UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Regional Transmission Organizations **Docket No. RT01-100-000**

PROPOSED MEDIATION MODEL FOR A SOUTHEASTERN REGIONAL TRANSMISSION ORGANIZATION SUBMITTED BY THE SETRANS SPONSORS

Submitted pursuant to the Notice of Procedural Schedule issued on August 30, 2001 by the Mediator, Hon. Bobbie J. McCartney, and served on the restricted service list in FERC Docket No. RT01-100-000. This document has not been filed with the Commission

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I. INTRODUCTION AND EXECUTIVE SUMMARY

At the direction of the Mediator, this mediation model is proposed as an outline for further discussions regarding the implementation of a single Southeastern Regional Transmission Organization ("RTO"). The outline is intended to assist the Mediator in carrying out the Commission's requirement that she "file a report…which will include an outline of the proposal to create a single Southeastern RTO…".[1] This mediation model is sponsored by Georgia Transmission Corporation ("GTC"), MEAG Power, Dalton Utilities, South Mississippi Electric Power Association ("SMEPA"), the City of Tallahassee, Florida ("Tallahassee"), JEA (formerly Jacksonville Electric Authority), South Carolina Public Service Authority ("Santee Cooper"), and Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power

[1] 96 FERC ¶ 61,066, slip op. at 2 (July 12, 2001).

Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively, "Southern Companies").[2]

The entities joining together to sponsor this model ("the SeTrans Sponsors") have striven to develop a governance model that serves the needs of the competitive market, as well as those of investor-owned utilities and the many public entities whose assets will be subject to the RTO's control. As discussed below, the need for such a model is particularly acute in the Southeastern United States, where a substantial amount of the region's transmission facilities is owned by state and federal authorities, municipalities and electric cooperatives.

The model set forth herein is organized around the key governance concept of an independent, incentive-driven, third party operator (the "System Administrator") that will manage (but will not own) the transmission facilities dedicated to the RTO. The System Administrator will exhibit the four characteristics identified in Order No. 2000 as critical to an RTO and will be charged with principal responsibility for the essential functions of such an

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[2] The SeTrans Sponsors believe that this model is the best that has been suggested so far and that it should form the basis of any RTO proposal that emanates from this mediation and serve as the platform for further discussions. With that understanding, the SeTrans Sponsors must also note that the mediation process has unfolded very quickly, with compromises being reached and new ideas being adopted without opportunity for full study or reflection. Accordingly, the submission of the mediation model should not be deemed a final endorsement of each concept contained therein outside of the construct of this mediation. This is particularly the case given that neither of the RTO models under consideration nor the specific attributes of any resulting RTO have been reviewed or approved by the necessary boards or regulatory agencies that have jurisdiction over the various SeTrans Sponsors. For these reasons, the SeTrans Sponsors clarify that they reserve their rights to further consider and review the matters set forth in this model. The parties further reserve their right to seek remedies consistent with the Petitions for Rehearing filed in this and related dockets.

organization identified by the Commission, with the exception of the market monitoring role to be assumed by an independent organization. The model is a "hybrid," in the sense that it provides for the formation of, and a role for, a new transmission owning entity (a "Transco") that will assume certain RTO functions, subject to the System Administrator's review and oversight.

The SeTrans model was largely formulated in a unique collaborative effort undertaken by the SeTrans Sponsors that predated this mediation, although the proposal has been modified and developed through the mediation process. The animating concept behind the model reflects an effort to accommodate two very different interests: (1) investor-owned utilities drawn through their experience to a for-profit system operator, and (2) transmission-owning public power entities far more comfortable with a not-for-profit Independent System Operator ("ISO") model. Such an accommodation is critical because an RTO in the Southeastern United States that lacks the very substantial transmission systems owned by the public authorities and cooperatives sponsoring this proposal will forever fail in its mission of optimizing competition in the bulk power market and maximizing the reliability and efficiency of the regional transmission grid.

The lynchpin to broad participation in a Southeastern RTO lies in a structure that has no institutional bias favoring one group of transmission owners over another with respect to decisions affecting all such owners. Critical decisions that hold the strong potential of prejudicing one group of transmission owners over another include decisions related to system planning and expansion, rate design and market design. The potential for bias with respect to these decisions is real and will foment distrust of the organization as long as the RTO simultaneously owns transmission assets and makes decisions affecting its own investment and the investments of others. Having a truly independent third party empowered to make these crucial decisions is also the best way to ensure neutrality of decision-making, which will in turn provide protection and comfort to all other market participants. Accordingly, the authority for such decision-making must reside in an independent third party that does not own transmission assets. Broad public power participation in the region's RTO depends on implementation of this concept.

The SeTrans Sponsors have further agreed that a performance-based, incentive-driven entity will assure the efficient performance of RTO services. While the sponsoring municipalities and cooperatives are not themselves wedded to institutional profits as the sine qua non of an efficient and effective organization, all the participants believe that financial incentives will provide the System Administrator with the motivation to perform its duties in an appropriate manner. For this reason, the SeTrans governance model contemplates that an independent, performance-based, incentive-driven organization will be engaged as the System Administrator.

As a result of compromises made during the mediation, the model described herein departs meaningfully from the format initially contemplated by the SeTrans Sponsors. Specifically, in order to facilitate financing of new investment and divestiture of existing assets, they have added a Transco within the RTO structure that will be invested with certain Order No. 2000 functions inside the Transco's footprint, including the authority to engage in system planning and expansion, interconnection studies and rate design, all subject to the System Administrator's ultimate review and approval. The SeTrans Sponsors have agreed to this significant modification, in the spirit of compromise, out of deference to the view articulated by those supporting a Transco-type model that a degree of autonomy with respect to decision-making on these matters will enhance the financial prospects for private transmission investment. While attempting to accommodate that view, the SeTrans Sponsors continue to believe that ultimate decisional authority must reside with the System Administrator.

In addition to governance, the SeTrans Sponsors advance below a model that addresses the RTO's remaining characteristics, including its scope, operational authority and control over short-term reliability, as well as the eight RTO functions mandated by Order No. 2000. A few preliminary reflections are made here with respect to those aspects of the model. First, it is worth noting that the mediation has demonstrated wide areas of general agreement on some critical functions, including market monitoring, operational authority and short-term reliability. Further, with respect to certain functions where disagreement remains, it is worth observing that decisions need not be made immediately. This is certainly true of "Day 2" market design (congestion management and real-time markets) and proposals for resolving parallel path issues. Finally, it is emphasized that the mediation has made plain that these issues are largely severable from one another on the merits, and certainly may be resolved independently of the governance issue.

Of paramount importance, this model offers a means of resolving the heretofore intractable problem of creating an RTO hospitable to <u>all</u> types of transmission owners, non-jurisdictional as well as jurisdictional. The Commission has been absolutely clear that providing a place at the RTO table for all transmission owners is high on its list of priorities. The Commission has further been clear that it is <u>not</u> wedded to a particular RTO governance model as an ideological matter. The SeTrans Sponsors are in agreement with the view expressed many times over the past several weeks that this mediation presents a unique opportunity for transmission owners and market participants to shape their destiny. But by the same token, an outcome that fails to accommodate major segments of the Southeast's transmission facilities would balkanize the region and would poorly serve the electric markets the Commission intends to benefit and the region's consumers and economy.

II. IDENTITY OF SETRANS SPONSORS AND LEVEL OF TRANSMISSION INVESTMENT

The SeTrans Sponsors represent a broad cross-section of transmission owners -- electric cooperatives, municipalities, municipal joint action agencies, state-owned utilities, and investor-owned utilities -- some of which are public utilities subject to the Commission's general jurisdiction, while others are not.

Taken together, the SeTrans Sponsors own and operate approximately 38,000 miles of transmission assets, of which approximately 11,000 miles are owned by non-jurisdictional entities. These transmission facilities represent a total gross investment of approximately $6 billion. These transmission facilities cover most of Alabama, most of Georgia, portions of northern Florida, a significant portion of Mississippi and much of South Carolina.

A summary description of each of the SeTrans Sponsors is set forth below: [3]

- GTC is a not-for-profit cooperative established for the sole purpose of providing transmission services. GTC is owned by 39 Electric Membership Corporations in Georgia. GTC owns approximately $925 million in assets, including 2,500 miles of transmission lines and 500 substations across the state and serves over 1.4 million end-use customers.

- MEAG Power is a joint-action state authority providing wholesale electric generation and transmission to 48 city- or county-owned electric systems in Georgia. MEAG Power is one of the largest public power entities in the United States and owns approximately 1,300 miles of transmission lines.

