

103 FERC ¶ 61,272

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cleco Power LLC
001
Dalton Utilities
Entergy Services, Inc.
Georgia Transmission Corporation
JEA
MEAG Power
Sam Rayburn G & T Electric Cooperative, Inc.
Southern Company Services, Inc.
City of Tallahassee, Florida

Docket No. EL02-101-

ORDER GRANTING AND DENYING REQUESTS FOR REHEARING

(Issued June 4, 2003)

1. In this order, the Commission grants in part and denies in part requests for rehearing of the Commission's order issued on October 10, 2002.¹ This order provides further guidance concerning the proposal to form the SeTrans Regional Transmission Organization (SeTrans RTO).

I. Background

2. The October 10 Order was a declaratory order that provided guidance to the SeTrans Sponsors² (Sponsors or Participating Owners) on certain issues which the

¹See Cleco Power LLC, et al., 101 FERC ¶ 61,008 (2002) (October 10 Order).

²Cleco Power LLC; Dalton Utilities (acting as agent for the City of Dalton,
(continued...))

Sponsors identified as critical to forming the SeTrans RTO. The Commission also determined that the SeTrans Sponsors' proposed business model, its independent system administrator (ISA) selection process, and generally the governance structure, are in compliance with Order No. 2000.³

II. Requests for Rehearing and Responsive Pleading

3. The SeTrans Sponsors, Alabama Electric Cooperative (AEC), Alabama Municipal Electric Authority (AMEA), Arkansas Public Service Commission (Arkansas Commission), Calpine Corporation (Calpine), Duke Energy North America, LLC (DENA), Louisiana Public Service Commission (Louisiana Commission), Municipal Entities,⁴ the City Council of New Orleans (New Orleans Council), and the Steel Producers⁵ filed timely requests for rehearing.

²(...continued)

Georgia); Entergy Services, Inc. (acting as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.); Georgia Transmission Corporation; JEA (formerly Jacksonville Electric Authority); MEAG Power; Sam Rayburn G & T Electric Cooperative Inc.; South Carolina Public Service Authority (Santee Cooper); Southern Company Services, Inc. (acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company); and the City of Tallahassee, Florida.

Subsequent to the issuance of the October 10 Order, Santee Cooper notified the Commission of its intent to withdraw from the proposed SeTrans RTO.

³Regional 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), aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

⁴Municipal Entities consist of Electricities of North Carolina, Inc., Piedmont Municipal Power Agency, Louisiana Energy and Power Authority, Lafayette Utilities System, Municipal Energy Agency of Mississippi, and the Cities of Orangeburg and Seneca, South Carolina.

⁵Steel Producers consist of Gerdau Ameristeel, Commercial Metals Company, Nucor Steel and Nucor Yamato Steel.

4. On November 26, 2002, the SeTrans Sponsors filed a motion in opposition to both Calpine and DENA's request for rehearing.

III. Discussion

5. On a procedural note, the Commission will reject the SeTrans Sponsors' answer in opposition to Calpine's and DENA's requests for rehearing. Rule 713(d) of our Rules of Practice and Procedure prohibits answers to requests for rehearing.⁶

A. Standard Market Design

1. Requests for Rehearing

6. Numerous parties, including AEC and Louisiana Commission, take issue with our position that we do not intend to overturn in the standard market design (SMD) final rule in Docket No. RM01-12-000⁷ decisions that are made in this docket.⁸ AMEA argues that the October 10 Order did not clearly explain whether the SMD final rule would apply to proposals such as the Transmission Expansion Protocol and the Market Design Protocol. Additionally, Calpine requests that the Commission clarify that it accepted the SeTrans ISA's governance structure and business model only in concept and did not approve any specific provisions in the organic documents that bear on the independence of the ISA.

7. DENA states that some parties may be under the mistaken belief that as long as the Sponsors file their detailed RTO proposal before the effective date of the SMD final rule, the Sponsors' proposal would be immune from compliance with the final rule. DENA therefore requests that the Commission clarify its intent. Additionally, Municipal Entities state that the Commission, by deciding not to revisit aspects that were not specifically flagged for future action, provides the Sponsors with a clear map of how to avoid the SMD final rule. Municipal Entities therefore request that the Commission withdraw its decision not to revisit its prior approvals.

⁶See 18 C.F.R. § 385.713(d) (2002).

⁷See *Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design*, 100 FERC ¶ 61,138 (2002).

⁸See October 10 Order at P 2.

2. Commission's Response

8. We recognize that substantial time and effort have been put into developing solutions to market design issues confronting the Southeast in the context of complying with Order No. 2000. The Commission has evaluated aspects of regional solutions against the broad policy goals and objectives under consideration in the RM01-12 rulemaking proceeding. The October 10 Order stated that the Commission viewed the filing as, "both informing and being informed by the proposed [SMD] rule."⁹ Specifically, the Commission stated:

[W]e take this opportunity to clarify that it is not this Commission's intent to overturn, in the final SMD rule, decisions that are made in this docket. In other words, unless the Commission has specifically indicated in this order that an element of the RTO proposal is inconsistent with the SMD proposal or needs further work in light of the SMD proposal, we do not intend, in the final SMD rule, to revisit prior approvals or acceptances of RTO provisions because of possible inconsistencies with the details of the final rule. This Commission intends to take all appropriate steps at the final rule stage of the SMD rulemaking to ensure that, to the extent we have already approved or conditionally approved RTO elements, these approvals would remain intact.¹⁰

9. It is not our intent to overturn, in the SMD final rule, prior decisions that are made in this docket. Our intent in making this statement is to foster certainty for RTO sponsors in considering future business decisions. We remain convinced that this approach is practical, builds on the substantial work that parties have put into developing SeTrans, and should achieve the same efficient, competitive, and non-discriminatory market outcomes we envision under the SMD rulemaking proceeding, while respecting important regional differences.

10. With respect to DENA's request, "immunization" from the SMD final rule is not automatically conferred solely because the details of the RTO proposal are filed before the effective date of the SMD final rule. Moreover, any issue that has not specifically been approved by the Commission prior to the issuance of the SMD final rule may be subject to review for consistency with our findings in the SMD final rule. This includes elements that are still being developed by the SeTrans Sponsors.

⁹October 10 Order at P 2.

¹⁰Id.

