

Overview of TOA and SARA
FERC SMD Technical Conference
Atlanta, Georgia
June 5, 2003

Bill DeGrandis
Paul, Hastings, Janofsky & Walker LLP
Washington, DC

Gerry Clark
Skadden, Arps, Slate, Meagher & Flom LLP
Washington, DC

Agenda

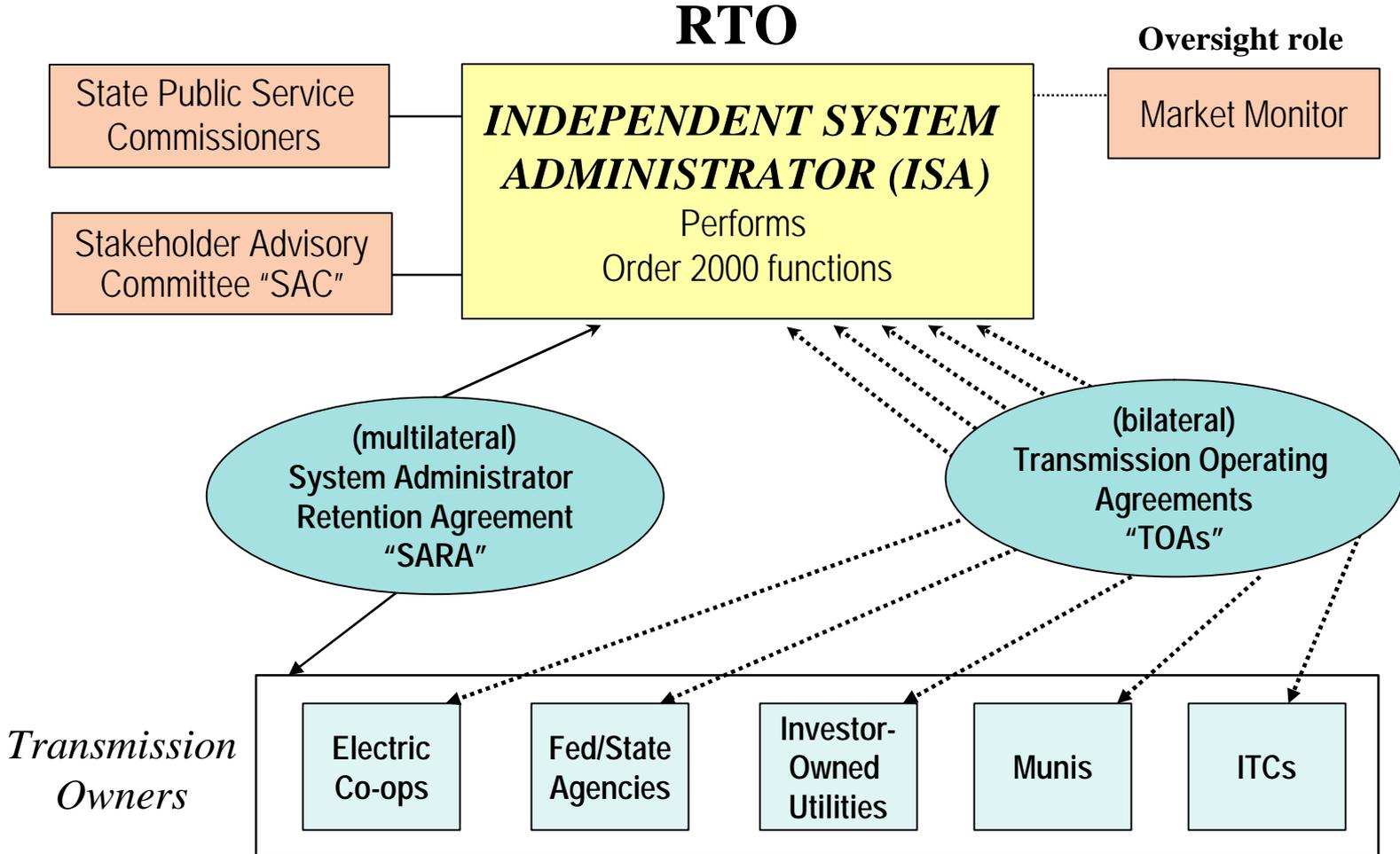
- TOA Overview
- SARA Overview

What is SeTrans?

- Regional Transmission Organization (RTO) designed to meet FERC's Order 2000 characteristics and functions for RTOs
- Independent System Administrator (ISA) to control and operate certain transmission assets in the Southeast
- ISA--existing company with experience and no business interests in the region
- Three IOUs, and six NJs (munis, with 48 members, and coops, who have 49 members)

SeTrans RTO Structure

RTO



Status of Agreements

- Subject to negotiation with ISA
- Subject to stakeholder review and comment
- Subject to further review by participating transmission owners (POs)
- Subject to FERC (and other regulatory and similar) reviews and approvals

What is the SARA?