- Dalton Utilities is a full-service utility providing electric, water, wastewater, natural gas and telecommunications services to the City of Dalton, Georgia, and to portions of Whitfield, Murray, Gordon, Floyd and Catoosa counties.

- South Mississippi Electric Power Association is a non-profit wholesale electric power cooperative with over 1,500 miles of transmission lines serving the power requirements of the 350,000 retail consumers (representing a population of approximately 800,000 rural residents) served by its 11 member distribution cooperatives in Mississippi.

[3] Fact sheets providing additional detail for each of the SeTrans Sponsors are included as Attachment A. The attachment also contains a summary of pertinent data.

- The City of Tallahassee maintains more than 2,200 miles of transmission and distribution lines, serving some 98,000 homes and businesses in and around Tallahassee, Florida.

- JEA is a municipally-owned electric supplier serving 350,000 customers in a four-county area in northeast Florida.

- Santee Cooper is South Carolina's state-owned electric and water utility and the state's largest seller of power. The utility is the direct and indirect source of power for 1.6 million South Carolinians and maintains 4,223 miles of transmission lines. Based on energy sales, Santee Cooper is the nation's fourth largest publicly-owned electric utility among state, municipal and district systems.

- Southern Companies are subsidiaries of Southern Company, a registered holding company under the Public Utility Holding Company Act of 1935. Southern Companies have more than 35,000 megawatts of electric generating capacity in the Southeast and 26,000 miles of transmission lines. Southern Companies serve approximately 4 million retail customers in Alabama, Florida, Georgia and Mississippi, and are subject to the jurisdiction of the public service commissions of those states.

III. THE EVOLUTION OF THE SETRANS MODEL

On December 20, 1999, the Commission issued Order No. 2000[4] encouraging transmission owners to voluntarily form RTOs. Among other things, that order specified the minimum characteristics and functions for an RTO. Although adopting a voluntary approach to RTO formation, the order required any jurisdictional public utility that did not already belong to an independent system

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[4] Regional Transmission Organizations, 65 FR 809 (January 6, 2000) FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 FR 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), petitions for review pending sub nom., Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir.) (citations are to the Slip Opinion).

operator to submit to the Commission by October 15, 2000 either a proposal to form an RTO or an alternative filing describing its efforts to participate in an RTO, obstacles to formation, and any plans regarding future efforts. Order No. 2000, slip op. at 652-653, 662. In compliance with that directive, Southern Companies filed with the Commission a petition for declaratory order that outlined their proposal for an RTO. Although Southern Companies had discussed their RTO proposal with many utilities in the Southeast, no other utility joined in that petition. It must be emphasized that Southern Companies' petition was <u>not</u> the current SeTrans model.

On March 14, 2001, the Commission denied Southern Companies' petition, setting forth two grounds for that denial. <u>Southern Company Services, Inc.</u>, 94 FERC ¶ 61,271 (2001). Specifically, the Commission held that Southern Companies' proposal was inappropriate because: (i) the proposed RTO's functions would include only new wholesale transmission services; and (ii) the benefits of certain rate incentives would flow to entities other than the RTO operator. 94 FERC at p. 61,960. The Commission expressed no opinion on the other aspects of the petition, but did indicate that Southern Companies should consider joining neighboring utilities in forming an RTO for the Southeast and directed Southern Companies to file a status report on their activities in this regard by May 14, 2001. 94 FERC at p. 61,965. In response to this suggestion, Southern Companies renewed their discussions with neighboring utilities. Ultimately, Southern Companies entered into memoranda of understanding ("MOUs") to pursue the development of an RTO with GTC, MEAG, Dalton Utilities, SMEPA, Tallahassee, JEA, Santee Cooper, and Alabama Electric Cooperative, Inc. On May 14, 2001 (as supplemented on June 20, 2001), Southern Companies filed their status report ("Status Report") in compliance with the Commission's March 14 Order, which report outlined the potential RTO arrangement set forth in the MOUs. In addition, the Status Report described a memorandum of understanding with the Tennessee Valley Authority to develop a "seams" agreement between the two transmission systems.

Beginning in May and continuing until the Commission's orders in July, the SeTrans Sponsors made significant progress on the development of an RTO. The participants had engaged an independent facilitator and were nearing completion of a participation agreement that would govern matters such as cost responsibility in the formative stages of the RTO. The participants had also developed a governance structure that would be independent and would encourage the participation of all transmission owners (including non-jurisdictionals) by accommodating their particular needs. When the SeTrans Sponsors first began discussing an RTO, they held disparate views regarding a governance structure. For example, some participants wanted to pursue a traditional non-profit independent system operator, while others were strongly opposed to such a arrangement. As a result of the collaborative process among the varying types of transmission owners, a compromise was reached that adopts various aspects of the different governance models. That compromise -- the performance-based, incentive-driven independent operator or System Administrator -- reflects many features of a traditional ISO but, at the same time, addresses the concerns of those that questioned that approach. The competing views of the SeTrans Sponsors were addressed by allowing the System Administrator to earn incentives but only on the "services it provides", unlike a typical Transco which can earn profits on the "assets it operates". This approach provides incentives for performance but prevents the opportunity for discriminatory practices with regard to assets that are "owned" versus "not owned" by the RTO.

The initial focus of the SeTrans group was to develop an organizational structure that would be acceptable to the diverse participants in the effort. This goal had been achieved when the Commission, on July 12, 2001, issued its: (i) Order on Status Report in Docket No. RT01-77-000 (Southern Company Services, Inc., 96 FERC ¶ 61,064 (2001)) (the "Status Order"); and (ii) Order Initiating Mediation in Docket No. RT01-100-000 (Regional Transmission Organizations, 96 FERC ¶61,066 (2001)) (the "Mediation Order") (collectively the "Orders"). Although the governance issue had been resolved, the SeTrans Sponsors had not reached consensus on all other RTO issues at that point. This is not to say that they had not considered or addressed those matters; to the contrary, many of the SeTrans Sponsors had been working (together and individually) on those issues for some time. Given their short time together as a group when the Orders were issued, however, the SeTrans Sponsors simply had not had the opportunity to collectively deliberate on a number of matters. During the Commission-mandated mediation process, the SeTrans Sponsors have not only continued the collaborative process they had already begun between one another, but have also collaborated with other market participants and model sponsors.

Through the mediation process, the SeTrans platform has been modified to adopt certain features of other RTO plans advanced during the mediation and various suggestions by market participants, in an effort to develop a mediation model that reflects the industry's "best practices." It is the SeTrans Sponsors' expectation that further collaboration (among themselves and with other market participants) will flesh out model details that have not yet been addressed. The openness of the SeTrans Sponsors to accommodate new ideas and to develop details through the collaborative process is a significant strength of the SeTrans model.

IV. THE SETRANS GOVERNANCE MODEL

The SeTrans model incorporates a hybrid structure. The RTO will consist of the System Administrator and a Transco, and will include significant input from a Stakeholder Advisory Committee. These entities are discussed briefly below.

- The System Administrator: A performance-based, incentive-driven, independent third party operator that will operate, but will not own, the transmission facilities subject to the RTO's control.

- The Transco: A Transco that will perform several significant functions for the facilities that it owns and will satisfy the independence requirements of Order No. 2000.

- The Stakeholder Advisory Committee ("SAC"): An established committee of stakeholders that will perform significant roles in the formation of the System Administrator, as well as in the on-going operation of the RTO.

A. The Independent System Administrator

The System Administrator will have each of the four characteristics required by Order No. 2000 and will perform all of the eight functions required by the Commission of an RTO, with the exception of Market Monitoring, which will be assigned to another entity. The System Administrator will be a public utility regulated under the Federal Power Act and will be responsible for administering the single RTO-wide Open Access Transmission Tariff ("OATT"). The System Administrator will exclusively exercise the RTO's Section 205 rights. The transmission owners will be responsible for submitting their revenue requirements to the RTO, as well as obtaining any necessary approvals of such revenue requirements. The System Administrator will include those revenue requirements in the OATT rates filed with the Commission.

The System Administrator will be the Security Coordinator for the RTO's region. The System Administrator will be responsible for market design, including the congestion management and real-time balancing models that will be utilized. The System Administrator will also perform the market administration and system operations functions, such as day-ahead resource scheduling and real-time market operations. The latter will include the performance of congestion management, real-time generation dispatch, interchange scheduling, and ancillary services dispatch. In this regard, the System Administrator will determine the settlement prices for purposes of redispatch.

