

SUMMARY OF SMD COMMENTS RE LIABILITY LIMITATION

<u>Commenter</u>	<u>Supports Liability Limitation</u>			<u>Opposes Liability Limitation</u>	<u>CRR Shortfall</u>	<u>Other/ Comments</u>
	<u>Full Limitation</u>	<u>Modified Limitation</u>	<u>Entities Covered</u>			
Allegheny Energy Allegheny Power	Liability should be limited to cases of gross negligence (does not specify type of damages)		TOs, ITPs Generators			
Ameren Corp.					CRR shortfalls should be assigned to CRR holders.	
American Electric Power	Supports provisions limiting liability. Will offer detailed recommendations after the technical conference					
American Transmission Company		<ul style="list-style-type: none"> •Proposes \$ cap on liability for direct damages for negligence •No consequential damages under any circumstances 	TOs ITPs		TOs should not be responsible for CRR shortfalls	
Coalition of Midwest Transmission Customers, and NEPOOL, PJM, CT, PA, OH and WV Industrials					Outage related congestion costs should be allocated to TOs	
Cinergy Services	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances 		TOs ITPs			Provision should be uniform with some allowance for regional variations that seek superior provisions.

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	<ul style="list-style-type: none"> •No liability for damages resulting from 3d party operation, electric system design common to industry, or good faith attempts to comply with ITP 					
City of Santa Clara, CA				Liability provisions should remain a negotiated element of a bilateral contract and should not be included in the SMD Tariff.		
CMS Energy	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No Consequential damages under any circumstances 		TOs ITPs		TOs should be assigned shortfalls and surpluses.	Liability Provisions should not alter existing agreements.
Constellation Energy Group		Liability should be limited to negligence by TO in fulfilling obligations directed by ITP	TOs ITPs			
Continental Cooperative Services					TOs should not be assigned CRR excess revenues or deficiencies.	

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Duke Energy Corp		There should be a cap on direct damages for negligence (no specific cap proposal). <i>Specific Language Proposed</i>	TOs. ITPs generators only to the extent that entities are subject to instruction of ITP		Shortfalls and surpluses should be borne by CRR holders.	<ul style="list-style-type: none"> •Liability provision should not alter existing agreements. •Provision should be uniform through out the country.
Edison Electric Institute	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances 		TOs ITCs ITPs			There should be a single liability standard.
Empire District Electric		<ul style="list-style-type: none"> •FERC mechanism should impose no additional potential liability on utilities. •Liability issues must follow the state PUC's prior precedents. •There should be no resulting conflicts with state law. 				
Exelon Corp and Sthe Energies	The SMD Tariff should contain indemnification language similar to language common in retail tariffs.				Opposes shortfalls to TOs, instead CRRs should not be fully funded	

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Florida Power & Light	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances 			<ul style="list-style-type: none"> • 		Liability provision should be generic to avoid discriminating against similarly situated transmission providers and to avoid forum shopping
Illinois Commerce Commission				<ul style="list-style-type: none"> •Liability limitation provisions should remain a matter of state law •Some transmission - owning members of RTOs continue to be state regulated and have only transferred functional operation of the facilities and service is thus not “unbundled” from distribution. 		
Industrial Customers of Northwest Utilities				<ul style="list-style-type: none"> •Liability limitation provision would protect utilities from their own errors and would provide some with greater protection than they have now. •Commission should continue to rely on provisions in state law. 		

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ISO New England	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances •Provisions in the ISO NE Interim ISO Agreement provide an appropriate national model (<i>Specific language proposed</i>). 				Opposes shortfalls to TOs	Commission should address the issue of contributory negligence by TOs.
Kansas City Power & Light	Tariff should include protection from claims arising from interruptions or irregularities in service caused by negligence.				Opposes fully funding CRRs and collecting deficits from TOs.	Provision should be generic to ensure consistency in the multi-state context.
MidAmerican Energy		<ul style="list-style-type: none"> •Recovery should be limited to direct damages except in cases of gross negligence •Endorses comments of EEI 	TO ITP			
Midwest ISO TOs		Supports the provision proposed by ATC and the Midwest ISO in Docket No. ER02-2033	TOs ITPs		CRR shortfalls should not be assigned to TOs	Liabilities associates with energy markets should fall on those that benefit from the markets
Midwest ISO		Supports provisions sought in Docket No. ER02-2033	TOs ITPs			

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Mirant Americas		Some liability limitation might be necessary. There should be no limits on recovery of direct damages			CRR shortfalls should be assigned to TOs.	
Missouri Public Service Commission					Commission should not assign CRR shortfalls to TOs and instead should undertake a separate rule-making on PBR.	
National Grid		<ul style="list-style-type: none"> • There should only be liability for direct damages for negligence • No liability for damages resulting from electric system design common to the industry or good faith attempts to comply with RTO directives. 	TOs ITPs ITCs			
National Rural Electric Coop. Assn.					Surpluses and deficits in CRR revenues should be allocated to CRR holders.	