- System Administrator Retention Agreement (SARA)
- Multi-party agreement
 - One agreement signed by ISA and all POs
 - Covers all POs

What is the TOA?

- Transmission Operating Agreement (TOA)
- Multiple two-party agreements
 - An agreement signed by ISA and each individual PO
 - Currently a pro forma agreement
 - Subject to negotiations between POs and ISA
 - Stakeholder review and input

What is the TOA?

- Establishes terms and conditions for transfer of “Functional Responsibility” from POs to the SA
 - Rights and obligations of the SeTrans ISA with regard to use of PO’s transmission facilities (Order 2000 functions)
 - Includes providing future transmission service

Key Points in TOA

- Term
 - Five-year for jurisdictional entities
 - One-year renewable term for non-jurisdictional entities
- Facilities covered
 - 40 kV and above are eligible for inclusion

Key Points in TOA (2)

- Reference to protocols (protocols attached to OATT govern unless otherwise provided in TOA)

Key Points in TOA (3)

- Certain “must haves” identified in TOA (and SARA)
 - Zonal rates
 - ROTR
 - Participant Funding
 - Year to year term for NJs and termination rights if tax problems occur
 - ITC functionality locked in for five years
 - Right to include transmission facilities 40 kV and above
 - Service to bundled retail load under OATT terms and conditions (but not certain rates)
 - ISA Management Fee and initial two-year incentive mechanism
 - Others

Key Points in TOA (4)

- Importance of “must haves”
 - POs represent a diverse group of Js and NJs
 - Critical to voluntary participation of Js and NJs
 - NJs own substantial transmission in Southeast
 - A number of the “must haves” sought by NJs
 - Many of the “must haves” driven by Js’ and states’ concerns for protecting retail customers
 - NJs want to participate voluntarily without losing non-jurisdictional status

Grandfathered Agreements

- Grandfathered Agreements will remain in effect
 - Will be listed in an attachment to the agreement
- Payments under Grandfathered Agreements go directly to PO per contract, unless otherwise agreed to by PO and ISA

What is in the SARA?

- Requires the ISA to operate the SeTrans transmission system in accordance with Order No. 2000.
- Sets forth the effective date and term of the agreement.
- Describes how the ISA can be terminated or replaced.
- Describes the rights and responsibilities of the ISA and the POs regarding:
 - the start-up and build-out of SeTrans
 - the operation of SeTrans
- Allocates risks and liabilities between the ISA and the POs regarding the build-out and the operation of SeTrans.

What is in the SARA (2)

- Establishes governance structure of SeTrans.
- This structure includes an ISA, a Stakeholder Advisory Committee ("SAC"), an independent Market Monitor, and the potential for ITCs.
- Includes the ISA's compensation and incentive mechanisms.
- Locks in certain “must haves” (as discussed previously).

Key Points in the SARA

Effective Date and Operations Date:

- Not effective until required approvals obtained, core group of POs execute TOAs, and the ISA secures financing for build-out.
- Build-out begins after Effective Date reached.
- SeTrans operational after build-out complete and certain acceptance criteria satisfied.

Key Points in the SARA (2)

Term and Termination of the SARA:

- Initial five year term.
- Each term automatically extended for additional five-year terms unless written notice is provided by a Super Majority of POs.
- The SARA can be terminated by the ISA or by a Super Majority of the POs “for cause”.
- "For cause" termination limited to narrow circumstances, e.g., a party's gross negligence, willful misconduct or material breach that have a material adverse effect on the other parties.

Key Points in the SARA (3)

Adding and Withdrawing POs:

- Additional POs can join SeTrans (must sign a TOA, an addendum to the SARA, and an accession agreement with the ISA).
- Additional POs must assume same responsibilities as the existing POs and hold existing POs harmless from RTO cost increases caused by the additional PO.
- Any denial of a party's ability to become an additional PO is subject to FERC review.
- TOA termination automatically results in such PO's withdrawal from the SARA.

Key Points in the SARA (4)

SeTrans Governance Structure:

- **ISA**
 - Responsible for operating the transmission system.
 - Must comply with the independence requirement and all other Order No. 2000's minimum characteristics and functions.
 - Must have its principal place of business in SeTrans footprint.
 - Must hold regularly scheduled board meetings in SeTrans footprint.
- **SAC** – Procedures required for SAC to provide input to the ISA.
- **Market Monitor** – ISA must contract with an independent Market Monitor to monitor markets and report conclusions to FERC.
- **ITCs** – Provides opportunity for ITCs to operate and perform certain delegated RTO functions.