The System Administrator will be responsible for OASIS administration and ATC/TTC calculations. The System Administrator will have ultimate planning authority and perform regional studies and planning. Similarly, the System Administrator will be responsible for the rate design for RTO-wide service and service outside and through the Transco footprint. In addition, the System Administrator will be responsible for all interconnections by generators and will have coordination responsibility, as well as review and approval authority over all interconnections within the Transco's footprint. The System Administrator will also perform any remaining functions required by Order No. 2000.

The System Administrator will be selected using a process that relies heavily on stakeholder input, while at the same time providing transmission owners some comfort that the entity selected to operate their assets will be competent. The selection process will begin with the Stakeholder Advisory Committee ("SAC") developing selection criteria that (at a minimum) will include the following:

- The System Administrator will not be a market participant;
- The System Administrator, its employees, and its directors will be prohibited from maintaining a financial interest in any market participant;
- The System Administrator will not own transmission, generation or distribution facilities in the region served by the RTO; and

- The System Administrator must demonstrate it is capable of operating the transmission system.

Although the precise criteria will be developed through the collaborative process, the SeTrans Sponsors believe that candidates should be encouraged (either through explicit requirements or positive evaluation factors): (i) to establish a special advisory role for state public service commissions outside of the context of the SAC; (ii) to form a local board of directors that is easily accessible; and (iii) to employ experienced, capable operators.

The SAC will then choose a professional search firm to assist in designating and selecting a pool of viable candidates. The SAC and participating transmission owners will be provided the opportunity to interview candidates in an open forum and to request pertinent information. Following the identification of candidates by the search firm, the SAC and participating transmission owners will also be permitted to add to the list of candidates and comment in writing upon any candidates considered unacceptable. While transmission owners will participate in the SAC process for purposes of developing criteria and interviewing candidates, they will <u>not</u> have a voting interest on the SAC for purposes of nominating a slate of System Administrator candidates. Once a list of at least four viable candidates is developed, the transmission owners that will participate in the RTO (including the Transco if it is formed at that time and owns transmission assets) will select one candidate to act as the System Administrator. Designation of the System Administrator will be submitted to the Commission for comment and approval. Any successor System Administrator will be selected in the same manner as the initial System Administrator, including approval of the Commission. Any such successor System Administrator will be required to comply with all existing agreements of its predecessor.

The System Administrator's authority and responsibilities will be set forth in a single, multilateral contract between the System Administrator, the Transco and all participating transmission owners (hereinafter "System Administrator Responsibility Agreement" or "SARA"). The form of the SARA will be developed through the collaborative process and will be included in the formation documents that will be filed with the Commission. The System Administrator's method of compensation, including appropriate incentives (both positive and negative) for performance, will be established in the collaborative process and included in the SARA. The SARA will have an initial term of at least five years with annual evergreen extensions. In addition, that contract will include standards and criteria to gauge the performance of the System Administrator.

The System Administrator will also enter into a Transmission Operating Agreement ("TOA") with each transmission owner (including the Transco) that will be filed with the Commission. The TOA will ensure that the System Administrator exhibits the characteristics and performs the functions required by Order No. 2000. The TOAs will be largely pro forma, but will contain additional provisions, as necessary, to accommodate the requirements of certain transmission owners (such as maintenance of tax exempt status of bonds issued by non-jurisdictional municipal transmission owners). The TOA between the System

Administrator and the Transco will be the pro forma TOA revised to accommodate the limited functionality allowed the Transco. As described further below in connection with the RTO's operational authority, the TOAs will assure that the RTO is able to exercise full operational authority under Order No. 2000. The TOAs will also provide for full recovery through the RTO's OATT of the transmission owners' revenue requirements and will provide for the distribution of associated revenues from the RTO's charges to the transmission owners.[5]

An important element of the model is that any individual System Administrator can be removed for cause during the term of the SARA and replaced with a new System Administrator. The SARA will provide the conditions for any such termination. Such removal would be subject to approval by the Commission and would only be available in the event of serious malfeasance. Since the System Administrator would not own the underlying transmission assets, such a removal should be able to be effectuated with relative ease.[6] In contrast, it would be nearly impossible to remove from service an RTO

[5] The TOAs will not impede the System Administrator's ability to perform the required functions of an RTO. However, the TOAs will contain terms and conditions that might be needed to honor preexisting agreements and to address any specific requirements of an individual transmission owner.

[6] To the extent that the System Administrator owns or controls any software, hardware, etc., that might be needed for the operation of the RTO, the SARA will establish a procedure by which such assets will be conveyed to the successor System Administrator in the event of termination.

that consisted of a poorly performing Transco because of its ownership of transmission assets.

B. The Stakeholder Advisory Committee

A Stakeholder Advisory Committee ("SAC") will perform several important roles both in the formation of the RTO (as discussed above) and after it commences operation.[7] The SAC will consist of representatives of all stakeholder groups. Although the exact composition of the organization's participants will be the subject of further discussion in the collaborative process, the SAC is expected to include:

- Investor-Owned Utilities
- Power Marketers and Brokers
- Generation Owners and Developers
- Transmission Dependent Municipals and Cooperatives
- Transmission-Owning Cooperatives
- Transmission-owning Municipal Joint Action Agencies and Municipals
- State Governmental Agencies/Consumer Advocates
- Industrial End Users
- Federal Utilities
- State-Owned Authorities

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[7] The SAC is modeled after the SAC proposal in the GridFlorida filings.

The stakeholder groups will each select their representatives and form of representation. Each representative will have one vote, and the SAC will act upon majority rule of the representatives. The transmission owners will not have a majority vote on the SAC, nor will they be able to veto a proposal.

The SAC will have an ongoing role of providing advice to the System Administrator and Transco. That input will be governed by a "Bill of Rights" that will ensure that the SAC has the right to: make presentations to the Board and Management of both the System Administrator and the Transco; make written reports and recommendations to the System Administrator and Transco; and present minority positions to the System Administrator and Transco. The RTO will have an open information policy, which will facilitate the SAC's ability to participate meaningfully in the RTO's activities. Participants in the SAC will neither be subject to fees nor provided reimbursement for their expenses.

C. The Transco

In order to accommodate those utilities interested in divesting their transmission assets and to facilitate the financing of the resulting acquisitions, the SeTrans model has been modified in order to provide for the creation of, and a role for, a Transco. The Transco will perform several specified functions for the facilities that it owns. As an initial matter, it will own the existing transmission facilities within the Transco's footprint and have the option to build new transmission facilities within that area. The Transco will also develop the rate design for load in its footprint, subject to System Administrator review and approval. In addition, the Transco will perform system studies and planning within its footprint, subject to System Administrator review and approval, unless the resulting improvement would cause a change in flows greater than 5% on any constrained facility outside of the Transco's footprint (in which case the System Administrator will have primary planning responsibility).[8] Customers seeking generator interconnections within the Transco's footprint will go to the System Administrator for such interconnection. The Transco will perform its generator interconnection studies at the direction of the System Administrator and using standards established by the System Administrator. In order to obtain any of this functionality, however, the Transco must satisfy the Commission's requirements on independence and be unaffiliated with any market participant.

D. Procedure for Further Development of Organic Documentation and for Changes to Allocation of Responsibilities to System Administrator.

The RTO's organic documents will be developed in the context of an open collaborative process including all stakeholders who wish to participate.[9] Those documents include: the SARA and the pro forma TOA; the OATT, including rate design, market design, congestion management, and ancillary service schedules

[8] As discussed below, market participants will be able to provide input into that planning process.

[9] Following its selection, the System Administrator will participate in the collaborative process as a consultant and facilitator.

incorporated therein; Planning and Operating Protocols; procedures for addressing Parallel Path Flow issues; OASIS Protocols and procedures for calculating ATC/TTC; and Planning and System Expansion Protocols. Following these collaborative efforts, the RTO and transmission owners will make the appropriate filings under Sections 203 and 205 of the Federal Power Act.

In order to ensure that neither the System Administrator nor the Transco can too easily encroach on the functions assigned to the other, the initial division of authority can only be changed by a Section 206 complaint to the Commission. In any such complaint, the proponent of the change will have to demonstrate that the status quo, without the proposed change, is unjust and unreasonable or unduly discriminatory, and that the proposed change is just and reasonable and not unduly discriminatory. It is the intent of the SeTrans Sponsors that the functions remain fixed for at least the first five years after commercial operation of the RTO.

