



National Energy Marketers Association

Remedying Undue Discrimination)
Through Open Access Transmission Service) Docket No. RM01-12-00
And Standard Electricity Market Design)

Executive Summary

NEM submits that the Commission's standard market design rulemaking is an historic, bold and visionary initiative to bring much-needed liquidity and competitive neutrality into the North American energy marketplace. The rulemaking will standardize the structure and operation of competitive wholesale power markets nationally and assure that severe market dysfunctions, such as that which occurred in California, never happen again. NEM is confident that at the end of the day, both energy supply and demand will be competitively priced, liquid commodities within a seamless, national marketplace in which all parties are incited to bring the lowest cost supplies to the energy consumer.

NEM applauds the Commission for the leadership it has exhibited in issuing the standard market design rulemaking and submits that the rulemaking provisions are well within FERC's statutory authority to require, implement and enforce.

NEM's comments set forth the following recommendations:

- **ITPs/RTOs** - FERC should mandate ITPs/RTOs with as large a geographical scope as possible in furtherance of the efficiency and uniformity goals of Order 2000 and the Standard Market Design rulemaking;
- **Locational Marginal Pricing** - Locational marginal pricing should be used in Standard Market Design. However, states should be encouraged not to socialize LMP to allow more accurate price signals to reach congested areas. The ITP should

establish a nodal pricing system although a zonal approach would be acceptable under certain circumstances;

- **Pricing in the Real Time Energy Market** - Ex post settlement should be used for real time energy pricing, and ex ante pricing should be used strictly for informational purposes;
- **Demand Response** - Demand response should play a pivotal role in the market. Negawatts should be treated the same as megawatts and should be permitted to set the market clearing price. There should also be a standard contract for the sale of demand;
- **Market Power Mitigation** - The concepts of market power and competitive pricing need to be better defined. Suppliers must be able to recover their fixed and variable costs, including opportunity costs and a reasonable return that accounts for risks. Market power mitigation should not be used as a price control mechanism, but rather it should be used against those not acting in conformance with proper behavioral rules. Additionally, there are problems with the Automatic Mitigation Procedure used in NYISO;
- **Software Systems** - A standardized software solution for SMD should be implemented utilizing XML technology. There must be open architecture that is web-architected and component-based;
- **Composition of Stakeholder Committees** - The proposed stakeholder groupings of generators/marketers and end-users/retail energy providers should be separated, and the stakeholder committees should be structured so that no group is able to take the plurality; and
- **Credit Policies and Procedures** - Uniform creditworthiness requirements should be adopted for market participants, and credit requirements must be realistic and take into consideration whether transactions are cleared or netted.

NEM appreciates this opportunity to comment on the Commission's proposed Standard Market Design. NEM reiterates our commitment to work with the Commission and the other stakeholders to devise fair and effective ways to implement competitive restructuring of the wholesale electric market.



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Comments of the National Energy Marketers Association

The National Energy Marketers Association (NEM) hereby submits comments on the Commission's Notice of Proposed Rulemaking issued July 31, 2002, in the above-referenced proceeding.

NEM is a national, non-profit trade association representing wholesale and retail marketers of energy, telecom and financial-related products, services, information and related technologies throughout the United States, Canada and the U.K. NEM's Membership includes wholesale and retail suppliers of electricity and natural gas, independent power producers, suppliers of distributed generation, energy brokers, power traders, and electronic trading exchanges, advanced metering and load management firms, billing and information technology providers, credit, risk management and financial services firms, software developers, clean coal technology firms as well as energy-related telecom, broadband and internet companies.

This regionally diverse, broad-based coalition of energy, financial services and technology firms has come together under NEM's auspices to forge consensus and to

help resolve as many issues as possible that would delay competition. NEM members urge lawmakers and regulators to implement:

- Laws and regulations that open markets for natural gas, electricity and related products, services, information and technology in a competitively neutral fashion;
- Rates, tariffs, taxes and operating procedures that unbundle competitive services from monopoly services and encourage true competition on the basis of price, quality of service and provision of value-added services;
- Competitively neutral standards of conduct that protect all market participants;
- Accounting and disclosure standards to promote the proper valuation of energy assets, equity securities and forward energy contracts, including derivatives; and
- Policies that encourage investments in new technologies, including the integration of energy, telecommunications and Internet services to lower the cost of energy and related services.

I. Standard Market Design Will Bring Much-Needed Benefits to the Wholesale Electric Industry

The lower costs of competitively-priced merchant generation created a shift in the electric industry regulatory paradigm that began in the 1970s with the Public Utility Regulatory Policy Act of 1978, followed by the Energy Policy Act of 1992, and eventually FERC Orders 888, 889, and 2000. Tremendous effort has been expended to encourage and permit competitive market forces to bring lower priced energy and demand response technology to energy consumers. To date, consumers have saved billions of dollars as a result of both federal and state efforts to encourage and permit competitively priced energy to be built and delivered to end users. NEM believes that FERC's Standard Market Design, (SMD), the logical and necessary extension of these legislative and

regulatory efforts, will ensure that all suppliers and consumers have equal non-discriminatory access to efficiently priced energy markets.

