

November 15, 2002

Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Remediating Undue Discrimination through Open Access Transmission Service
and Standard Electricity Market Design
Docket No. RM01-12-000

Joint Comments Urging Withdrawal of Standard Market Design NOPR

Dear Secretary Salas:

On behalf of more than 200 officials and entities that include public utility commissioners, attorneys general, local elected officials, consumer advocates, public utilities, municipalities unions and businesses, we are submitting the attached comments to the Federal Energy Regulatory Commission (FERC) on its proposed rules for standard market design.

For purposes of the required Executive Summary: these comments recommend that FERC withdraw its proposed rules on the following grounds:

- The rules constitute an over-reaching of FERC authority into retail responsibilities now executed by the states.
- FERC bases its rules on the unjustifiable finding that a vertically-integrated utility that gives priority to its own customers engages in undue discrimination.

We hope you take these comments into account when making decisions on standard market design in the coming weeks.

Sincerely,



Marilyn Showalter, Chairwoman
Washington Utilities and
Transportation Commission



James Y. Kerr, Commissioner
North Carolina Utilities Commission

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Remedying Undue Discrimination through)
Open Access Transmission Service and) Docket No. RM01-12-000
Standard Electricity Market Design)

JOINT COMMENTS URGING WITHDRAWAL OF PROPOSED RULES

The undersigned officials and entities offer the following Joint Comments urging the Federal Energy Regulatory Commission (Commission) to withdraw its Standard Market Design Notice of Proposed Rulemaking, issued July 31, 2002.

All notices, comments and other correspondence should be sent to the following:

Marilyn Showalter, Chairwoman
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, Washington 98504

James Y. Kerr, Commissioner
North Carolina Utilities Commission
430 North Salisbury Street
Raleigh, North Carolina 27603

Robert D. Cedarbaum
Assistant Attorney General
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Olympia, Washington 98504

**JOINT COMMENTS URGING WITHDRAWAL OF FERC'S
PROPOSED RULES ON STANDARD MARKET DESIGN**

1 In meeting its obligation under the Federal Power Act, the Federal Energy Regulatory Commission fulfills a role that is critically important for electricity consumers. But the Commission's role -- to ensure just and reasonable wholesale power and transmission rates -- is neither isolated from, nor superior to, the role that states must play to ensure fair and reliable *retail* service. Consumers will not be well served if the roles of the Commission and the states are confrontational. Our respective roles must be complementary. Unfortunately, in its proposed rules for a standard market design, the Commission has chosen to over-reach the authority that Congress has delegated to it, based on the Commission's unsupported "finding" that a vertically integrated utility that gives priority to its own customers engages in "undue" discrimination.

2 The most profound aspect of the Commission's proposal is its assertion of Commission jurisdiction over major elements of retail electricity service. It amounts to a transfer of authority to the Commission and a loss of control by the states over, among other things, demand forecasting, resource planning, demand-side management and marketing, and the ability to ensure that transmission is available to meet retail service obligations. The result is not only a confrontation with state law and usurpation of state ability to protect consumers at the retail level, but also immense investment uncertainty--at a time when the merchant plant industry is in crisis, and when utilities must be able to plan for and recover the costs of meeting retail needs.

3 Jurisdiction is profoundly important because it determines *who gets to decide* retail electricity policy. If the Commission is “successful” in intruding into retail jurisdiction, it will have pre-empted the rights of the elected members of the legislatures and other state constitutional bodies in all of the 48 lower states to determine appropriate retail policy. State legislatures will have lost the ability to ensure that their citizens and businesses are served by a retail system that provides adequate, reliable, and affordable electricity. Meanwhile, whatever rules the Commission adopts are just the rules of the day. With its on-going authority, the Commission can be expected to modify the rules over time. ***This is why the debate over the proposed operational rules—troubling as they may be—pales in importance to the debate over who will have the right to impose them, and to modify them over time.***

4 The Commission’s unprecedented and unjustified move has engendered enormous controversy, expended considerable political capital, and eroded the respect and trust the Commission needs if it is to oversee effectively a rapidly changing wholesale electric industry. The Commission proposes to supplant state policies that protect retail consumers with new and untried institutions and rules, implementing a new and untested market theory. In the name of transforming the wholesale industry, the Commission would dis-integrate our retail system, turning our joint state-federal regulatory structure on its head. By subordinating the retail system to the perceived needs of the wholesale system, the Commission has lost

sight of those who should be the ultimate beneficiaries: *end-use consumers*--not generators who have no public service obligation and whose interests are solely commercial. A wholesale market "solution" that cripples the well-founded retail policies chosen by the elected representatives of a majority of states is not a solution at all.