V. THE SETRANS GOVERNANCE MODEL IS STRONGLY SUPPORTED BY COMMISSION PRECEDENT, WHILE THE PROPOSAL MEETS ALL OTHER REQUIREMENTS OF ORDER NO. 2000

A. Commission Precedent for the SeTrans Governance Model.

Every aspect of the SeTrans governance model finds strong support in Commission precedent and, indeed, melds what the SeTrans Sponsors believe are the best practices of several already-approved RTOs. As an initial matter, the concept of an independent operator that does not own transmission assets is not a new one. Indeed, that is a central feature of the ISO models approved by the Commission. See PJM, 95 FERC ¶ 61,061 (2001).[10]

The SeTrans governance model differs principally from those ISOs previously approved by the Commission insofar as it proposes to engage an existing third-party operator in order to provide management services for the RTO. Since this organization will satisfy the Commission's established requirements for independence from any market participant, there is no legitimate objection to the concept of a third party operator. Moreover, precedent exists for the independent third party concept in the Commission's orders approving the governance model for the Alliance RTO, in which the concept of an independent third party as the "managing member" has been tentatively authorized, subject to review of Alliance's choice of that entity.[11] While the Alliance is a Transco model, there is no conceptual difference between the third party operator occupying the Managing Member position for the Transco and such an operator assuming the role of the System Administrator for the SeTrans RTO. Very significantly, the Alliance proposal conditionally approved by the Commission permits the sponsoring Alliance transmission owners to choose this managing member unilaterally,

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[10] ISOs have been approved, of course, for operation in the Midwest, New York and California as well. See Midwest Independent Transmission System Operator, Inc., et al., 84 FERC ¶ 61,231 (1998); Central Hudson Gas & Electric Corp., et al., 83 FERC ¶ 61,352 (1998); New England Power Pool, 79 FERC ¶ 61,374 (1997); and, Pacific Gas and Electric Company, et al., 77 FERC ¶ 61,204 (1996).

[11] Alliance Companies, et al., 96 FERC ¶ 61,052 (2001).

subject to the Commission's ultimate approval.[12] As is made clear above, the SeTrans Sponsors are proposing that the System Administrator will be chosen from a slate prepared using an independent search firm and a group of stakeholders that will not include the transmission owners. That important difference should satisfy any concern the Commission might have regarding the independence of the System Administrator.

To the extent the SeTrans model proposes to permit a Transco to exercise limited Order No. 2000 functionality, subject to the System Administrator's review and oversight, the proposal finds support in "hybrid" RTO models already approved by the Commission. In Order No. 2000, the Commission left "to the discretion of the region to decide on the particular allocation of authority that works best. The standard to be applied by the Commission in reviewing any proposed allocation of control . . . would be whether the chosen allocation ensures reliable operation of the grid and non-discriminatory access to the grid by all market participants." Bangor Hydro Electric Co., 96 FERC ¶ 61,063, slip op. at 17-18 (2001). In evaluating a hybrid proposal, the Commission has determined that the proposal "must provide clarity about the decisional process, accountability

[12] Id., slip op. pp. 6-9; 11-12. The Alliance proposed two possible vehicles for management of the Transco. One, ultimately chosen, provided that the Alliance sponsors would unilaterally choose a "managing member" of the Transco that would make a "strategic investment" in the organization. The other reserved for the Alliance the option to constitute a "Newco" for the purpose of managing the Transco. The Board of such Newco would have been chosen from a slate of candidates designated by an independent search firm. However, that second option has not been chosen, and the Alliance filed with the Commission on August 27, 2001 in Docket Nos. RT01-88-000 and ER99-3144-000 for approval of National Grid Group as its Managing Member.

among the entities that constitute such an RTO, and how the binary-RTO will provide customers with 'one-stop-shopping.'" Commonwealth Edison Company, 90 FERC ¶ 61,192, pp. 61,617-618 (2000).

In Commonwealth Edison, the Commission approved in principle the creation of an Independent Transmission Company ("ITC") subject to the Midwest ISO's oversight authority. Commonwealth Edison's proposal in that case provided for one or more ITCs performing many of the operational and other responsibilities outlined in Order No. 2000, but subsidiary to the ISO's final decision-making authority. Collectively, the ITC and the Midwest ISO would perform all of the functions required for RTOs.[13] In conditionally approving the proposal, the Commission pointed out that Order No. 2000 purposefully sought to avoid placing limitations on RTO structures:

> We will not limit the flexibility of proposed structures or forms of organizations for RTOs. We are prepared to accept a transco, ISO, hybrid form, or other form so long as the RTO meets our minimum characteristics and other functions and other requirements.
>
> This Rule does not necessarily require that a single organization perform all of the functions itself . . . We will entertain appropriate tiered or other structures. We require only that the RTO be responsible for ensuring that the requirements are met in a way that satisfies our Rule.[14]

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[13] Prior to submitting an RTO proposal, Commonwealth Edison sought a declaratory order from the Commission that a binary RTO would fulfill the Order No. 2000 requirements. It is this preliminary application for approval of a binary RTO model and Commission order that are discussed here. Commonwealth Edison subsequently departed the Midwest ISO and became a member of Alliance RTO, which is not proposing a binary RTO.

[14] Commonwealth Edison at p. 61,617 (citing Order No. 2000).

Consistent with this precedent, in Avista Corporation, et al., 96 FERC ¶ 61,058 (2001) ("RTO West"), the Commission only last month issued a decision on rehearing approving a hybrid ISO/Transco structure for RTO West in which public power (Bonneville Power Administration) is to play a major role and in which final decisions concerning key RTO functionality are made by the ISO. The functions assigned to the Transco in that proceeding appear to be very similar to those assigned to the Transco in the SeTrans model.

As explained above, the SeTrans model is a creature of evolution and compromise. Although the precise model may not have been the subject of a Commission order, its fundamental aspects have been accepted by the Commission. Moreover, its foundational purpose -- the accommodation of all transmission owners -- is certainly a well-established principle of Order No. 2000. Accordingly, the SeTrans model is consistent with and supported by Commission precedent.

B. Order No. 2000 Characteristics And Functions.

1. Independence.

a. Requirements of Order No. 2000.

Order No. 2000 requires an RTO to be independent of any market participant. In this regard, the RTO, its employees, and its non-stakeholder directors must not have a financial interest in any market participant, and the RTO's decision-making must be independent of market participant control. The

RTO must also have exclusive and independent authority to propose the rates, terms and conditions of transmission service provided over the facilities that it operates.[15] If any market participant retains an ownership interest in any RTO or if a market participant has a role in the RTO's decision-making process, then compliance audits of the independence requirement must be performed. 18 C.F.R. § 35.34(j)(1).

b. Description of Model.

Consistent with Order No. 2000, and as stated above, the minimum criteria for an acceptable candidate for designation as the SeTrans System Administrator include the following:

- The System Administrator will not be a market participant; and

- The System Administrator, its employees, and its directors will be prohibited from maintaining a financial interest in any market participant.

Further, SeTrans governing documents will ensure that the System Administrator will have exclusive and independent authority to propose under FPA Section 205 the rates, terms and conditions of transmission service provided over the facilities that it operates. If any market participant retains an ownership interest in any RTO or if a market participant has a role in the RTO's decision-making process, then compliance audits assuring the organization's independence will be performed. All of these criteria are drawn directly from the Commission's regulations

[15] Transmission owners would retain the authority to seek recovery from an RTO of the revenue requirements associated with the transmission facilities that they own.

implementing Order No. 2000, and leave absolutely no doubt over the System Administrator's independence. See 18 C.F.R. § 35.34(j)(1)(i) through (iv).

The SeTrans proposal for choosing the System Administrator further ensures the independence of the RTO. As explained above, the list of candidates will be chosen by the Stakeholder Advisory Committee, with the assistance of an independent search firm. Transmission owners will be involved in vetting potential candidates, but will not participate in voting on those entities that comprise the Stakeholder Advisory Committee's list of candidates. As noted, these procedures provide for more protection against any undue influence exercised by transmission owners than those already approved for the Alliance, in which the managing member of the Transco has been designated unilaterally by the sponsoring transmission owners.[16]

2. Scope and Regional Configuration.

a. Requirements of Order No. 2000.

Order No. 2000 requires the RTO to serve an appropriate region of sufficient scope and configuration to permit the RTO to effectively perform its required characteristics and functions and to support efficient and non-discriminatory power markets. Order No. 2000, slip op. at 246. The Commission in Order No. 2000 declined to establish regional boundaries, but did note that given the characteristics and functions for an RTO set forth in Order No. 2000, the "regional configuration of a proposed RTO should be large in scope." Order No.

[16] See Alliance Companies, Id.