11. In response to Calpine, we confirm that we granted only conceptual approval to the proposed governance structure, business model, and independence features. As noted in the October 10 Order, the Commission found these aspects of the Sponsor's proposal to be generally acceptable. Nevertheless, the documents filed before us were draft documents that were in the process of being revised. The Commission will review the final documents filed with us. To the extent the final documents are not materially changed from the draft documents, however, we do not intend to revisit our prior decisions.¹¹

12. Conversely, the October 10 Order "provide[d] guidance in areas which we [did] not find consistent with the basic principles of the Standard Market Design NOPR."¹² In other words, we "flagged" various elements of the proposal that were inconsistent with the general framework of the SMD NOPR and, therefore, more likely to be inconsistent with the SMD final rule.

B. Treatment of Bundled Retail Load

1. SeTrans Sponsors' Proposal

13. SeTrans Sponsors proposed that Participating Owners that are vertically integrated would take service under the SeTrans ISA's Open-Access Transmission Tariff (OATT) for serving their native load, including bundled retail customers. The Participating Owners would be responsible for certain costs.¹³ However, SeTrans Sponsors would not be charged the applicable zonal rate for transmission to serve their bundled retail customers but, rather, would pay the transmission rate component of the bundled retail rates as set by the particular state commissions.

¹¹For example, our finding that the ISA selection process will result in the selection of an ISA that is independent was not conditional. As such, we do not expect to revisit the issue of the selection process. However, this is not to be interpreted that we will not revisit specific provisions in the System Administrator Retention Agreement (SARA) or the Transmission Operating Agreement (TOA) that may infringe on the ISA's independence.

¹²October 10 Order at P 4 (emphasis added).

¹³Congestion costs, the ISA administrative fee, losses, ancillary services (unless self-supplied), and the costs of any other services procured from the ISA.

14. Similarly, the Sponsors proposed that the native load, including bundled retail load, of Participating Owners that have tax-exempt financing or are tax-exempt, would also be exempt from paying the zonal rate for transmission service under the SeTrans ISA OATT. Instead, they would include the revenues from that load in developing the revenue requirement for the particular zonal rate. Alternatively, the Participating Owners could credit the revenues from the load while excluding these loads in developing the revenue requirement for the zonal rate.

2. October 10 Order

15. With respect to bundled retail load, the Commission pointed out that when a vertically integrated utility joined a regional organization such as an Independent System Operator (ISO) or an RTO, the Commission has required that the utility execute a service agreement under the appropriate OATT. The Commission noted that, with respect to whether the RTO transmission charge should be applied to the bundled retail load, the Commission has permitted utilities to pay the transmission portion of the bundled retail rate, but required that the service agreement explicitly state the rate that is charged. Accordingly, our October 10 Order placed a similar requirement on the SeTrans RTO.

3. Requests for Clarification

16. SeTrans Sponsors request that the Commission explain that it is not asserting jurisdiction over the transmission component of bundled retail service. The Sponsors state that the pricing treatment applied to bundled retail service is a critical issue to the SeTrans RTO. SeTrans Sponsors state that they understand that the Commission agrees with its position and is not attempting to exercise jurisdiction over the transmission component of bundled retail service. Arkansas Commission seeks rehearing on the same grounds and requests that the Commission clarify that the transmission portion of the bundled retail rate now set by the appropriate state regulatory authorities would continue to be set by state regulatory authorities as long as the transmission service remains part of a bundled retail service. Louisiana Commission states that the Commission has exceeded its jurisdiction and authority by approving matters that are subject to state jurisdiction. It adds that, by requiring the service agreement between the Participating Owners and the ISA to explicitly state the rate for transmission service, the ISA must consent to the lower rate in order for bundled retail customers to pay the state rate rather than the OATT rate. Moreover, Louisiana Commission fears that, if the ISA is truly independent, it would have no incentive to grant this consent and, even if it does, it is only a matter of time before the Commission reverses its position and no longer allows the state-approved rate to apply.

4. Commission's Response

17. In response to SeTrans Sponsors' and Arkansas Commission's filings, we clarify that the Commission's order did not assert jurisdiction over the transmission rate component of bundled retail service. The October 10 Order requires that the ISA put in place service agreement(s) for the provision of transmission in interstate commerce by the SeTrans RTO, including transmission provided by the SeTrans RTO to the SeTrans Sponsors which will be "re-sold" by the SeTrans Sponsors to retail customers as part of bundled retail service. The service agreements must explicitly state the transmission rate to be charged for the transmission service, which will be "re-sold" to retail customers, which, in turn, becomes part of the costs paid for by bundled retail customers.¹⁴ This is not tantamount to an assertion of authority over bundled retail rates, contrary to the Louisiana Commission's claim.

18. This approach was explained in GridSouth,¹⁵ which noted that Order No. 2000 did not require bundled retail rates, *i.e.*, the bundled price for electric energy delivered to retail customers, to be unbundled. However, as in GridSouth, once the SeTrans RTO is operational, the Participating Owners in SeTrans will no longer be transmission providers. The SeTrans RTO will be the sole provider of transmission service and the Participating Owners must take all transmission services, including transmission used to deliver power to bundled retail customers, from the SeTrans RTO. As a result, the rates, terms and conditions of transmission service purchased by the Participating Owners from the SeTrans RTO in order to serve their bundled retail customers must be on file with the Commission. This reflects the simple reality that the SeTrans RTO will provide all transmission service and must be compensated, as would any transmission provider.¹⁶

19. As explained above, the price that the SeTrans RTO's transmission customers pay to the RTO becomes their cost for the transmission used to deliver the energy they sell at retail. These transmission customers are free to seek a rate from the ISA for the transmission purchased to deliver energy to bundled retail customers equal to the transmission rate component of the bundled retail rates set by their state regulatory authorities. Thus, under this approach, the rate set for transmission in interstate

¹⁴See October 10 Order at P 108.

¹⁵Carolina Power & Light Co., *et al.*, 94 FERC ¶ 61,273 at 61,999 (2001) (GridSouth).

¹⁶See Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,192 at P 23-25 (2003) (MISO).

commerce to be re-sold to retail customers as part of bundled retail service would be the same rate set by the states for the transmission rate component of bundled retail service. As we stated in GridSouth, this must be accomplished by contract between the SeTrans RTO and the Participating Owners. Service agreements reflecting such proposed rates must be filed with the Commission and must be consistent with the Federal Power Act.¹⁷ Moreover, we share Louisiana Commission's concern regarding the ISA's duty to treat all customers comparably, including with respect to the rates for service. However, this would not prohibit the ISA from permitting the state-approved rate for service to the Participating Owners, so long as the ISA followed the Order No. 888 pro forma tariff requirement with respect to discounts.¹⁸

C. Regional Through and Out Rate (RTOR)

1. SeTrans Sponsors' Proposal

20. SeTrans Sponsors proposed that transmission customers serving load outside the SeTrans RTO would be charged a single rate (the RTOR) which would apply to all transmission transactions that exit or go through the SeTrans footprint to serve load outside the SeTrans RTO. The actual rate would be calculated based on the net revenues of the Participating Owners lost due to elimination of rate pancaking. SeTrans Sponsors state that the RTOR would be at least equal to the weighted average RTO-wide cost of

¹⁷We also note that in the October 10 Order we did not specifically address how the rates would be calculated. Rather, we approved having the rates set out in contracts, but we were not addressing there the specific rate design or cost allocation that would be used to develop such rates. We will address the particular rates and any attendant cost shifts when the SeTrans section 205 filing is submitted.