5 There may well be problems to solve and improvements to be made both in federal regulation of wholesale services and in state regulation of retail services. We are confident that these problems, once clearly identified, can be constructively addressed and that evidence-based solutions can be found. For example, over the past two years the states and other parties have expended thousands of hours and millions of dollars on the task of proposing regional transmission organizations (RTOs). All of us face near-term decisions on the wisdom of using regional transmission organizations to ensure equitable access to transmission. We are convinced that consumers will benefit if both the Commission and the states focus on identifying and solving *real* problems, whether through RTOs or other means. But the Commission's unprecedented and aggressive jurisdictional reach, which shifts the ground rules and undermines trust at many levels, disrupts useful aspects of the RTO process and the ability to make informed decisions.

We urge the Commission to recognize the limits of its own reach and respect the partnership it must forge with the states, and to:

- Withdraw the proposed rulemaking.
- Refrain from asserting jurisdiction over the transmission component of bundled retail sales.
- Refrain from asserting jurisdiction over power supply planning functions.
- Refrain from asserting jurisdiction over demand-response functions.
- Refrain from mandating the transfer of transmission operations from vertically integrated utilities to independent transmission providers.
- Refrain from imposing highly-complex and untested market mechanisms across the whole nation.
- Focus on improving the wholesale electricity market through better monitoring and better enforcement.
- Return to voluntary regional transmission system discussions.
- On a regional, cooperative basis, identify real (not theoretical) problems and fashion evidence-based, practical solutions.
- Before implementing any new programs or market designs, subject them to a rigorous cost-benefit-risk analysis that measures net benefits to end-use consumers.

JOINT COMMENTERS

ALABAMA

Alabama Public Service Commission
Jim Sullivan, President
Jan Cook, Commissioner
George Wallace, Commissioner

ARKANSAS

Arkansas Public Service Commission
Betty Dickey, Commissioner
Sandra Hochstetter, Chair

CALIFORNIA

California Public Utilities Commission
Loretta Lynch, Chair
Carl Wood, Commissioner
Geoffrey F. Brown, Commissioner

The Utility Reform Network
Nettie Hoge, Executive Director

COLORADO

Colorado Office of Consumer Counsel
Ken Reif, Director

GEORGIA

Georgia Public Service Commission
Lauren "Bubba" McDonald, Chair

IDAHO

Idaho Public Utilities Commission
Paul Kjellander, President
Dennis Hansen, Commissioner

KANSAS

Kansas Corporation Commission
Brian Moline, Commissioner

KENTUCKY

Kentucky Public Service Commission
Martin Huelsmann, Chair

LOUISIANA

Louisiana Public Service Commission
Jay Blossman, Chair
Irma Muse Dixon, Commissioner
Jimmy Field, Commissioner
Don Owen, Vice Chair
Dale Sittig, Commissioner

MISSISSIPPI

Mississippi Public Service Commission
Michael Callahan, Chair
Nielsen Cochran, Commissioner
Dorlos "Bo" Robinson,
Commissioner

NEBRASKA

Nebraska Public Service Commission
Anne C. Boyle, Chair
Lowell C. Johnson, Commissioner

NEVADA

Attorney General of Nevada
Frankie Sue Del Papa

Nevada Public Utilities Commission
Don Soderberg, Chair

NEW MEXICO

New Mexico Attorney General
Patricia Madrid

New Mexico Public Regulation Commission
Herb Hughes, Vice Chair
Lynda Lovejoy, Chair
Rory McMinn, Commissioner
Tony Schaefer, Commissioner

NEW HAMPSHIRE

New Hampshire Public Utilities
Commission
Nancy Brockway, Commissioner

New Hampshire Office of Consumer
Advocate

Michael W. Holmes, Consumer
Advocate

NORTH CAROLINA

North Carolina Utilities Commission

Jo Anne Sanford, Chair
Jim Kerr, Commissioner
J. Richard Conder, Commissioner
Robert V. Owens, Jr.,
Commissioner
Sam J. Ervin, IV, Commissioner
Lorinzo L. Joyner, Commissioner
Michael S. Wilkins, Commissioner

NEW YORK

Public Utility Law Project of New York
Gerald Norlander, Executive
Director

OREGON

Oregon Public Utilities Commission
Joan Smith, Commissioner

Public Power Council
Jerry Leone, Manager

SOUTH CAROLINA

South Carolina Public Service Commission
Buddy Atkins, Commissioner
H. Clay Carruth, Jr., Commissioner
Mignon L. Clyburn, Chair
Randy Mitchell, Commissioner
Bob Moseley, Commissioner
William "Bill" Saunders,
Commissioner
Nick Theodore, Commissioner

SOUTH DAKOTA

South Dakota Public Utilities Commission
Jim Burg, Chair
Pam Nelson, Commissioner

TENNESSEE

Tennessee Regulatory Authority
Sara Kyle, Chair
Pat Miller, Director
Deborah Taylor Tate, Director

UTAH

Utah Committee of Consumer Services

NATIONAL

Utility Workers Union of America
Donald E. Wightman, President

National Consumer Law Center on behalf of
its low-income clients
Charles Harak, Staff Attorney