2000, slip op. at 254. The Commission also set forth a set of factors that will affect the regional boundaries of the RTO, including:

- facilitating essential RTO functions and goals;
- recognizing trading patterns;
- mitigating the exercise of market power by regional transmission entities;
- not unnecessarily splitting existing control areas or existing regional transmission entities; and
- encompassing contiguous geographic areas and highly interconnected portions of the grid while taking into account existing regional boundaries (such as NERC regions) and international boundaries.

Order No. 2000, slip op. at 259-262. In Order No. 2000, the Commission also stated that all transmission facilities within the RTO should be included in and controlled by the RTO, while recognizing that there may be legal or other impediments preventing such inclusion. Particularly important in this regard, the Commission found that a "properly formed RTO should include all transmission owners in a specific region, including municipals, cooperatives, Federal Power Marketing Agencies (PMAs), Tennessee Valley Authority and other state and local entities." Order No. 2000, slip op. at 589. In its Mediation Order, the Commission further clarified that it desired a single RTO for the entire Southeast, while reserving judgment on the inclusion of Florida and the Southwest Power Pool.

b. Description of Model.

In the Southeast, a very large portion of the transmission grid is owned by electric cooperatives, municipal utilities, state agencies, and federal utilities, such as the Tennessee Valley Authority -- all of which are not subject to the Commission's general jurisdiction. For example, non-jurisdictional entities participating in the SeTrans effort own approximately 11,000 miles of transmission facilities. Without the participation of these non-jurisdictional owners, an RTO will be riddled with holes and thus will not be able to maintain reliability, effectively perform its required functions, resolve parallel flow and constraint issues, and support efficient and non-discriminatory power markets.[17] An RTO without these non-jurisdictional entities will fall far short of the Commission's goal of forming an RTO that encompasses the entire Southeast. With the inclusion of these non-jurisdictional entities (and others such as TVA), buyers and sellers will be better able to access broader markets, which in turn promotes competition.

A fundamental tenet of the SeTrans model is that non-jurisdictional owners must be accommodated and encouraged to participate. This tenet is being satisfied through an RTO that does not own transmission and uses TOAs to address individual owner issues. SeTrans' success in this effort is best demonstrated by

[17] A clear example of this need for non-jurisdictional participation involves the Integrated Transmission System in Georgia ("Georgia ITS"), which is comprised of the transmission assets of Georgia Power Company, GTC, MEAG Power and Dalton Utilities. Without the assets of all of these owners, the transmission system in the State of Georgia will not function in the way the Commission desires.

the integral involvement in the effort by GTC, MEAG Power, Dalton Utilities, SMEPA, Tallahassee, JEA and Santee Cooper, all of which are non-jurisdictional transmission owners. Without these (and other) non-jurisdictional entities, the scope of the RTO would be seriously limited and its efficiency and reliability would be severely impaired.

Non-jurisdictional entities preferred the SeTrans model because of the independence of, and the concentration of RTO functions in, the System Administrator. As discussed above, the SeTrans model avoids concerns because the System Administrator will be independent of all market participants and will not own generation, transmission or distribution in the RTO area. For these reasons, the SeTrans model best satisfies the RTO characteristics of scope and configuration, and is the best platform for all transmission owners (including non-jurisdictional entities) to participate.

3. <u>Operational Authority</u>.

a. <u>Requirements of Order No. 2000</u>.

The third minimum characteristic of an RTO is that it must have operational authority for all transmission facilities under its control. To satisfy this requirement, the RTO must ensure that any operational authority shared with a market participant does not adversely affect reliability or provide an unfair competitive advantage. In addition, the RTO must act as Security Coordinator of the facilities under its control. Order No. 2000, slip op. at 277-282.

b. Description of Model.

Under the SeTrans model, the System Administrator will have operational authority for all transmission facilities under its control through the TOAs. The TOAs will be pro forma documents created through the collaborative process. The SeTrans Sponsors expect that the collaborative process will consider transmission operating agreements developed by other RTOs in crafting a pro forma TOA that reflects the best industry practices. The TOAs will, for the most part, be substantially identical, but they will take into account issues of concern for individual transmission owners, such as conditions needed to preserve the tax exempt status of non-jurisdictional entities. The TOAs will ensure transparency such that all the requirements of Order No. 2000 will be satisfied by the RTO. In other words, transmission owners will not be able to exert control that could affect the reliability of the system or provide them with an unfair competitive advantage. Any concerns in this regard should be ameliorated by the development of the pro forma TOA in the collaborative process. Moreover, the System Administrator will file the TOAs, along with other organic documents, when it seeks RTO status from the Commission.

The System Administrator will be the NERC-defined Security Coordinator for the facilities under its control to further ensure its ability to exercise operational authority over regional transmission facilities. As Security Coordinator, the System Administrator will be responsible for all Security Coordinator functions defined in NERC Operating Policy, including specifying ancillary service requirements, performing system studies, conducting security analysis, developing special operating procedures, implementing Transmission Loading Relief ("TLR") procedures, and directing and coordinating system restoration activities.

In Order No. 2000, the Commission made clear that an RTO is not required to operate a single control area. Order No. 2000, slip op. at 279-80. Accordingly, the System Administrator will operate multiple control areas as defined by NERC. This arrangement will minimize cost by using existing facilities under the overall control of the System Administrator. Control areas that are maintained by participants in the RTO will be required to follow the direction of the System Administrator with respect to transmission service and reliability matters through either direct or indirect control. See Carolina Power & Light Co., et al., 94 FERC ¶ 61,273, p. 61,995 (2001) ("GridSouth") (approving the use of multiple control areas). To be clear, the System Administrator will be responsible for directing the operations of the transmission system, monitoring and controlling real and reactive power flows and voltages levels, and scheduling and directing the operation of reactive resources. The control area operators will retain physical control of their systems (e.g., physically switch transmission elements into and out of operation, remove equipment from service, etc.), but they will do so pursuant to operating procedures approved by the System Administrator and subject to the direction of the System Administrator. The Commission has endorsed such a division of responsibility between an RTO and control areas in a number of cases, including the recent decision in PJM Interconnection, LLC and Allegheny Power, 96 FERC ¶ 61,060, p. 61,212 (2001).

The SeTrans Sponsors believe that all load-serving entities ("LSEs") should take responsibility for planning and supplying generation resources to meet their load. This is particularly the case in the Southeast where the States have not adopted retail competition and most utilities continue to have an obligation to serve the public in their service territories. Accordingly, it is a feature of the proposed model that all entities must submit balanced schedules of generation and load to the RTO. Specifically, all market participants must schedule sufficient generation to meet their projected load plus losses. The real-time balancing market will resolve any mismatches between scheduled and actual performance but, in the first instance, the market participants must come forward with plans to serve their load without "leaning" on their neighbors.[18] The resources that can be specified include self-generation, purchases from others, load reductions or other appropriate arrangements that market participants choose to pursue. Regardless of the approach used, all market participants will bear responsibility for serving their own load similar to the way that control areas currently operate.

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[18] To discourage intentional mismatches between scheduled and actual performance, the RTO will impose financial penalties on market participants that consistently mismatch schedules. The exact nature of such penalties has yet to be determined, but the concept is to impose a penalty after a limited number of significant violations.

4. **Short Term Reliability**.

a. Requirements of Order No. 2000.

Order No. 2000 requires that an RTO have exclusive authority for maintaining the short-term reliability of the grid it operates. Among the areas identified by the Commission as being associated with short-term reliability are the following: (i) the exclusive authority to receive, confirm and implement interchange schedules; (ii) the right to order redispatch if necessary for reliable operation of the transmission system; and (iii) the authority to approve scheduled transmission outages. In addition, the RTO must perform its functions consistent with established reliability standards, and must notify the Commission if these standards prevent it from providing reliable, non-discriminatory transmission service. Order No. 2000, slip op. at 315-22.

b. Description of Model.

Under the SeTrans model, the System Administrator will ensure the short-term reliability of the integrated transmission system it operates. Consistent with Order No. 2000, the System Administrator will be responsible for receiving, confirming and implementing all interchange schedules, through either direct or indirect control. As noted above, market participants will provide balanced generation and load projections for each hour of the next day. Using this information, the System Administrator will develop an operating plan to determine the amount and location of needed ancillary services, transmission reconfiguration, redispatch options, or must-run reliability generation. At an established time later during the day, the System Administrator will acquire any additional ancillary services (above those acquired on a longer-term basis) from a bid-based market.

During current day operations, the market participants will refine their hourly projections to better balance load and generation. As more information is known, the System Administrator will update its original plan and allow the bid-based market to respond. In real-time, moment-to-moment balancing of load and generation will be accomplished by the control areas within the RTO responding to Area Control Error ("ACE"). The System Administrator (by contract) will have the right to order redispatch of generation to alleviate congestion and to ensure that the moment-to-moment reliability requirements of the load and transmission system are met.