¹⁸See MISO, 102 FERC ¶ 61,192 at P 25. The pro forma tariff's discounting principles, as applied to ancillary and point-to-point services, are that any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers by posting on the OASIS, and once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, the Transmission Provider must offer the same discounted transmission (or ancillary) service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System. (All network integration transmission service customers pay rates based on a load ratio share of the transmission provider's annual revenue requirement). See id. at P 25, n.44.

transmission facilities (the weighted average of the zonal rates) but that it would not exceed the highest zonal rate.

2. October 10 Order

21. In discussing the proposed RTOR, the Commission stated:

In the SMD NOPR, the Commission proposed to eliminate rate pancaking for inter-regional transfers and proposed two mechanisms that would recognize the import/export quantities of inter-regional transfers in establishing the revenue requirement to be covered through the access charge.¹⁹

and also stated:

At such time as the SeTrans Sponsors file their detailed and final Pricing Protocol under Section 205, we would expect SeTrans Sponsors' proposed pricing methodology for inter-regional transfers would be consistent with the principles and objectives of our Final Rule, if effective by then.²⁰

3. Request for Clarification

22. The Sponsors explain that, under their proposed Pricing Protocol, transmission customers serving load outside of the SeTrans RTO would be charged a single RTOR. SeTrans Sponsors reiterate that the RTOR is an element that is critical to the further development of the SeTrans RTO and that it is designed to recover a portion of the system's embedded costs through the rate that customers would pay for export transactions that use the SeTrans' transmission system. SeTrans Sponsors assert that the elimination of the RTOR can result in inappropriate cost shifts and revenue loss. SeTrans Sponsors also state that, at this point, it is unclear which principles and objectives will be embodied in the SMD final rule but they recognize that the SMD NOPR does not contemplate the RTOR.

23. SeTrans Sponsors assert that avoidance of cost shifts and revenue loss are among the stated principles and objectives of the SMD NOPR. SeTrans Sponsors also cite the recent RTO West and WestConnect orders in which the Commission approved RTOR-

¹⁹October 10 Order at P 107.

²⁰Id.

type charges.²¹ SeTrans Sponsors state that rejecting their RTOR proposal would jeopardize the delicate balance achieved among the jurisdictional and non-jurisdictional transmission owners in the proposed SeTrans RTO. SeTrans Sponsors ask that the RTOR can be included in a future Section 205 filing.

4. Commission's Response

24. SeTrans Sponsors' request is granted on the same basis as in RTO West and WestConnect. In RTO West and WestConnect, the Commission approved proposed export fees based on the average cost of the transmission system for a transitional period in order to ensure that costs were recovered. The situation in the Southeast is similar to that in the West, in that there is no other mechanism that is currently available to recover export costs. (In the West, however, the RTOs have formed a working group to address how such costs would be recovered in the future). Moreover, in the October 10 Order, the Commission found that such export pricing was acceptable in the Southeast as a transitional pricing mechanism in the absence of other pricing mechanisms. Accordingly, we clarify that the SeTrans ISA may use the RTOR. In our recent White Paper in Docket No. RM01-12-000, the Commission discussed the use of export fees, which was a modification of our original proposal in the SMD NOPR. There we stated:

RTOs and ISOs should eliminate export and import fees where there is not a notable imbalance between imports to and exports from a region. Other rate measures could be used to prevent cost shifts among the regions.²² This could include adjusting the revenue requirement for the importing region to include a portion of the revenue requirement of the exporting region. However, where there is a notable imbalance between imports to and exports from a region, the RTO or ISO may seek to recover some of its transmission costs through an export fee. (Appendix A at p. 6)

²¹Citing Avista Corp., et al., 100 FERC ¶ 61,274, order on rehearing, 101 FERC ¶ 61,346 (2002) (RTO West), and Arizona Public Service Co., et al., 101 FERC ¶ 61,033, order on rehearing, 101 FERC ¶ 61,350 (2002) (WestConnect), which approved transitional through and out charges (export fees).

²²For example, we stated, a portion of the transmission cost of service of the exporting region could be recovered through the access charge of the importing region. Such a measure would reduce the transmission costs that would be collected from customers in the exporting region.

We will consider proposed SeTrans RTO rates in this light after specific rate and rate design proposals have been filed with the Commission.

D. Maintaining Zonal Rates Through 2012

1. Requests for Rehearing

25. Arkansas Commission is encouraged that the SeTrans RTO may utilize zonal rates for a transition period through December 31, 2012. However, it does not believe that a transition period ending in 2012 adequately reflects the existing infrastructure investment made by native load customers. Furthermore, Arkansas Commission states that, since retail competition is not likely to develop in the Southeast in the foreseeable future, there is no equity argument for departing from the zonal rate. As such, Arkansas Commission contends that the Commission should not set an expiration date on the use of zonal rates.

26. On the other hand, AMEA contends that the proposed Pricing Protocol will result in the establishment of a discriminatory rate structure through 2012. AMEA argues that under the proposed Pricing Protocol, all of the operating affiliates of Southern Company would fall into a single large zone and pay a different, lower rate for bundled service to its retail load. AMEA states that, as a result, Southern Company affiliates like Alabama Power Company will pay less than AMEA members for the same service. Further, since AMEA's members directly compete with Alabama Power for wholesale load, AMEA members are placed in an anti-competitive position by paying a higher price than Alabama Power for the same transmission service. In order to remedy this undue discrimination, AMEA argues that either (i) its members should pay a zonal rate that reflects only the cost of Alabama Power's transmission system, or (ii) Alabama Power should be charged the Southern-wide zonal rate for all of its wholesale and retail loads.

2. Commission's Response

27. In the October 10 Order, the Commission found that the proposed eight-year transition period was developed in a manner that will minimize cost shifts and the loss of revenues. Further, we found that the proposed transition period would encourage participation by market participants and accommodate the unique contractual arrangements between public power entities and jurisdictional entities.²³ Given these determinations, as well as the current configuration and structure of the Southeast region,

²³See October 10 Order at P 106.

in particular, the status of retail choice, vertical integration, and the Georgia ITS contracts (which will expire in 2012), SeTrans Sponsors' proposed eight year transition is reasonable.

