

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Guidance on Regional Transmission Organization  
and Independent System Operator Filing  
Requirements under the Federal Power Act

Docket No. PL03-5-000

GUIDANCE ON REGIONAL TRANSMISSION ORGANIZATION AND  
INDEPENDENT SYSTEM OPERATOR FILING REQUIREMENTS UNDER THE  
FEDERAL POWER ACT

(Issued September 10, 2003)

1. In light of the recent court decision in *Atlantic City Electric Co. et al. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002), a number of entities have informally sought Commission clarification with respect to whether public utilities that seek to join a regional transmission organization (RTO) or an independent system operator (ISO), or to exit an RTO or ISO, are required to make filings pursuant to Section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b (2000). The Commission offers the following guidance for filings made subsequent to the date of issuance of this clarification.

2. For any transfer of operational control of jurisdictional transmission facilities to or from an RTO or ISO, which does not involve a transfer of ownership or other proprietary interest in transmission facilities or a lease of jurisdictional transmission facilities, the Commission will no longer require a public utility to make a filing pursuant to Section 203 of the FPA with respect to such transfer.<sup>1</sup> Rather, in the limited circumstances described, arrangements to join or exit an RTO or ISO will be reviewed in the context of filings made under Section 205 of the FPA, 16 U.S.C. § 824d (2000). Such Section 205 filings, typically include agreements establishing the roles and responsibilities of the

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<sup>1</sup> If a public utility's transfer of control of jurisdictional facilities to or from an RTO or ISO involves a sale, lease, or transfer of proprietary interest, such transfer must be filed pursuant to Section 203 of the FPA. Further, a transfer of jurisdictional contracts would also require a Section 203 filing.

institutional participants in the RTO or ISO (such as the transmission owning members of the RTO), the RTO or ISO managing entity, and the other participant members in RTO or ISO markets; such filings may also include Section 205 agreements between the member transmission owner and the RTO with respect to the specific facilities whose operational control is being transferred.

3. Public utilities making Section 205 filings will continue to be required to demonstrate that they meet the principles of Order No. 2000.<sup>2</sup> In undertaking our review of such Section 205 filings, the Commission will consider whether all of the elements contained in the filed arrangements meet the principles of Order No. 2000 and are just and reasonable pursuant to Section 205 of the FPA. Further, our consideration will extend to matters such as whether, at the outset of an RTO or ISO, member entrance and exit rights are just, reasonable and not unduly discriminatory as well as whether a specific proposed withdrawal of a participant is consistent with the FPA.<sup>3</sup> Of course, all associated tariffs, rates, terms and conditions of service provided by or through an RTO or ISO shall continue to be filed pursuant to Section 205 of the FPA. In addition, all other filing requirements relating to RTOs and ISOs are unaffected by this clarification.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>2</sup> Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. & 31,089 (1999), order on reh-g, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. & 31,092 (2000), appeal dismissed, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001) (Order No. 2000).

<sup>3</sup> See 295 F.3d at 12.