In addition, the System Administrator will have the right to order redispatch in emergency conditions. These "emergency" conditions will be limited to reliability situations that require generation adjustments for security problems that cannot be resolved using the ancillary and congestion management markets due to a failure of the market to offer a sufficient quantity of resources at some price or as a result of some catastrophic condition. In other words, the System Administrator will not call on such resources when sufficient resources have been offered through the ancillary markets, even if the price for such resources is high. Moreover, the System Administrator will not call for a reduction in generation resources without supplying appropriate replacement energy to maintain the balance of supply and load. Finally, these emergency redispatch provisions will not prevent generation owners from offering generation services into the wholesale energy market on a firm basis or create a situation in which the generation is significantly devalued as a result of the redispatch obligation. It is currently expected that the limitations on emergency redispatch, as well as the appropriate compensation, will be established in the generators' interconnection agreements with the System Administrator.

The System Administrator will also provide oversight and have final authority over scheduled transmission outages. This responsibility will include reviewing and approving all scheduled transmission outages of the transmission owners to minimize disruptions in transmission service. The System Administrator will also coordinate planned generator outage schedules to ensure reliability of the transmission system. Accordingly, the System Administrator will satisfy the Commission's short-term reliability characteristic. <u>See</u> <u>GridSouth</u>, 94 FERC at p. 61,995 (holding that a similar proposal regarding short-term reliability satisfied the requirements of Order No. 2000).

B. **<u>Functions Of An RTO</u>.**

1. **<u>Tariff Administration</u>.**

a. <u>Requirements of Order No. 2000</u>.

In Order No. 2000, the Commission determined that the RTO must be the sole provider of transmission service and sole administrator of its own OATT.

The Commission clarified that this authority includes the evaluation and approval of all requests for transmission service, including new interconnections. In addition, the Commission determined that transmission customers must not be charged multiple access charges. Order No. 2000, slip op. at 330-32.

b. Description of Model.

Consistent with the requirements of Order No. 2000, the System Administrator will develop and file a "system-wide" OATT and will be the sole provider of unbundled transmission service over the facilities that it operates. The System Administrator will be the sole tariff administrator of a Commission approved OATT, with the right to file for rate changes under Section 205 of the Federal Power Act. The System Administrator will be responsible for the rate design for RTO-wide service and service outside and through the Transco footprint. The Transco will have authority to develop the rate design for service to load in the Transco's footprint, subject to System Administrator review and approval. Each transmission owner will have the right at any time, with appropriate regulatory approval, to change its annual revenue requirement (including incentive mechanisms) payable to the transmission owner by the RTO.

Based on current Commission precedent, the SeTrans Sponsors expect that all load would be under the OATT (with appropriate treatment for grandfathered agreements). In this regard, the SeTrans Sponsors anticipate that they would take network transmission service from the RTO for their retail and bundled wholesale customers. Specifically, participating transmission owners would execute a contract with the System Administrator for such service unless an owner is legally prohibited from doing so or faces the loss of eligibility for tax exempt financing by engaging in such a contract, in which case the terms of service must be modified to address such impediments.

The System Administrator will have the sole authority to receive, evaluate, and approve or deny all requests for transmission service (including interconnection service). This approach will provide generators with a “one-stop” approach to obtain interconnection and delivery service. The System Administrator will be responsible for all interconnections by generators and will have coordination responsibility as well as review and approval authority over all interconnections within the Transco’s footprint. Although the Transco will have responsibility for interconnections in its footprint, customers seeking such interconnections will have access to “one-stop shopping” by applying to the System Administrator. The Transco will perform its generator interconnection functions at the direction of the System Administrator and using standards established by the System Administrator.

The RTO tariff rate design will be developed through a stakeholder process, and thus it is premature to try to describe it in great detail. In general terms, it is expected that the rate model will provide full cost recovery for all participating transmission owners and will include incentives for new construction. Some of the key principles of the SeTrans model concerning rate design are outlined below:

1) All facilities rated 40kV and above are eligible for inclusion (subject to the consent of the owner of such facilities) in the RTO from the initial operation of the RTO. Transmission owners desiring to include such facilities will not be subject to any functionality or other test for inclusion.

2) Transmission owners will be entitled to full revenue requirement recovery for any facilities included in the RTO, beginning at initial RTO operation.

3) There will be a "rolled-in," system-wide point-to-point rate.

4) There will be "license plate" rates for network service, based upon the zone where the loads are located. The specific zones will be determined through the collaborative process.

5) Multiple access charges within the RTO area will be eliminated.

It is anticipated that the model will include cost shifting mitigation measures, but it must be emphasized that there are several types of potential cost shifting concerns that have been discussed in the mediation. One type involves cost shifts due to the transition from a license plate rate to a postage stamp rate; a second involves cost shifts arising from the recognition of all transmission facilities within the RTO; and a third involves cost shifts due to the loss of existing transmission revenues resulting from to the elimination of rate "pancaking". The SeTrans Sponsors are very concerned about the first because it could have a significant impact on the rates of end users. With respect to the second, the discussions have suggested that the impact would be very small. Based on that assumption, the SeTrans model does not propose to "phase-in" recognition of investment of participating transmission owners over some multi-year period. Instead, the SeTrans model contemplates recognition of transmission investments from the outset of RTO operations. With respect to the loss of transmission revenues due to the elimination of rate pancaking, such cost shifts will need to be addressed when their magnitude is better understood. All of these issues will be explored in more detail in the collaborative process.

In addition, the RTO rate design will honor all Existing Transmission Agreements ("ETA"), including transmission service agreements, interconnection agreements, interface agreements and transmission ownership agreements effective as of July 12, 2001 with no generic abrogation of the ETAs. See Order No. 2000, slip op. at 602 ("it is not appropriate to order generic abrogation of existing transmission contracts."); GridSouth, 94 FERC at 61,999 (allowing the grandfathering of ETAs). However, the System Administrator may, pursuant to Section 206, propose an amendment to any non-rate term or condition of an ETA that has an unduly adverse impact on its ability to administer the Tariff or its operation of the grid. The SeTrans model contemplates that license plate rates will remain in effect at least through December 31, 2012 to coincide with the term of the Georgia ITS Agreements. Any ETA that conveys firm transmission rights will be allocated congestion rights consistent with the congestion management system.

Current individual Tariff transmission service agreements ("TSAs") will be converted to RTO TSAs.

2. <u>Congestion Management</u>.

a. <u>Requirements of Order No. 2000</u>.

Order No. 2000 requires that an RTO ensure the development and operation of market mechanisms to manage congestion. The Commission determined that responsibility for operating these market mechanisms must reside with the RTO or another entity that is not affiliated with any market participant. The Commission declined to endorse any single model or pricing approach, but instead stated that it "will allow RTOs considerable flexibility to propose a congestion pricing method that is best suited to each RTO's individual circumstances." Order No. 2000, slip op. at 384. With respect to implementation, the Commission allowed RTOs to defer implementation of market mechanisms for managing congestion for a period of one year after start-up. Order No. 2000, slip op. at 380-86.

b. <u>Description of Model</u>.

The SeTrans model regarding congestion management is a work-in-progress and is intended to facilitate tradable transmission rights and secondary markets for such rights, promote efficient regional dispatch and maintain system reliability. Expectations are that the "Day 2" congestion management plan ultimately adopted will be the fruit of a full collaborative process. Given this intent for further development and input and recognizing that the specific details of the plan are still under consideration, the congestion management plan concepts will be briefly summarized.

Firm Transmission Rights ("FTRs") will be allocated to firm transmission customers based on the flowgates associated with the transmission service that they have reserved. See GridFlorida LLC, et al., 94 FERC ¶ 61,363, p. 62,353 (2001) (accepting, in theory, the use of a flowgate/physical rights model to manage congestion.) Transmission service will be reserved between specific resources (point(s) of receipt) and specific loads (point(s) of delivery), but the FTRs will be assigned on the specific flowgates impacted by the service request. Since the FTRs are associated with flowgates (instead of specific contract paths), they will be usable for any transmission reservation that involves the affected flowgates. Consequently, an FTR owner that wishes to schedule transmission service along a different contract path than the original reservation will be able to use the FTRs it holds to the extent the new transmission schedule impacts the same flowgates.