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Nevada Power and Sierra Pacific Power	<ul style="list-style-type: none"> •Liability protection should be included in the tariff •Commission must allow companies to write contracts that limit consequential damages 				CRR Revenue deficits should not be assigned to the TOs	
New York ISO	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances <i>(Specific language proposed)</i> 				Supports assignment of shortfalls to TOs	
New York TOs	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances 		TOs ITPs			Liability limitation should also apply to all forms of market administration not just the new pro forma tariff.
NiSource	<ul style="list-style-type: none"> •ITP should be indemnified for negligent acts that occur in the provision of transmission service. (Did not address liability specifically) •ECAR's Inadvertent Settlement Tariff contains provision limiting liability for consequential damages. 					

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North American RTOs and ISOs (CAISO, IMO, ISO-NE, MISO, NYISO, PJM, SPP)	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances 					
Northeast Utilities					CRRs should not be funded by TOs. Shortfalls should reduce the revenues to CRR holders.	
Oklahoma Gas & Electric	Supports EEI's position on liability issue.		TOs ITPs			

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Pacific Northwest Utilities (Avista, BPA, Idaho Power, PacifiCorp, Puget Sound, BC Hydro)		<ul style="list-style-type: none"> •Commission should adopt MISO proposal or the RTO West proposal, which includes liability provisions associated with outage and power-quality events, contact claims and wrongful dispatch. •Specific language limits application to instances in which damage is caused by an electric disturbance resulting in an interruption or deficiency of service. •Cap on recovery of direct damages should be .0025 of the TO's rev. req. 	TOs ITPs generator owner or operator, load facility owner or operator, scheduling coordinator power marketer, broker aggregator or other agent.			Provisions must be region-wide and uniform. Provision is particularly critical because BPA has protections under the Federal Tort Claims Act.
PG&E	<ul style="list-style-type: none"> •Supports the inclusion of a liability limitation provision in the pro forma SMD Tariff. •Will provide detailed comments on Jan. 10. 		ITPs			

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PJM Interconnection	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances (similar protection provided in the PJM Operating Agreement) •No liability for damages resulting from electric system design common to the industry 					
PJM TO Group	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances 		TOs ITPs			
Portland General Elec.	Provisions should be similar to those provided under state and gas pipeline tariffs		TO ITP			Provisions must be region-wide and uniform
PSEG Companies	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances 		TOs ITPs		Opposes assigning shortfalls to TOs.	
Reedy Creek Improvement District	Commission should not expose state political subdivisions to greater liability than state law prescribes.					

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Southern Company		<ul style="list-style-type: none"> • Liability for direct damages should be subject to a cap that provides an incentive for the TP to act prudently while not threatening the financial viability of the TP • No liability for actions taken pursuant to directions of ITP 	TOs ITPs		Opposes TO funding of CRR shortfalls. Shortfalls and surpluses should be assigned to CRR holders	
Trans-Elect					TOs should not be responsible for CRR shortfalls. ITP should be responsible for shortfalls.	
TRANSLink	<ul style="list-style-type: none"> • Liability should be limited to direct damages for gross negligence or willful misconduct • No consequential damages under any circumstances 		TOs			There should be a single federal rule on liability limitation.
Transmission Agency of No. Calif (TANC)				SMD should not include liability provisions. Supports a technical conference to explore the issue.		

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Transmission Dependent Utility Systems		Current indemnification provision should stay in the tariff. TP should not be indemnified from damages caused by its negligence (did not address liability specifically).				
TXU Operating Companies	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances (unless it is shown that the TO has not made reasonable provision to supply steady and continuous delivery service) •No liability resulting from electric system design common to the industry. •In the event of failure to make reasonable provision, liability limited to cost of necessary repairs or physical damage. <p><i>Specific language proposed)</i></p>		TOs		TOs should not be held responsible for CRR shortfalls.	

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WestConnect RTO	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances 					<ul style="list-style-type: none"> •Tariff should also provide indemnification for gross negligence •Liability limitation provisions in the Transmission Control Agreement should be maintained (WestConnect assumes no liabilities prior to operation date and TOs assume no liability from WestConnect’s exercise of functional authority)
Williams Energy Marketing					CRR revenue surpluses should be held in an interest bearing account and released to TOs only upon successful completion of upgrades.	

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WPS Resources	<ul style="list-style-type: none"> •Liability should be limited to direct damages for gross negligence or willful misconduct •No consequential damages under any circumstances 		TOs ITPs			