WASHINGTON

Washington Attorney General
Christine Gregoire

Washington Public Utilities District
Association
Steve Johnson, Executive Director

Washington Utilities and Transportation
Commission
Dick Hemstad, Commissioner
Pat Oshie, Commissioner
Marilyn Showalter, Chair

Seattle City Light
Gary Zarker, Superintendent

Tacoma Public Utilities
Mark Crisson, Chief Executive
Officer

Northwest Power Works
Don Godard, Co-chair
Steve Loveland, Co-chair

Endorsers include:

City of Aberdeen
AgriNorthwest
Alder Mutual Light Company

Atlas, Chehalis Plant-Quali-Cost
Benton City Economic
Development Committee
Cathlamet Kiwanis
Central Grange #360
City of Cheney
Clark County Commission
C.M. Holtzinger Fruit Co.
Columbia Colstor Inc.
Columbia River Carbonates
City of Cosmopolis
Cowlitz-Wahkiakum Council of
Governments
DeGoede Bulb Farms, Inc.
Desert Hills Fruit
Town of Eatonville
Echo Bay Minerals
Economic Development Council of
Mason County
City of Ellensburg
Elmhurst Mutual Power and Light
Company
Emerald People's Utility District
Emerald Shores Homeowners'
Association
Ferry County Chamber of
Commerce
Ferry County Board of
Commissioners
Ferry County Fair Association
Ferry County Hospital District #1
City of Forest Grove
Grayland Cranberry Association
Grays Harbor Chamber of
Commerce
Grays Harbor County Commission
Grays Harbor Economic
Development Council
Grays Harbor Public Development
Authority
Grays River Grange
Harney Electric Cooperative
Harstine Island Community Club
City of Hoquiam
IBEW Local 77
IBEW Local 125

IBEW Local 280
IBEW Local 483
IBEW Local 659
City of Kennewick
Kennewick Red Apple Market
Kootenai Electric Cooperative
Lakeview Light & Power
Lampson International, LLC
Lane County Pamona Grange
Lewis County Board of
Commissioners
Mason County Board of
Commissioners
Mason County Economic
Development Council
Mason County Republican Central
Committee
City of McCleary
Mercer Ranch
Mid State Cooperative
City of Milton
City of Milton-Freewater
Montesano Chamber of Commerce
Nespelem Valley Electric Company
North Mason County Chamber of
Commerce
North Mason Kiwanis Club
North Mason Lions Club
Ohop Grange
Ohop Mutual Light Company
City of Omak
Oregon AFL-CIO
Oregon Municipal Electric Utilities:
City of Ashland
City of Bandon
City of Cascade Locks
City of Drain
City of Forest Grove
City of Hermiston
City of McMinnville
City of Milton-Freewater
City of Monmouth
Oregon Trail Electric Cooperative
Pacific Council of Governments
Pacific County Board of County

Commissioners
Pacific County Economic
Development Council
Parkland Light and Water Company
Pasco Chamber of Commerce
City of Pateros
Peninsula Light Company
Pierce County Cooperative Power
Association
Port of Grays Harbor
Port of Wahkiakum No. 2
Prosser Economic Development
Association
Raymond Chamber of Commerce
Raymond Kiwanis
City of Republic
Republic Business & Professional
Women
Republic Area Chamber of
Commerce
Republic Kiwanis
City of Richland
Salem Electric
San Poil Grange
Sandpiper Farms
Seattle City Light
City of Shelton
Shelton-Mason Chamber of
Commerce
City of South Bend
South Bend Kiwanis
South Pierce County Fire & Rescue,
PCFD #15
Springfield Chamber of Commerce
Springfield Utility Board
Sunheaven Farms
Surprise Valley Electrification
Corporation
Tabafor Mill, Inc.
Tacoma Power
Tilamook PUD
Tri-City Chamber of Commerce
TRIDEC (Tri-City Industrial
Development Council)
City of Vancouver, WA
WaferTech

Wahkiakum Chamber of Commerce
Wahkiakum County Board of
Commissioners
Washington Fruit and Produce
Washington Public Utilities District
Association:
Asotin County PUD
Benton County PUD
Chelan County PUD
Clallam County PUD
Clark Public Utilities
Cowlitz County PUD
Douglas County PUD
Ferry County PUD
Franklin County PUD
Grant County PUD
Grays Harbor County PUD
Jefferson County PUD
Kitsap County PUD
Kittitas County PUD
Klickitat County PUD
Lewis County PUD
Mason County PUD No. 1
Mason County PUD No. 3
Okanogan County PUD
Pacific County PUD
Pend Oreille County PUD
Skagit County PUD
Skamania County PUD
Snohomish County PUD
Stevens County PUD
Thurston County PUD
Wahkiakum County PUD
Whatcom County PUD
Energy Northwest
Washington State Grange
Washington State Labor Council,
AFL-CIO
City of Washougal
City of Westport
Westside Waterworks
Willapa Valley School District