After initial assignment to a transmission customer, FTRs can be reassigned by the original owner to any party (subject to registration with the RTO). Unlike some approaches, this model provides that a holder of FTRs will receive no benefit unless it actually uses its rights. Hence, a holder of FTRs will have an incentive to sell any unused FTRs to others. At the same time, a holder of FTRs will not be able to prevent others from using the flowgate. If an FTR is left unused, transmission service will be provided to others on a non-firm basis and the FTR holder will receive no compensation.

Congestion will be managed by the System Administrator using voluntary hourly bids for redispatch. Bids will include both "incremental" prices (prices market participants would be willing to receive to increase generation or to decrease load) and "decremental" prices (prices market participants would be willing to pay to decrease generation or to increase load). The generator must obtain any applicable regulatory approvals associated with the price quotations. Redispatch will occur as necessary to maintain system security and alleviate congestion. The bids will be used to calculate the locational marginal price ("LMP") for the flowgate nodes, which in turn will determine the net congestion cost to be allocated to those entities responsible for the congestion.

Redispatch will be available for all types of transmission customers. Non-firm customers (i.e., customers without FTRs) may choose to pay redispatch costs and avoid curtailment (if a redispatch solution exists) or decline to do so and be physically curtailed when congestion occurs. Similarly, external customers (i.e., those causing unscheduled loop flows) may request transmission service and, to the extent that it is available, pay the transmission service charges and congestion costs associated with the loop flows and thereby avoid physical curtailment during periods of congestion. Prior to redispatch, physical curtailment will be implemented consistent with the NERC TLR procedures to remove non-firm (internal and external) customers preferring physical curtailment over increased transmission cost. If congestion persists after eliminating these flows, the System Administrator will attempt to alleviate the limitations using redispatch based on the incremental and decremental bids submitted by generators. As a last resort, physical curtailment consistent with NERC TLR procedures will be implemented. At settlement, congestion costs will be allocated to those customers causing the congestion. Such costs will be first allocated to the customers without FTRs and then to customers with such rights.

The proposed congestion management concepts provide a feasible approach that will establish clear and tradable transmission rights, promote efficient regional dispatch, facilitate the emergence of secondary markets for transmission rights and provide market participants the opportunity to hedge their exposure to congestion, while maintaining system reliability. For these reasons, the SeTrans model satisfies the requirements of Order No. 2000.

3. Parallel Path Flow.

a. Requirements of Order No. 2000.

In Order No. 2000, the Commission determined that an RTO must develop and implement procedures to address parallel path flow issues within the region and in other regions. Recognizing the complexity of the issue and the varying severity of the problem among different areas of the country, the Commission established a three-year period to implement measures to address parallel path flow issues between regions. Order No. 2000, slip op. at 390-93.

b. Description of Model.

Consistent with these requirements, the System Administrator will implement procedures to address parallel path flow issues within its region and with other regions. Since service will be provided under a single OATT, parallel path flows within the region will be internalized. By virtue of the inclusion of substantial non-jurisdictional transmission facilities in the RTO, the System Administrator will be able to internalize many more flows than an RTO without such public power participation. To the extent parallel path flows from other regions can be identified (through the NERC tagging process or another means), their relative transmission priorities can also be determined. Under the SeTrans model, customers causing these external transactions may agree, if there is ATC, to pay any transmission service charges and the congestion costs associated with the parallel path flow they impose and thereby avoid physical curtailment. In addition, a customer imposing a parallel path flow can purchase FTRs to mitigate exposure to such congestion costs. Although this approach should satisfy the requirements of Order No. 2000,[19] the System Administrator will also continue to work with other regions to adopt more comprehensive parallel path flow mechanisms within three years of startup.

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[19] In this regard, it should be emphasized that this model is superior to that approved by the Commission in GridSouth because it allows the customer causing the loop flows to avoid curtailment by paying the associated redispatch costs or by purchasing FTRs. Compare with GridSouth, 94 FERC at p. 62,002.

4. **Ancillary Services.**

a. Requirements of Order No. 2000.

In Order No. 2000, the Commission determined that an RTO must serve as provider of last resort of all ancillary services required by Order No. 888 (and subsequent orders). The Commission clarified that the RTO could fulfill its ancillary service obligation through a variety of means, including contractual arrangements, control of specified generation facilities or market mechanisms. The Commission found that all market participants must have the option of self-supplying or acquiring ancillary services from third parties, subject to restrictions imposed by the Commission. The Commission ruled that the RTO must have authority to decide the minimum required amounts of each ancillary service and the locations at which these services must be provided. The Commission also concluded that an RTO must ensure that customers have access to a real-time balancing market that is developed and operated by either the RTO or another entity that is not affiliated with any market participant. Order No. 2000, slip op. at 420-26.

b. Description of Model.

Consistent with these requirements, the System Administrator will serve as the provider of last resort for all ancillary services required to be offered to market participants. All market participants will have the option of self-supplying or acquiring ancillary services from third parties consistent with Commission policies. However, the System Administrator will have the authority to decide the minimum required amounts of ancillary services and, if necessary, the locations at which these services will be provided.

The ancillary services that will be provided include the ancillary services required in Order No. 888. The System Administrator will take bids for all of those services, except Scheduling, System Control and Dispatch Service. The cost of that service will be based upon the System Administrator's costs, while all other ancillary services will reflect the cost of acquisition from the market. To the extent that a market participant desires to sell such services to the RTO at market-based rates, it must obtain the appropriate regulatory approval. The details of the ancillary services will be developed as part of the collaborative process.

5. OASIS/TTC/ATC.

a. Requirements of Order No. 2000.

In Order No. 2000, the Commission found that an RTO must be the single OASIS site administrator for all transmission facilities under its control. The Commission reaffirmed that an RTO should calculate ATC values based on data developed (partially or totally) by the RTO. In the event of a dispute over ATC values, the RTO's values should be used pending the outcome of the dispute. Order No. 2000, slip op. at 432-35.

b. Description of Model.

Consistent with these requirements, the System Administrator will be the single OASIS site administrator for all transmission facilities under its control and will independently calculate TTC and ATC. TTC and ATC will be calculated on individual flowgates of relevant concern. In addition, the System Administrator will post TTC and ATC to reflect contract paths based upon the ATC of all the flowgates involved in the contract path, as is the case today. In the event of a dispute over the appropriate TTC or ATC, the System Administrator's determination will govern pending the resolution of the dispute. See GridSouth at p. 62,004 (accepting a similar proposal regarding this function).

6. Market Monitoring.

a. Requirements of Order No. 2000.

In Order No. 2000, the Commission determined that market monitoring is needed to ensure that markets do not result in undue discrimination or provide the opportunity for the exercise of market power. At the same time, the Commission recognized the concerns that many have over market monitoring by RTOs. The Commission also acknowledged that different monitoring plans are likely to be appropriate for different RTOs. Order No. 2000, slip op. at 461-66.

b. Description of Model.

The SeTrans model contemplates that the market monitoring function will be performed by a Market Monitoring Corporation ("Market Monitor") with an independent board of directors selected by the Stakeholders Advisory Committee. See GridFlorida, 94 FERC at pp. 62,362-65 (essentially accepting a proposal to use a separate, non-profit corporation to perform the market monitoring role). The System Administrator will contract with the Market Monitor for monitoring services consistent with the following objectives, authority, and obligations.

The primary objectives of the Market Monitor will be: (1) to objectively develop and report information regarding the structure and operations of the markets; (2) to propose actions regarding efficiency improvements, correction of design flaws, market rule violations, the identification of market power and other anti-competitive conduct; and (3) to conduct independent, objective monitoring consistent with safe and reliable operations and minimal interference with competition.

The Market Monitor will have the authority to monitor, investigate (on its own initiative or the request of any person or governmental agency) and report on: (1) market structure and operation, (2) compliance with market rules by all participants and the System Administrator, (3) market power and abuse, and (4) other anti-competitive practices and conduct. The Market Monitor will prepare and submit reports to the System Administrator, the Stakeholder Advisory Committee, interested state agencies, and the Commission.

The System Administrator will be required to provide to the Market Monitor, on request, all pertinent information in its possession. The Market Monitor may seek authority from the Commission to require market participants and the System Administrator to provide specific types of information to the Market Monitor. Appropriate confidentiality protections will apply to all information so provided to the Market Monitor.

In investigating market power abuses, rule violations and other anti-competitive conduct, the Market Monitor can investigate; seek mitigation; require explanations, justification and information; demand the cessation of inappropriate actions; submit FPA section 206 complaints to the Commission or file complaints with or inform other appropriate authorities; consider other enforcement mechanisms; request the System Administrator to submit proposed tariff changes for review 30 days in advance of filing with the Commission, if practicable; and recommend to the System Administrator changes in market rules. The independence of the Market Monitor should not be prejudiced by being subject to ADR review.