28. In response to Arkansas Commission's concern that no expiration date should be imposed on the zonal rates, we observe that the transition period ending December 31, 2012 is merely an end date by which SeTrans is required to revisit its rates, and does not dictate any particular rate design to be applied. On or before this date, SeTrans will need to make its case for either continuing the existing rate design or proposing a new rate design.

29. In response to AMEA's concerns, we are not changing Southern's rate structure, other than to broaden access throughout the SeTrans system at the transmission rate the customer is currently paying. Moreover, to the extent a Southern Company operating affiliate seeks to compete with AMEA members to serve wholesale load within the ISA footprint, it will face the same transmission charge (i.e., the rate for the zone in which the load is located). Accordingly, AMEA's competition concerns are unfounded.

E. Participation in the Stakeholder Advisory Committee (SAC)

1. SeTrans Sponsors' Proposal

30. As explained by SeTrans Sponsors, the SAC consists of representatives of ten stakeholder groups with two voting representatives from each group.²⁴ The SAC will provide ongoing advice to the ISA. It will have the right to make presentations, submit written reports, and present minority positions to the management of the ISA. The SAC will also have the responsibility for selecting the Independent Market Monitor (IMM).

²⁴The ten groups include the Investor-Owned Utilities; Power Marketers and Brokers; Generator Owners and Developers; Transmission Dependent Municipal Joint Action Agencies and Municipalities; Transmission Dependent Cooperatives; Transmission-Owning Cooperatives; Transmission-Owning Municipal Joint Action Agencies and Municipalities; State Government Agencies, Consumer Advocates and Environmental Interests; Industrial End Use Customers; and Transmission-Owning or Transmission Dependent Federal Utilities and State Owned Authorities.

2. October 10 Order

31. The Commission found the SeTrans Sponsors proposed SAC would permit market participants to participate in more than one stakeholder group. The Commission noted that in the recent RTO governance structures it had acted on, each market participant (including all of its affiliates) was only permitted to participate in a single stakeholder group. Finding this approach more appropriate, the Commission directed that SeTrans Sponsors modify their proposal accordingly in order to ensure that a market participant could not exert undue influence in SAC discussions.²⁵

3. Requests for Rehearing

32. SeTrans Sponsors note that, in the SAC proposal, the SAC meetings are open to the public and anyone can attend these public meetings. SeTrans Sponsors argue that non-voting participation at public SAC or sector meetings would not give the market participant any ability to unduly influence or control the SAC. **SeTrans Sponsors assert affiliates that have separate and distinct interests should be able to monitor SAC meetings to share their experiences and expertise as to matters under discussion, and to develop their own positions on the actions that the SAC and the SeTrans RTO should follow.** SeTrans Sponsors request the Commission clarify the ruling does not preclude any market participant, including affiliates, from having a representative in more than one of the stakeholder groups. SeTrans Sponsors add that a number of RTO proposals approved by this Commission expressly allow all qualified market participants, including affiliates, to attend stakeholder meetings.

33. DENA states the Commission should distinguish between "participation" and "representation." DENA asserts the entity which is chosen to have a representative will be the only entity that will have real influence through its representative on the SAC. DENA asks that stakeholders be allowed to express their views in any stakeholder groups in which they have interests.

34. AMEA contends, without specificity, that the SeTrans proposal does not satisfy the requirement for a SAC under the SMD NOPR. AMEA requests the Commission clarify the modifications it has requested for the SAC proposal, specifically, that such modifications ensure that the proposal is in line with the SMD NOPR.

²⁵See October 10 Order at P 59.

4. Commission's Response

35. The requests for rehearing are denied. **The responsibilities of the SAC are important and it has the potential to influence the actions and decisions of the SeTrans ISA. Thus, representation in the SAC by a market participant and its affiliates should be limited to a single stakeholder group in order to avoid the possibility that a market participant and its affiliates could exert undue influence through representation in multiple stakeholder groups.**

36. We stated in the October 10 Order that each market participant (including all of its affiliates) is only permitted to participate in a single stakeholder group, *i.e.*, each market participant, including its affiliates, can belong to no more than one stakeholder group and have no more than one representative in the SAC.

37. However, SeTrans Sponsors are correct that other RTOs and ISOs permit stakeholders to attend SAC meetings or sector meetings without limitation.²⁶ We clarify that our initial order did not intend to limit attendance at such public meetings, as market participants and their affiliates will have the same rights to attend or speak in sector meetings as do members of the general public. However, when we allowed "participation" in just one sector, we intended that "participation" in one sector means that a company or its affiliate can vote on proposals in only one sector. Otherwise, certain participants may be in a position to exert undue influence through their voting in more than one sector.

38. In response to comments that the proposed SAC does not satisfy the requirement for a SAC under the SMD NOPR, we find that AMEA's concerns are without merit. Our definition of "participation" is consistent with the SMD NOPR. Further, in the SMD NOPR we stated that any stakeholder body must contain at least six stakeholder classes that represent various principal interests.²⁷ Since SeTrans' SAC has such a balance of

²⁶See New York ISO Agreement § 7.05 ("a party and its affiliates may participate in different sectors provided that they vote only in one sector."); see also Midwest ISO Agreement, Art. Two, VI.A.1 ("nothing in this Agreement shall prohibit a corporate or other entity from participating in more than one stakeholder group"); Avista Corp., 95 FERC ¶ 61,114 at 61,239, reh'g denied, 96 FERC ¶ 61,058 (2001) ("participation in the Board Advisory Committee is not limited and any RTO West member may join").

²⁷SMD NOPR at P 561 (generators and marketers; transmission owners; transmission-dependent utilities; public interest groups; alternative energy providers; end
(continued...)

interests among its ten stakeholder groups,²⁸ we find that SeTrans Sponsors' proposal meets the requirements that are contained in the SMD NOPR.

F. End-User Representation on the SAC

1. Request for Rehearing

39. Steel Producers state that end-users are under-represented in the SAC. They argue that the SAC is dominated by transmission and distribution companies, generators, and marketers, and that such a structure does not allow end-users to appropriately voice their interests and concerns. Steel Producers believe that the stakeholder groups as composed give end-users two votes on the SAC and believes this should be modified to give them one third of the votes on the SAC. Steel Producers seek rehearing on the composition of the SAC, but states that if the Commission denies rehearing, then they request the SAC be conformed to the SMD final rule.

