds of generation interconnection studies for almost 50,000 MW of capacity.

II. TRANSMISSION PLANNING PRINCIPLES

In the NOPR, the Commission proposes to require public utility transmission providers to comply with eight identified transmission planning principles. See NOPR at P 214. The IRC fully supports these planning principles and, as shown below, the ISOs and RTOs already meet or exceed all of them.

Principle 1: Coordination

ISO/RTO tariff requirements and procedures for transmission planning provide for formal and informal participation of stakeholders, including market participants, transmission owners, public power, representatives of governmental agencies (such as state regulators), consumer groups, environmental entities, consultants, and other interested parties. Stakeholder participation is achieved through regularly scheduled and

noticed stakeholder advisory committee meetings and planning meetings that are generally held on at least a quarterly basis in order to provide information exchange. Through these meetings, stakeholders provide valuable input in the planning process on the scope of work, draft results, and critiques of final plans that are ultimately subject to ISO/RTO approval. In addition, planning coordination agreements and joint operating agreements provide protocols for information exchange with neighboring system operators to assist in the development of a coordinated transmission plan.

Principle 2: Openness

Forums and information related to the ISO/RTO transmission planning process (i.e. criteria, assumptions, and data) are open to the public subject to Order No. 889's information policy and critical energy infrastructure information ("CEII") concerns (e.g. maps may be posted on password protected sites, etc.). For example, ISO/RTO planning reports are posted on public web sites, or otherwise made available with appropriate non-disclosure requirements where necessary to protect confidentiality or security concerns. As the administrators of the wholesale electric markets within their respective regions, ISOs and RTOs are obligated by their tariffs to maintain competitive intelligence as confidential, such as outage rates of individual generating units.

Principle 3: Transparency

ISOs and RTOs disclose their transmission system plans through planning business practices and/or reports that are well documented and available to all stakeholders. These practices include details as to applicable planning criteria, model development practices and assumptions, generation dispatch assumptions and equipment ratings.

Principle 4: Information Exchange

ISO/RTO tariffs and planning procedures require transmission owners, generators, and customers to provide timely and accurate data necessary for the ISO/RTOs' efficient transmission planning. In addition, ISO/RTO tariffs prescribe interconnection and transmission service planning studies to be made available for review and comment and thoroughly vetted with stakeholders before being finalized and adopted by the ISOs and RTOs.

Principle 5: Comparability

As independent entities, ISOs and RTOs have no incentive to engage in anti-competitive or discriminatory practices that could unfairly favor a particular class or type of transmission customer. Instead, the ISOs and RTOs open planning processes result in fully coordinated, economical, and reliable plans that fully comply with tariff requirements to offer comparable service for all transmission customers.

Principle 6: Dispute Resolution

ISO/RTO tariffs and forming agreements have established and FERC-approved dispute resolution procedures.[2]

Principle 7: Regional Participation

The Commission-approved scope and configuration of ISO/RTO footprints ensure a high level of integrated system planning across multiple individual transmission systems. In the IRC's view, this level of planning integration is not achievable in alternatives such as Regional Reliability Organizations (RRO), or mere agreements between smaller interconnected systems to exchange plans. For example, unlike ISOs and RTOs, RROs do not have as a part of their institutional agreements the mandates or authority to ensure adequate system expansion on a coordinated basis. In addition, RRO activities of periodically assessing system performance and levying fines for non-compliance are not comparable to ISO/RTO authority to require members to invest in needed expansions.

In conjunction with the regionally coordinated planning that takes place within each ISO/RTO footprint, ISOs and RTOs also coordinate their regional planning. ISOs and RTOs have agreements and protocols (as shown in the IRPC Planning Report) that promote proactive coordinated planning with other ISOs and RTOs as well as with non-ISO/RTO regions. These activities include sharing of data, scopes of work, and draft results. Planned projects between ISO/RTO areas are subject to a joint review process, including open stakeholder participation and review and require each ISO/RTOs' certification of final results.

Principle 8: Congestion Studies

ISOs and RTOs regularly issue market reports and other summaries of historical congestion. These reports identify frequently constrained areas and may also include measures taken to relieve the congestion when appropriate, such as uplift, reliability must run ("RMR") services, etc. ISO/RTO regional plans identify congestion by reporting where there is generation redispatch for binding constraints, repeated denials of service requests, zero ATC, and frequent curtailments. Generally, congestion is managed through market mechanisms and/or redispatch. System improvements necessary for reliability have also frequently addressed many congestion issues. In addition, some ISOs and RTOs have mechanisms in place to develop upgrades justified by economic considerations, including reduction of congestion. Moreover, interregional studies are conducted to address significant congestion issues with other transmission systems.

[2] In Alberta, the dispute resolution procedures are included in the AESO Tariff approved by the EUB. The EUB may also address complaints from market participants.

Submission Contents