The Stakeholder Advisory Committee will review the budget of the Market Monitor and make suggestions prior to its submission to the System Administrator. The System Administrator will include the fee of the Market Monitor in its management charge, subject to Commission approval.

7. Planning and Expansion.

a. Requirements of Order No. 2000.

In Order No. 2000, the Commission determined that the RTO must have ultimate responsibility for both transmission planning and expansion within the region. The Commission also concluded that an RTO must encourage market-motivated operating and investment actions for preventing or allocating congestion, and must accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. If it is unable to perform these functions at its formation, the RTO must file plans with the Commission with specified milestones to ensure that it meets the overall planning and expansion requirement no later than three years after initial operation. Order No. 2000, slip op. at 485-92.

b. Description of Model.

The SeTrans model draws heavily from the GridFlorida planning model with appropriate modifications necessary to accommodate a multi-state region. See GridFlorida, 94 FERC at pp. 62,366-67 (generally accepting GridFlorida's Planning and Expansion proposal). The System Administrator of the RTO will be responsible for performing regional system studies, planning and arranging transmission expansions, additions and upgrades to enable the system to provide efficient, reliable and non-discriminatory transmission service. The System Administrator will have the responsibility to oversee and approve these plans. In general terms, the SeTrans model:

- Provides for the RTO to have ultimate planning authority.

- Encourages market motivated operating and investment actions for preventing or allocating congestion.

- Expects local area planning to be performed by transmission owners and coordinated with the RTO to ensure adequate load serving facilities are planned.

- Allows for enhanced facilities that do not adversely affect grid reliability.

- Utilizes a form of stakeholder planning committee(s) to ensure a forum for stakeholder input into the facilities, operation and reliability aspects of planning.

The Transco will also have authority to perform system studies and planning within the Transco footprint, subject to System Administrator review and approval. There is one significant exception to the Transco's planning authority. If a resulting improvement within the Transco's footprint would cause a change in flows greater than 5% on any constrained facility outside of the Transco's footprint, then the System Administrator will have primary planning responsibility. This limitation ensures that the System Administrator has the requisite authority to make planning and expansion decisions that materially affect the system, while reserving to the Transco those preliminary decisions that are truly within its sphere.

Transmission customers and transmission owners will have the opportunity to provide input into the planning process to ensure that adequate facilities are planned and that local issues (such as cost, right of way limitations and siting concerns) are properly considered. The System Administrator will establish and chair three joint planning committees: (1) Facilities Planning Committee; (2) Operations Planning Committee; and (3) Reliability Planning Committee. The composition of these Committees will consist of representatives from each transmission owner and all market participant classifications, to be determined through the stakeholder advisory process.

The Facilities Planning Committee will have an advisory role that recommends a jointly planned and prioritized list of projects to the System Administrator. The Facilities Planning Committee will have no approval authority; instead, the System Administrator will have approval authority for facilities that are to be included in its rates. The Facilities Planning Committee will be charged with the responsibility of recommending to the System Administrator implementation of a regional transmission expansion plan that fully serves traditional reliability needs and, at the same time, encourages market-motivated actions for preventing and relieving congestion in a way that establishes clear rights to transmission facilities and provides accurate price signals. The Facilities Planning Committee process will provide for meaningful opportunity for all interested parties to participate with the System Administrator, which is ultimately responsible for developing the regional plan and conducting the necessary studies and analysis in connection with such plans.

The Operations Planning Committee will provide a forum for transmission owners and market participants to have input into the operational planning process and be advised of potential operating problems in the next year. The Operations Planning Committee will have an advisory role to review the System Administrator's planned outage list. The Operations Planning Committee will have no approval responsibility. The System Administrator will have sole approval authority for planned outages as well as recommended solutions to extended planned outages.

The Reliability Planning Committee will provide a forum for transmission owners, stakeholders, and market participants to review and provide input to joint reliability planning activities (e.g., interregional studies).

After completion of this process, the System Administrator will communicate the desired improvements to the local transmission owner. Since it will probably be more expedient and less costly for the transmission owner in the area of the desired improvement to acquire necessary rights-of-way and to construct upgrades, that entity will have the option to develop the facilities. If that transmission owner is unable or unwilling to undertake the upgrades (which could be the case for regulatory or financial reasons), then the System Administrator could engage the Transco, another transmission owner or a third party merchant transmission provider to undertake the improvement. The building entity may be subject to the jurisdiction of various State regulatory agencies for such activities and, if so, will be required to obtain all necessary regulatory approvals. In this regard, the System Administrator should also accommodate any efforts that the States may undertake to create multi-state transmission arrangements.

With respect to market-motivated actions, the SeTrans model may include a form of pricing (e.g., LMP) that will provide economic signals concerning the need for transmission in specified locations. This pricing approach will also provide proper locational pricing signals for new generation siting.

8. Interregional Coordination.

a. Requirements of Order No. 2000.

The final function of an RTO is interregional coordination. The Commission determined that RTOs should coordinate their activities with other regions. The Commission specifically found that this is needed whether or not an RTO exists in those regions. Order No. 2000, slip op. at 494-97.

b. Description of Model.

The coordination of activities among regions is an important element in maintaining a reliable and efficient transmission system. Utilities in the Southeast have worked together for many years to coordinate on reliability and other matters. The Georgia ITS is one very clear example of such an arrangement where transmission owners have worked closely to ensure reliability of the transmission system. Interconnection agreements between neighboring utilities are also indicative of the steps taken in the past to coordinate with other systems and to ensure greater reliability across a large area of the country. Furthermore, bulk power sales, including unit power sales, became extremely important in the Southeast beginning in the early 1980s and required that utilities address interface requirements on more than the historic reliability basis. The System Administrator will continue these types of efforts to enhance system reliability and to establish consistent rules governing the use of the grid.

The SeTrans model expects the System Administrator to continue this historical approach and to develop coordination agreements with all adjacent RTOs. Such negotiations should be given a high priority and should include the following concepts:

- Inter-RTO stakeholder conferences held several times a year to discuss issues affecting inter-regional transmission;

- A common set of protocols for TTC/ATC determinations to ensure consistent postings on interfaces;

- Common TLR and security coordination procedures;

- Coordination of congestion management methods including development of parallel path flow protocols;
- A standard generation interconnection procedure;
- Coordinated transmission planning and expansion; and
- Coordination of inter-regional transmission planning and other market implementation efforts between RTOs.

The SeTrans Sponsors commit to continue to work with other utilities and RTOs to coordinate these details where possible. In this regard, a memorandum of understanding between Southern Companies and TVA has been developed to facilitate this effort.

V. SUMMARY OF POINTS FAVORING THE SETRANS MODEL

1. The SeTrans model contemplates the use of an independent, incentive-driven, third party operator that will not own transmission, generation or distribution facilities in the RTO region. This approach accommodates the needs of non-divesting transmission owners and avoids concern over biased decision-making by the RTO.

2. The SeTrans model can become fully operational without awaiting the transfer to the RTO of transmission assets by the transmission owners or the completion of an initial public offering by the Transco.

3. The SeTrans model will enable the divestiture of transmission assets by transmission owners to a Transco when and to the extent that market and

financial conditions prudently warrant that fundamental shift in the structure of the electric industry.

4. The SeTrans model facilitates, rather than is dependent on, the transfer of transmission facilities by transmission owners to a Transco. That evolution will be facilitated by the assignment to the Transco of those minimal specified Order No. 2000 functions required by conditions in the financial market.

5. The concentration of the Order No. 2000 functions in the System Administrator avoids the conflicts of interest perceived by non-jurisdictional transmission-owning utilities to arise when the for-profit RTO is a transmission-owning entity.

6. The SeTrans model provides more flexibility in meeting the needs of the industry than a Transco model in that the RTO will perform its functions under contract and will be removable for cause (with Commission approval).

7. The RTO transmission grid will be controlled by an experienced system operator from the outset under the SeTrans model.

8. The participation of non-jurisdictional owners is greatly facilitated by the SeTrans model, which can easily accommodate all types of transmission owners. This is demonstrated by the fact that seven non-jurisdictional owners with over 11,000 miles of transmission lines and one of the nation's largest investor-owned utilities have worked on this model.

9. As there is no need to transfer transmission assets from transmission owners to the RTO under the SeTrans model, (a) concern over the ability of a

Transco to exercise eminent domain authority (potentially necessary to expand RTO facilities) will be minimal, and (b) there should be a minimal dislocation in the roles historically played by the State public service commissions.