2. Commission's Response

40. The Commission understands the importance of balanced representation in the SAC. In fact, the Commission proposed baseline standards for SACs in the SMD NOPR. There, we said we were looking for better representation of under-represented groups (e.g., transmission-dependent utilities and new technologies) and proposed accomplishing this through establishing a minimum of six sectors and participation limited to one sector for each company (including their affiliates).²⁹ Steel Producers' contention that end-users are not adequately represented in the SAC highlights the fact that the Sponsors' proposal designates four of the SAC's ten sector groups for transmission-owning entities,³⁰ whereas in the SMD NOPR there is only one sector group (transmission owners), or at most two (transmission owners and transmission-dependent

²⁷(...continued)
users and retail energy providers).

²⁸Compare supra note 24 with supra note 27.

²⁹Id.; see supra note 27.

³⁰The four groups include: Investor Owned Utilities; Transmission Owning Cooperatives; Transmission-Owning Municipal Joint Action Agencies and Municipalities; Transmission-Owning or Transmission Dependent Federal Utilities and State-Owned Authorities.

utilities), out of six for transmission-owning entities.³¹ The Commission values the role that the SAC should play in the development of a successful RTO, and encourages the market participants to explore a model in which the sectors are equitably balanced.

G. Independence of the ISA

1. Request for Rehearing

41. Arkansas Commission requests that this Commission require that both the draft SARA and the draft TOA be approved by the Participating Owners and the SAC prior to being filed with this Commission. Arkansas Commission believes that such a requirement would alleviate any concerns that the ISA could be inappropriately influenced by the Participating Owners either through the ISA selection process or its relationship as defined by the provisions of the draft SARA and the draft TOA.

2. Commission's Response

42. In the October 10 Order, the Commission found that the SeTrans ISA would be sufficiently independent from the control of the Participating Owners, as required by Order No. 2000. Specifically, the Commission found that the ISA selection process was designed in such a manner as to prevent Participating Owners from unduly influencing the slate of ISA candidates.³²

43. With regard to Arkansas Commission's claims that the ISA could be influenced by Participating Owners through its relationship vis-à-vis the draft SARA and the draft TOA, no such conflicts are evident at this time. In the October 10 Order, we addressed the issue of whether the draft organic documents contained provisions that could compromise the ISA's independence and found that no such provisions were evident. Furthermore, Section 5.1 of the draft SARA specifically provides that the ISA and its affiliates will be independent of any market participants and the Participating Owners.³³

³¹See supra note 24.

³²See October 10 Order at P 75-77. We found that the ISA selection process was reasonably balanced since the SAC was charged with determining the slate of ISA candidates from which the Participating Owners would ultimately choose one of the final candidates to serve as the SeTrans ISA.

³³October 10 Order at P 55.

44. Therefore, having determined that neither the ISA selection process, nor the provisions in the previously filed draft organic documents appear to compromise the independence of the ISA, we do not find that Arkansas Commission's proposal is necessary. However, when the Sponsors file their final SARA and TOA for our review, individual parties will be permitted to file protests if they detect that the independence of the ISA may be compromised given the specific provisions in the final organic documents.

H. Hierarchy between SARA-TOA / SARA-OATT

1. Requests for Rehearing

45. DENA states that the Commission erred by its failure to address hierarchical and conflict issues between the SARA and the OATT, and between the SARA and the TOAs. As such, DENA request that the Commission clarify that the Sponsors should not only address potential TOA and OATT conflicts, but identify provisions of the SARA that could negatively affect non-discriminatory provisions of the OATT. DENA also requests that potential conflicts between the SARA and pro forma TOA should be identified.

2. Commission's Response

46. In the October 10 Order, we found that, in limited instances, the general terms of the OATT (which will be the primary document governing non-discriminatory access to the transmission grid) may unreasonably infringe on the terms of the TOA.³⁴ As a result, we directed the Sponsors to include in the OATT, the limited instances where such adverse outcomes could occur.

47. We further recognize that, under Section 18.2 of the draft SARA and Section 11.1 of the draft TOA, in the case of a conflict between the SARA and the TOA, the terms of the individual TOAs would prevail. DENA takes issue with these provisions since they could possibly allow an individual TOA to trump the SARA. We will grant DENA's request and direct the Sponsors to identify areas of potential conflict between the documents in its future filing. This will be facilitated by joint filing of all documents.

³⁴See October 10 Order at P 63.

I. Identification of Transmission Assets and Grandfathered Agreements

1. Request for Rehearing

48. In its request for rehearing, AEC states that the Commission erred by not requiring Participating Owners to identify, prior to the resumption of the collaborative process, which transmission assets they will designate for RTO control and which they propose to withhold. While AEC recognizes that the October 10 Order required SeTrans Sponsors to disclose a list of the affected transmission assets, AEC states that it serves no purpose to keep this information from the stakeholders until such time when the SeTrans Sponsors make their final filing.

49. Similarly, AEC also argues that the Commission should have required SeTrans Sponsors to provide a complete list of the transmission agreements that they propose to grandfather, prior to the resumption of the collaborative process. AEC contends that the number and scope of grandfathered agreements (GFAs) may exclude significant portions of the transmission grid and lead to inefficient grid planning and operations. To avoid such a result, AEC states that stakeholders must know the scope of the impact and the duration of the GFAs if the collaborative process is to contribute to the development of the Pricing, Planning, and Transmission Expansion Funding Protocols.

2. Commission's Response

50. In the October 10 Order, the Commission directed SeTrans Sponsors or the SeTrans ISA to submit, in a future Section 205 filing, a complete list of GFAs and a complete list of transmissions assets that will be subject to the control of the SeTrans ISA, and those that will not.³⁵ Upon further consideration, the Commission finds it reasonable to require SeTrans Sponsors to disclose such information in advance of its future Section 205 filing.

51. As noted by AEC, by providing this information to the stakeholders, SeTrans Sponsors can receive important feedback from the stakeholders in advance of making its Section 205 filing. To this end, in order to facilitate the collaborative process and avoid possible disputes that could be resolved in advance of the filing, we will require SeTrans Sponsors to disclose this information to the stakeholders as soon as practical before making its future Section 205 filing.

³⁵October 10 Order at P 60 and 93.

J. Participant Funding

1. SeTrans Sponsors' Proposal

52. In the Transmission Expansion Funding Protocol, SeTrans Sponsors proposed that projects would be classified as either Base Plan investments or Participant Funded investments. Base Plan investments are those required to maintain Total Transfer Capability and investments required to serve forecasted load reliably from existing sources. Participant Funded investments refers to a mechanism whereby a party or parties fund the cost of an expansion in return for the net incremental Financial Transmission Rights (FTRs) created by the expansion. Examples of Participant Funded investments given in the protocol include transmission investments to add or interconnect new generation to the transmission system, transmission investments to reduce congestion within the SeTrans RTO, transmission investments to increase throughput across, out of or into SeTrans, and transmission investments to increase reliability beyond levels required by NERC.

