UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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...MISSION

Notice of Request for Public Comments On Regional Transmission Group Proposal	)	Docket No. RM93-3-000

COMMENTS OF THE U.S. DEPARTMENT OF JUSTICE
ON REGIONAL TRANSMISSION GROUPS

On November 10, 1992, the Federal Energy Regulatory Commission (FERC or Commission), invited comments on a proposed standard for FERC certification of Regional Transmission Groups (RTGs).1/ The proposal, first presented to the conferees then discussing inclusion of an RTG provision in the Energy Policy Act of 1992, was developed by a cross-section of entities in the electric industry.2/

1/ Notice of Request for Public Comments on Regional Transmission Group Proposal, Docket No. RM93-3-000), 57 Fed. Reg. 54580 (Nov. 19, 1992) (Notice).

2/ The proposal upon which FERC has requested comments sets out a number of criteria for certification of an RTG. Under these criteria, an RTA would have to:

--Include a region of sufficient size to provide reliable and efficient transmission service (§(a)(A));

--Provide for membership open to buyers and sellers of transmission service in the region (§(a)(B));

--Impose an obligation to provide transmission service including building transmission when necessary to provide

(Footnote continued on next page.)

The Department of Justice (Department) supports the Commission's efforts to promote the utilization of RTGs as a means of increasing the efficiency of the nation's electric power system. While joint activity among competitors may under certain circumstances raise competitive concerns, there is nothing inherently anticompetitive in the concept of an RTA. Indeed, the Department believes that RTGs can enhance competition and efficiency in bulk power markets and encourages the FERC to support their development. As regional competitive bulk power markets continue to develop, more transactions are likely to take place that involve transmission by more than one utility. The fact that FERC recently has been granted authority to order wheeling3/ is likely to increase the amount of voluntary wheeling that takes place. For these reasons,

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reasonable and reliable service §(a)(C));

--Facilitate joint transmission planning to accommodate known requirements of members and non-members within, into, out of, and through the region (§(a)(D));

--Include rules for decision-making reflecting the interests of all members (§(A)(E)); and

--Create a consentually crafted mechanism for dispute resolution that limits the necessity of invoking FERC procedures and remedies. (§(a)(F)).

3/ Wheeling in these comments refers to transmission service provided by a utility for a transmission customer that is purchasing bulk power from a third party.

planning and operation of the electric grid on a regional basis are likely to become more important than ever before and RTGs have the potential to play an important role.

RTGs offer a potentially useful device for obtaining significant potential efficiencies by coordinating regional planning, facilitating bulk power transactions, optimizing grid usage, and developing efficient expansion of the grid, all while maximizing reliance on privately negotiated transactions. RTGs will serve as a clearinghouse for information concerning all transmission users, not just native-load customers of individual utility companies. When all potential users can make known long-term needs for transmission in or through a region, transmission planners can more efficiently design, expand, and operate the grid to accomodate these needs on a regional basis.4/ Planning and

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4/ Currently, there is some coordination of transmission planning within reliability councils in order to protect against adverse effects of new transmission and generation on reliability of interconnected systems. In some areas of the country, especially areas in which there have already been large numbers of inter-regional transactions, members of these reliability councils exchange information on projected transmission projects and provide some joint planning of transmission capacity expansion.

RTGs may offer greater planning potential than traditional reliability councils, because their focus would be on planning for the increased use of third-party transmission requests and will incorporate more directly information on future needs of all transmission users. This will be especially important if, as anticipated, there is increased demand for long-term transmission requiring expansion of existing facilities.

operation of transmission lines throughout an entire regional grid will allow utilities to accomodate the maximum number of service requests in a timely manner and to take advantage of economies of scale inherent in transmission facilities. The potential efficiency of regional planning and operation consists of more than merely saving some transactions costs of negotiating with multiple utilities or avoidance of duplicative transmission facilities. The action that would be the most efficient response by an individual utility to the requests of its customers may not be the most efficient response when considered in the context of all regional utilities simultaneously attempting to accomodate all demands on the system. The advantage of an RTG is that it can allow configuration and use of the system in a way that would be appropriate for the maximum number of the transactions.

The Commission should use its authority to encourage efficient bulk power transactions. One way to do so is through encouraging participation in efficiency enhancing RTGs. Because the development and certification of RTGs has not been mandated by the Congress, transactional information needed for rational planning and operation will have to be obtained from

non-RTG members voluntarily. Even for members, unless otherwise agreed to in the contract, building in conformance to RTG planning recommendations will be voluntary. (See §(G)(3)). Buyers and/or sellers of transmission may opt out of the RTG process and instead simply request (or provide) transmission at the time it is needed. There may be valid business justifications for failing to provide information early in the RTG process; however, the disinclination of entities in a region to participate in the process may be detrimental to the efficient development and functioning of the regional transmission grid. For this reason, FERC should take such a failure to engage in rational regional planning and operation into account, as one of the factors it considers, in determining whether the approval or denial of a request for mandatory transmission under §211 is in the public interest. Such a policy will encourage rational, consentual transmission rather than piecemeal building and inefficient transmission operation based on the exigencies of individual transmission orders.

RTGs offer an opportunity to maximize flexibility and creativity in developing solutions to transmission issues through private negotiation. These potential benefits could be

diluted, however, or lost by FERC insistence on uniform terms for RTG agreements. For example, long-term transmission agreements do not tend to be uniform. Frequently they are negotiated to meet very specific needs of both buyers and sellers. Regulation in general does a far worse job of tailoring transactions to meet such specific needs than does direct negotiation. This is true even when the result of the negotiation will be subject to relatively strict regulatory scrutiny after the fact. RTAs can provide a framework for such direct negotiation.

The need to preserve flexibility and opportunity for experimentation is strong with respect to RTG pricing.5/ The FERC and the industry have not yet developed expertise in the management and pricing of wheeling on demand. The economic and technical conditions affecting transmission can vary from region to region. Wheeling on demand poses a risk that

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5/ FERC's proposal included no criteria on transmission pricing. The Department believes that this omission is appropriate. Transmission pricing is not fully developed at this time, and RTGs may serve to develop transmission pricing principles. Thus, the FERC should not narrowly circumscribe RTGs with respect to pricing. While the antitrust laws apply to Regional Transmission Agreements (RTAs), like other joint venture agreements, their pricing provisions need not violate the antitrust laws. RTGs also may prefer not to deal with pricing, and they should be allowed that option. Certainly, FERC should not mandate or even suggest that uniform pricing such as postage stamp wheeling on a regional basis be part of an RTA.

adversely could affect existing customers by harming reliability and/or resulting directly or indirectly in provision of service without adequate compensation. RTGs consisting of transmission providers and users knowledgable about technical and economic conditions within a region are likely to be able to discern practical approaches tailored to address these regional issues. The Commission should encourage them to do so.

In sum, the FERC should adopt broad guidelines for the certification of RTGs, and not prescribe standard clauses or rigid rules. The FERC should act primarily as a reviewer, not author, of RTG agreements to allow maximum flexibility for regions to address transmission issues, consistent with the public interest.

Respectfully submitted,

John W. Clark
Acting Assistant Attorney General
Antitrust Division

Mark C. Schechter
Chief
Transportation, Energy, and Agriculture Section

Mary E. Fitzpatrick
Assistant Chief
Economic Regulatory Section

Jade Alice Eaton
Attorney
Transportation, Energy, and Agriculture Section

Room 9114
Antitrust Division
U.S. Department of Justice
555 4th Street, N.W.
Washington, D.C. 20001
(202) 307-6316