UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of		
Regional Transmission Organizations	)	Docket No. RM01-12-000
Electricity Market Design and Structure	)	

COMMENTS OF THE NORTH CAROLINA
UTILITIES COMMISSION

On October 30, 2001, the Federal Energy Regulatory Commission (the Commission or FERC) issued a notice of extension of time and opportunity to submit comments on regional transmission organization (RTO) issues discussed at the workshops held at the Commission's offices on October 15 through October 19, 2001. This notice indicated that the Commission's Staff had developed summaries of the key issues discussed at each workshop and that these had been attached to the notice to encourage further discussion on the development of RTOs. The notice further stated that the summaries were not intended to suggest that there is an industry-wide consensus, but rather to obtain alternative opinions on the issues addressed in these summaries. Written comments were invited addressing the Commission Staff's summaries of the key issues discussed at each workshop or addressing any other matter discussed at the workshops.

As noted by Chair Riley of the Maryland Commission in her remarks at the State Commission Workshop, "RTO Week" was designed to focus on the details of RTO structure and operation, not the important threshold issues that need to

be addressed prior to RTO formation, such as the need for RTOs, their appropriate geographic boundaries, differences between and among the States and regions, and the critical importance of State regulators being able to ensure low cost electric service and protect natural resources. Many of the other State Commissioners who spoke at the workshop shared these concerns and expressed their skepticism about the wisdom of the Commission's proposal to form four RTOs. Commissioner William M. Nugent, speaking as President of the National Association of Regulatory Utility Commissioners (NARUC), described as critical the need for a thoughtful and careful development of both the legal and factual bases for the Commission's proposals.

The North Carolina Utilities Commission (NCUC) participated in the State Commission Workshop on Thursday morning, with Commissioner Sam J. Ervin, IV, speaking on its behalf. As noted in his remarks, the majority of the load in the Southeast is served by vertically integrated investor-owned utilities (IOUs) that rely for the most part on their own generating units. The IOUs in North Carolina use their transmission facilities primarily for the purpose of moving electricity from generating units located within their control areas to end users within their control areas. The amount of electricity purchased by them on the wholesale market, when compared to their total loads, is relatively small. The municipalities that own distribution facilities and the electric membership cooperatives operating in North Carolina also own a fair amount of generation within IOU control areas. Accordingly, the percentage of end user load in North Carolina that is affected by

market purchases is limited. He also noted that retail competition is not likely to be pursued in North Carolina in the foreseeable future. Therefore, even assuming wholesale markets can be made robustly and vibrantly competitive at minimal cost, the positive benefits to North Carolina end users may not be very large.

The NCUC has challenged the Commission's recent RTO orders on numerous legal, jurisdictional, and policy grounds, including the lack of adequate notice and other procedural problems and the absence of any showing that the benefits available from the Commission's policies outweigh the resulting costs. These past filings are hereby incorporated into these comments by reference. The Commission should now confront the major issues that have been raised in these proceedings, which are (1) its failure to directly and openly address, through a factual inquiry, the threshold question of whether end users within the scope of any proposed RTO would be better off as a result of the change in the status quo and (2) its failure to consider the limitations on its authority when a specific RTO is to be designed and implemented. These issues should be addressed and resolved before the Commission takes any further actions intended to result in the formation of one or more RTOs for the Southeast.

A major consideration in this entire process should be the very important differences that exist between and among the various parts of the country and the differences that exist between and among the various States within a given

region. These differences include, but are not limited to, the following: industry structure issues, such as the continued existence of vertically integrated public utilities and the lack of retail competition; historical operations, such as the existence or lack of close coordination among a region's utilities (e.g., tight versus loose power pools) and the existence or lack of a pattern of activity between and among States and regions; the current status of the transmission systems serving a given IOU control area, State and/or region; the proximity of fuel sources; air quality and other environmental issues; and regulatory differences. The State Commission Workshop revealed clearly that there are significant differences between and among States within a given region, even one with a long history of joint transmission operations such as the PJM Interconnection, and that there are even greater differences between and among the various other parts of the country.

Turning now to the workshops that addressed details with respect to the structure and operation of an RTO, it must be recognized that general agreement among the members of a panel at a workshop designed to discuss theoretical details is, by its nature, of limited value. For example, there was apparent consensus among the six panelists for the planning and expansion workshop that an RTO should be the ultimate decision maker and that a regional transmission plan involving all stakeholders is the best way for such functions to be performed. The panelists apparently were not asked to consider how such expansion and planning could be accomplished given the lack of federal siting authority. In

addition, a specific, detailed proposal about which there is apparent consensus can be irrelevant when applied to the Southeast. The workshop on congestion management, for example, did not consider differences among the regions. Unlike the Northeast, most of the generation in the Southeast is in retail rate base and/or otherwise committed to retail customers. It, therefore, would not be available for use in the management of congestion in the same manner as discussed in the workshop.