2. October 10 Order

53. In the October 10 Order, the Commission decided to allow participant funding in SeTrans as part of a general framework. The proposal included the independent administration of a regional planning process that is necessary to permit such funding and a phase-in of independent system operation with a market design including locational marginal pricing and FTRs. The Commission added that the SeTrans Transmission Expansion Funding Protocol was still being developed and may be further revised. Thus, SeTrans Sponsors sought only guidance and not approval of the proposal. The Commission accordingly encouraged stakeholders to hold further discussions and clarify how specific types of investments should be treated and which should be considered Base Plan Funded and which Participant Funded.³⁶

3. Requests for Rehearing

54. AEC requests rehearing of our finding to allow participant funding as part of a general framework. AEC argues that such approval is inconsistent with the Commission's decision not to approve SeTrans' draft Planning Protocol or Transmission Expansion Funding Protocol at this time. AEC also contends that approving participant funding might preempt the SMD rulemaking because, if participant funding is not

³⁶See October 10 Order at P 133-35.

included in SMD, its inclusion in SeTrans would possibly result in an unbalanced playing field for neighboring RTOs or transmission providers.

55. Municipal Entities state that the Commission erred in approving participant funding as many of the important details are missing, including the procedures that would be used to classify facilities as either Base Plan or Participant Funded and the methods that would be used to resolve disputes over the classification of expansion facilities. Municipal Entities also disputes the Commission's statement in the October 10 Order that "there appears to be a general consensus in the Southeast to have participant funding for those projects that seek an economic expansion of the system if it is developed in an equitable manner."³⁷ Municipal Entities argue that, while SeTrans Sponsors and some of the state regulatory commissions in the Southeast support participant funding, that does not constitute a consensus and the Commission ignored the objections raised by a variety of regional interests.

56. AMEA argues that the Commission should clarify that the SeTrans Transmission Expansion Funding Protocol will be subject to compliance with the SMD final rule. AMEA claims that the October 10 Order's statements encouraging parties to clarify the criteria for determining which investments would be Base Plan and which Participant Funded would be unnecessary if the Transmission Expansion Protocol must comply with the SMD final rule.

57. Louisiana Commission argues that participant funding should be approved without restrictions. Louisiana Commission states that the October 10 Order approved participant funding as part of a framework that would also include independent administration of a regional planning process and a market design including locational marginal pricing and FTRs. Louisiana Commission argues that these conditions should be removed, stating that participant funding is necessary to prevent significant harm to retail ratepayers in Louisiana and the Southeast and to send appropriate cost signals to merchant generators to site plants in the most efficient manner.

³⁷See October 10 Order at P 133.

4. Commission's Response

58. In the SMD NOPR, the Commission stated that a more precise matching of beneficiaries and cost recovery responsibility would encourage greater regional cooperation to get needed facilities constructed and that participant funding would be a useful tool to help ensure that needed infrastructure is built.³⁸ We approved participant funding in the October 10 Order only as a part of a general framework; however, we expressly noted SeTrans Sponsors' statement that the Transmission Expansion Funding Protocol had not been finalized and was still being developed.

59. With respect to the Louisiana Commission's concerns, we note that we have approved SeTrans Sponsors' proposal as part of a general framework of a broader RTO filing. It has not requested to separate out this feature of the filing. However, the Commission, in its recent White Paper in Docket No. RM01-12-000 addressed part of this issue directly. There we stated:

For a transitional period, not to exceed a year, participant funding may be used for transmission upgrades for generator interconnection as soon as an independent entity has been approved by the Commission and the affected states. Using the regional criteria, the independent entity would make decisions on which transmission upgrades should be participant funded and which ones should not. These decisions would be made through a regional planning process conducted by an independent entity in which the independent entity is also responsible for conducting all necessary facility studies.³⁹ However, this transitional process is explicitly predicated on the assumption that this will be the first step towards the RTO or ISO satisfying the requirements of § 35.34 of the Commission's regulations. (Appendix A at p. 15-16).

60. It is our view that an independent entity is crucial to making participant funding work properly as many of the determinations involved, such as the determination of which generators in the queue should be responsible for which facilities, the cost of facilities, and the assumptions underlying the power flow analysis, require the exercise of judgment. The ISA will be able to perform these functions successfully through its administration of a regional planning process. As indicated in our White Paper, we will

³⁸SMD NOPR at P 197.

³⁹E.g., if ESBI were selected by the SeTrans Sponsors to be their proposed ISA and it received the necessary regulatory approvals, ESBI could serve this function for SeTrans RTO on an interim basis.

entertain a proposal in this proceeding for the ISA to perform this role in advance of implementation of all of the market changes discussed in our October 10 Order.

61. With respect to the Municipal Entities' statement that a regional consensus does not exist in support of participant funding, and AMEA's suggestion that this be addressed in Docket No. RM01-12-000, we advise parties that this is the appropriate time and docket to focus on achieving a transmission expansion funding approach in the Southeast that is broadly acceptable. We add that all of the state commissions in the Southeast that filed comments were supportive of participant funding and we welcome their leadership in ensuring that the details of the plan to be filed are just and reasonable. Finally, in response to AEC, it does not appear to us that regionally-variant approaches to funding transmission expansions create "seams" between regions.

62. Accordingly, the requests for rehearing of AEC, Municipal Entities and AMEA are denied.

K. Facilities Under RTO Control

1. Request for Rehearing

63. Louisiana Commission requests rehearing of the 40 kV cut-off for transmission facilities to be under the control of the ISA. Louisiana Commission argues generally that assets below 69 kV provide no benefit to the bulk transmission system, as such facilities are mainly used for distribution and do not increase the transfer capability of the grid. Louisiana Commission states that only facilities rated at 69 kV or above should be included in the RTO.

2. Commission's Response

64. As we indicated in the SMD NOPR, if a facility serves a transmission function, it belongs under the control of the Independent Transmission Provider (the transmission owner, however, can request an exemption for certain facilities).⁴⁰ When the SeTrans section 205 filing is made, the Sponsors will have the burden to show that the transmission facilities they propose to place under the control of the ISA are appropriately placed there. The Louisiana Commission will then have an opportunity to

⁴⁰See SMD NOPR at P 367-68.

respond to the Sponsors' explanation or raise objections to the inclusion of specific facilities on the grounds that those facilities do not provide transmission service.⁴¹

L. Locational Marginal Pricing and the Use of FTRs

1. Request for Rehearing

65. Louisiana Commission objects to the use of locational marginal pricing (LMP) and FTRs for managing congestion. Louisiana Commission argues that this approach "has not been studied and is not fully developed." It further claims that it is not clear that there will be sufficient FTRs to protect all retail transactions and future retail load growth from the costs of congestion. Moreover, Louisiana Commission claims that the protection is only conceptual and may be illusory, given that the details of SeTrans' proposed FTR system have not been developed. Louisiana Commission fears that the LMP system may lead to much higher electricity costs for ratepayers, in part because it believes that paying all sellers the highest accepted bid price will increase prices relative to a system in which sellers receive what they bid. It is also concerned that FTRs will not protect ratepayers in the real-time market and will lead to cost shifting, and that the LMP system may not provide adequate incentives for efficient generation siting decisions and transmission investments that are needed to alleviate congestion. Finally, Louisiana Commission claims that price transparency under LMP will provide sellers with information to coordinate their bids and drive up prices.

2. Commission's Response

66. Louisiana Commission's concern that the LMP approach to congestion management, recommended by the SeTrans Sponsors and accepted by the Commission, has not been studied or fully developed is not well founded. The LMP approach has been used successfully for several years in both PJM and the New York ISO. Although the approach continues to be refined as problems are encountered, it has thus far stood the test of time by providing a flexible framework for efficient congestion management in support of competitive markets. Louisiana Commission's concern that LMP will lead to overall higher prices appears to be based in part on a misunderstanding of the incentives that sellers would face under a system that pays them what they bid.

67. Louisiana Commission is correct that the LMP approach pays sellers the market clearing price (the bid price of the last seller whose bid was accepted, and whose sale

⁴¹See October 10 Order at P 60.

serves to balance supply and demand and thus clear the market) and not their bids, and that some sellers thus will get prices above their bids. It is widely observed that markets work efficiently when prices reflect marginal costs, *i.e.*, when the market price will be equal to the cost of bringing to market the last unit necessary to balance supply and demand. An LMP pricing approach encourages sellers to submit bids that reflect their marginal costs (primarily fuel costs) and, therefore, the sellers selected in the energy auction are likely to be the sellers with the lowest actual costs.⁴² In contrast, a policy of paying each seller its bid would encourage sellers to bid above their marginal costs, since doing so would be the only way for them to earn a profit. As a result, in a system where each seller was paid its bid, the sellers selected would not necessarily be the sellers with the lowest actual costs (an inefficient result) and this system thus could produce higher overall costs. It is important to note, however, that the focus of Louisiana Commission's concerns is the spot market. Our expectation, based on experience across the nation, is that wholesale customers will meet the vast majority of their energy needs through longer-term bilateral contracts. In this way, customers can minimize their reliance on the spot market.

68. Louisiana Commission's concern that FTRs may not provide adequate price protection for ratepayers is premature, given that the details of SeTrans' FTR allocation process have yet to be specified. If the SeTrans transmission system is not currently over-subscribed (and we have no evidence that it is), then it should be possible to allocate FTRs in a way that avoids cost shifting while providing native load and other firm service customers with price protection that closely replicates what they now enjoy under existing contracts and tariff provisions. In this regard, the SMD NOPR and our recent White Paper propose that FTRs will be allocated to all customers based on the service they are currently receiving. Thus, if a customer is currently receiving firm service, it would receive sufficient FTRs to continue that same service without facing congestion charges.⁴³ Also, concerns about a lack of price protection in the real-time market can always be addressed by adopting a more conservative bidding strategy in the day-ahead market, since a customer is exposed to real-time prices only to the extent that its real-time purchases deviate from its day-ahead purchases.

69. With regard to the concern about a lack of incentives for efficient generation siting and transmission investments, we note that LMP and FTRs (combined with a participant funding approach for generator interconnections, discussed above) offer a major improvement over existing pricing policies, which do not allow the locational

⁴²See SMD NOPR at P 204.

⁴³See SMD NOPR at P 376-78.

costs of energy and congestion to be readily observed, and thus provide little or no market information that is useful for siting and investment decisions. Finally, with regard to the claim that LMP price transparency provides sellers with information to coordinate prices, we note that this feature alone will not make possible the exercise of market power in markets that are otherwise competitive. Moreover, should markets prove not to be competitive, then a variety of market power mitigation methods are available and may be employed by the SeTrans IMM.⁴⁴ Therefore, Louisiana Commission's requests for rehearing with respect to use of LMP and FTRs is denied.

M. ITC Concept in the Southeast

1. Requests for Rehearing

70. In the October 10 Order, we stated that having ITCs that would exercise authority delegated to them was consistent with recent Commission orders and could bring significant benefits to the Southeast.⁴⁵ New Orleans Council and Louisiana Commission request rehearing. New Orleans Council argues that the Commission's prior rulings were case-specific (addressing ITC proposals in the Midwest) and that the Commission did not consider the unique circumstances of the Southeast. According to New Orleans Council, the TRANSLink and Alliance ITCs brought several additional large utilities into the Midwest ISO, thereby increasing the availability of transmission and generation to all customers within the RTO. However, the proposed Entergy Transco in the SeTrans model consists of a single market participant and does not pool the assets of several utilities. In addition, the participation of several utilities in the Midwest ISO's ITCs provided for a balancing of interests in a way that New Orleans Council argues is not possible with the Entergy Transco.

71. Louisiana Commission is concerned that, should there be ITCs in SeTrans, it would lose authority that it currently has over transmission-related costs incurred to serve retail rate payers, and over planning and investment decisions. It also argues, as a result retail rates will increase.

⁴⁴See SMD NOPR at P 390-456.

⁴⁵See October 10 Order at P 61.

2. Commission's Response

72. The requests of both New Orleans Council and Louisiana Commission are denied.

73. The concerns of New Orleans Council are premature at this point as we have not seen the details of the SeTrans proposal, and Entergy has not yet sought ITC status. We add that in the October 10 Order we expressly stated that the SeTrans SARA and TOA require that any ITC operating within SeTrans must first obtain Commission approval before the ISA can delegate any RTO functions to that ITC.⁴⁶ New Orleans Council thus will have the opportunity to raise its concerns about circumstances in the Southeast and about specific ITCs at a more appropriate time.