Given the limitations on the Commission's authority under federal law, the approach the Commission has taken to date with respect to the Southeast may actually impede progress toward greater competition in wholesale markets because of the legal challenges that will ensue. The Commission's focus at this point should be first on determining whether an RTO can perform functions of value in the Southeast given current law and facts and then on whether an RTO designed within those limitations should be pursued. Congress, in the Energy Policy Act of 1992, endorsed integrated resource planning processes at the retail level, through amendments to the Public Utility Regulatory Policies Act of 1978 (codified as 16 U.S.C. 2621(d)(7)), and also endorsed enhanced wholesale competition. Current federal law, therefore, does not support the Commission's goal of "nationalizing" electricity, and clearly there is no current consensus in Congress that favors granting the Commission authority broad enough for it to force States to unbundle retail service and obliterate integrated resource planning.

Since RTO Week, Commissioner Brownell has circulated a memorandum suggesting that the Commission's Staff should explore the means by which the Commission can have a more structured process for working with States, such as the establishment of regional boards or panels with agreed upon goals, duties, and timelines. This proposal was discussed at the Commission's November 7, 2001, Regular Meeting, and followed up by a Commission order of the same date. Commission Staff has been asked to provide recommendations on the structure of State-federal RTO panels and to propose a timeline for the work of the panels to begin. With respect to the narrow question of exploring the structure and procedures for one or more regional joint State-federal panels, the NCUC would be pleased to participate in any such effort and agrees that increased communication could only be of benefit. However, any participation by the NCUC in any such panel must be conditioned as follows: first, there should be no restriction, or limitation, on the relevant topics that may be addressed by such a body, and; second, there must be no prejudice to the legal right of the NCUC to challenge in an appropriate manner any actions taken by the FERC or to exercise the NCUC's obligations under State law.

Given the significant differences between and among the various areas of the country, the NCUC suggests that the FERC and the State Commissions in the Southeast specifically engage in discussions with respect to how a regional panel should be constituted and implemented. Without such a Southeastern focus, a regional panel is likely to be of limited usefulness. For example, the first

item on Commissioner Brownell's suggested list of duties (the immediate setting up of RTOs) would not be an appropriate duty for a Southeastern panel in the near future for the reasons advanced by the NCUC in this and prior filings.

The State Commission Workshop suggested the existence of widespread concern that the FERC's RTO policy may be a "solution in search of a problem." Given that the Southeastern Association of Regulatory Utilities Commissioners (SEARUC) has informed the FERC that it intends to undertake a regional study of transmission issues and given that the NCUC had previously instituted an investigation of transmission issues affecting North Carolina, the NCUC specifically recommends the following:

(1) The FERC should delay any further action on a Southeastern RTO until completion of the SEARUC study;

(2) Upon completion, the FERC and the SEARUC Commissioners can review the results of the study and determine both the nature of any actual problem(s) that are identified and a range of possible solution(s) to any such problem(s);

(3) Cost/benefit analyses of any identified solutions should then be undertaken. If the most appropriate solution to the identified problems is found to be the formation of one or more RTOs, then the configuration and operational details of such RTO or RTOs should be determined; and

(4) Explicit consideration should be given to the cost and benefits to retail ratepayers as solutions are identified and the configuration and operational details of any proposed RTOs are determined, with the FERC and the SEARUC Commissioners jointly performing the cost/benefit analyses.

The foregoing is the appropriate solution to the current situation in the Southeast. As revealed at the State Commission Workshop, each region of the country has unique issues and, therefore, different approaches are appropriate for different regions. This reality should be the driver behind the Commission's future actions in this area.

Respectfully submitted,

NORTH CAROLINA UTILITIES COMMISSION
By Its Attorneys,

Louis S. Watson, Jr.
Staff Attorney
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325
(919) 733-3969

Gisele L. Rankin
Staff Attorney
Public Staff-North Carolina
Utilities Commission
4326 Mail Service Center
Raleigh, North Carolina 27699-4326
(919) 733-6110

By: _____.
Louis S. Watson, Jr.

CERTIFICATE OF SERVICE

I, Louis S. Watson, Jr., certify that a copy of the Comments of The North Carolina Utilities Commission has been served on all parties of record by U.S. mail on this 9th day of November, 2001.

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Louis S. Watson, Jr.