74. Similarly, the issues raised by Louisiana Commission are premature at this stage. As we stated in the October 10 Order, SeTrans preliminary proposal was consistent with recent Commission orders that held that ITCs can bring significant benefits to the industry.⁴⁷

75. It is not our intent, however, merely to "rubber stamp" ITC proposals as the April 25, 2002 TRANSLink order illustrates.⁴⁸ It is our intent, rather, to work with state commissions as ITCs develop. We found in the April 25, 2002 TRANSLink order that the creation of that ITC would not have a detrimental impact on state retail regulation and we said in the November 1, 2002 TRANSLink order on rehearing that we would work with affected states to resolve any problems that may develop.⁴⁹

⁴⁶Id.

⁴⁷Id. In the SMD NOPR, we likewise recognized that ITCs can bring significant benefits including increased investment, improved access to capital markets given a more focused business model than that of vertically integrated utilities, development of innovative services, and additional independence from market participants. See SMD NOPR at P 132.

⁴⁸TRANSLink Transmission Co., L.L.C., et al., 99 FERC ¶ 61,106 (2002).

⁴⁹TRANSLink Transmission Co., L.L.C., et al., 101 FERC ¶ 61,140 at P 69 (2002).

N. Market Monitoring

1. Request for Rehearing

76. Municipal Entities argue that the Commission should withdraw its approval of the Sponsors' market monitoring proposal, finding the proposal to be vague and limited. Further, Municipal Entities criticize the Commission's review of the proposal, finding that the Commission has held the SeTrans RTO to a minimum, "watered-down" standard.

77. AMEA argues that the Sponsors' market monitoring proposal should be subject to the outcome of the SMD final rule. AMEA states that since the Sponsors have committed to permitting the addition of any market monitoring function that is in the public interest, there should be no reason why full compliance with the SMD should not be required.

2. Commission's Response

78. In the October 10 Order, the Commission held the Sponsors' proposal to be generally consistent with other proposals found to be acceptable.⁵⁰ In this regard, the Commission recognized that the SARA had yet to be filed in final form, and the Sponsors had offered to include any market monitoring function that the Commission finds to be in the public interest. This latter point, the Commission believed and still believes, will facilitate market oversight and protection of customers in those markets.

79. While Municipal Entities criticize the Sponsors' market monitoring proposal and the Commission's analysis of it, nowhere do Municipal Entities attempt to explain how the proposal fails to meet the Commission's requirements under Order No. 2000. Municipal Entities also fail to recognize that the Sponsors' market monitoring proposal was only a draft, and as such, may change before it is filed.

80. In response to AMEA's argument that SeTrans Sponsors' market monitoring proposal should comply with the SMD final rule, we recognize that the Sponsors have already expressed a willingness to modify their market monitoring proposal in order to incorporate additional market monitoring functions that the Commission determines to be that are in the public interest. Accordingly, the Commission accepts the Sponsors' commitment to modify their proposal to comply with future Commission determinations.

⁵⁰See October 10 Order at P 65.

O. Role of State Regulators

1. Request for Rehearing

81. Arkansas Commission is concerned with the SeTrans Sponsors' failure to describe the role of state regulators in the proposed SeTrans RTO. Arkansas Commission believes the SeTrans Sponsors should correct this in any organic documents filed under Section 205. Arkansas Commission believes the state regulators role should also be defined to include consultation on issues such as tariff design, market design, auditing and budgeting. In addition, Arkansas Commission believes that state regulators' should have access to the market monitor, reports by the market monitor, and the studies underlying those reports. Arkansas Commission requests the Commission grant rehearing to negotiate with the retail regulators to structure an appropriate role for state regulators in the RTO operation, and to recognize in such order the rights of state regulators to have complete access to all books and records and planning documents of the ISA.

2. Commission's Response

82. The Commission recognizes the importance of ongoing state participation. As we stated in the SMD NOPR and reiterated in our recent White Paper, state regulators provide valuable regional perspectives with regards to transmission planning and expansion, revenue requirements and rate design, market power and monitoring, and demand response and load management, among other issues.⁵¹ The Commission has already encouraged SeTrans Sponsors to use the guidance provided in the October 10 Order to continue working closely with state regulators to address any unresolved issues within the RTO.⁵² We expect that the ISA likewise will work collaboratively with state regulators to define an appropriate role for the states in the RTO region and that a proposal on this issue will be included in the upcoming Section 205 filing.⁵³ Against this backdrop, we deny Arkansas Commission's request for rehearing as premature, since the issues raised by Arkansas Commission will be addressed in the future Section 205 filing.

⁵¹SMD NOPR at P 551.

⁵²October 10 Order at P 143.

⁵³State participation in the SeTrans RTO should conform to the SMD final rule.

P. Cost-Effectiveness of the SeTrans RTO

1. Request for Rehearing

83. New Orleans Council requests rehearing so that two cost-benefit studies⁵⁴ issued about the time of the October 10 Order can be considered in the Commission's evaluation of the SeTrans Sponsors' proposal.

2. Commission's Response

84. Because the purpose of the Sponsors' filing in this proceeding was to obtain preliminary guidance on a limited set of issues unrelated to these cost-benefit studies, and because parties have not had a chance to comment on these studies even if we allowed them to be filed, we will deny New Orleans Council's request for rehearing. This is without prejudice to New Orleans Council raising this issue at a later time.⁵⁵

Q. Return on Equity

1. Requests for Rehearing

85. Municipal Entities oppose the Commission's willingness to consider allowing transmissions owners in the SeTrans footprint to earn an incentive return on equity (ROE) for joining the RTO at the time the SeTrans RTO becomes operational. Municipal Entities state that such an offer would be troubling, arguing that public utilities should not be rewarded for meeting their legal obligations. Further, Municipal Entities claim that any incentive ROE poses a risk of devaluing the assets of non-jurisdictional entities that may place their transmission facilities under SeTrans' control.

⁵⁴Entergy Gulf States, Inc. and Entergy Louisiana, Inc., RTO Cost-Benefit Analysis - Interim Report, (Council of the City of New Orleans, Docket No. U-25965 (August 22, 2002); Charles River Associates, The Benefits and Costs of Regional Transmission Organizations and Standard Market Design in the Southeast (prepared for the Southeastern Association of Regulatory Utility Commissioners) (November 6, 2002).

⁵⁵The approach we are taking here is generally consistent with our approach for other RTO proposals. See RTO West, 101 FERC ¶ 61,033 at P 210 (2002); WestConnect, 101 FERC ¶ 61,346 at P 51-53 (2002).

2. Commission's Response

86. While we stated that the Commission was "open to the idea" of allowing transmission owners to earn an incentive ROE, any incentive would be proposed in a rate proceeding in which Municipal Entities would participate.⁵⁶ Accordingly, the Municipal Entities' concerns are premature.

The Commission orders:

The requests for rehearing of the October 10 Order are hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵⁶See October 10 Order at P 142.