NEM submits that FERC's SMD will bring much-needed standards, uniformity and independent competitively neutral management to the nation's electricity grid. A standard wholesale market design will ensure that energy supply and demand are competitively priced, liquid commodities within a seamless, national marketplace in which all parties are incented to bring the lowest cost supplies to energy consumers. A standard retail market design including unbundled retail transmission will also ensure that the distribution of competitively priced energy and technology is performed in an efficient non-discriminatory manner at the lowest possible cost to ratepayers.

NEM has been a long-time advocate of a number of the principles underpinning the SMD NOPR and strongly supports FERC's efforts in this regard. For example, NEM has long argued that all electricity providers should reserve, purchase, schedule and curtail transmission services under the same uniform, non-discriminatory, open-access transmission tariff. The tariff should be applicable on a uniform, non-discriminatory basis to all transactions, including those currently designated as "native load."¹ NEM also believes that transmission services should be sufficiently uniform to be transferable and tradable.² NEM also applauds FERC's effort to regionalize the U.S. electric grid under independent management and operational control.³ NEM's Comments set forth

1 See NEM's "*National Guidelines for Restructuring the Electric Generation, Transmission and Distribution Industries*" is available at: <http://www.energymarketers.com/Documents/FinalElectricityPaper.pdf>.

2 Id.

3 Id.

below should be read and construed in the context of NEM's strong support for the general principles set forth in the proposed SMD rules.

II. FERC Has the Statutory Authority to Promulgate and Implement the Standard Market Design Rules

FERC chiefly relies on Sections 205 and 206 of the Federal Power Act⁴ as the basis of its authority for promulgating the proposed rules. (Paras. 100-102). The U.S. Supreme Court recently reviewed the Commission's Federal Power Act authority with respect to Order 888 and the open access requirement for unbundled retail transmissions in New York v. FERC. The Court found that,

It is true that FERC's jurisdiction over the sale of power has been specifically confined to the wholesale market. However, FERC's jurisdiction over electricity transmissions contains no such limitation. Because the FPA authorizes FERC's jurisdiction over interstate transmissions, without regard to whether the transmissions are sold to a reseller or directly to a consumer, FERC's exercise of this power is valid.⁵

The Court also stated that, "[t]here is no language in the statute limiting FERC's transmission jurisdiction to the wholesale market, although the statute does limit FERC's

⁴ 16 U.S.C. §§ 824d(b) provides that,

No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission,

(1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or

(2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

⁵ 16 U.S.C. § 824e(a) provides that,

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affected such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

⁵ New York et. al. v. FERC et al., slip op. at 17 (March 5, 2002).

sale jurisdiction to that at wholesale."⁶ In his separate opinion, Justice Thomas explicitly stated that, "the statute unambiguously grants FERC jurisdiction over all interstate transmission and § 824e mandates that FERC remedy undue discrimination with respect to all transmission within its jurisdiction."⁷

Although the Supreme Court stated that, "FERC had no § 206 obligation to regulate bundled retail transmissions or to order universal unbundling,"⁸ the Supreme Court went on to find that,

"it may be true that FERC's findings concerning discrimination in the wholesale electricity market suggest that such discrimination exists in the retail electricity market as well, as Enron alleges. Were FERC to investigate this alleged discrimination and make findings concerning undue discrimination in the retail electricity market, § 206 of the FPA would require FERC to provide a remedy for that discrimination. See 16 U.S.C. § 824e(a) (upon finding of undue discrimination, "the Commission shall determine the just and reasonable . . . regulation, practice, or contract . . . and shall fix the same by order"). And such a remedy could very well involve FERC's decision to regulate bundled retail transmissions."⁹

NEM asserts that the Commission has made the requisite findings described above by the Supreme Court for issuing these proposed rules. In issuing the rulemaking, the Commission found that:

- (1) the operation of the Commission's pro forma transmission tariff (which is administered by vertically integrated as well as non-vertically integrated public utilities such as ISOs) contains provisions that, in practice, permit undue discrimination in the provision of transmission services;
- (2) public utilities that own, operate or control transmission facilities and also participate in power markets continue to possess substantial transmission market power and retain the ability to unduly discriminate in the provision of transmission service and spot market energy services;

6 Id. at 14.

7 New York v. FERC, Opinion of Thomas, J., slip op. at page 16.

8 New York et. al. v. FERC et al., slip op. at 25 (March 5, 2002).

9 Id. at 25.

(3) lack of standardized wholesale electric market design allows undue discrimination within and across regions, can result in unjust and unreasonable pricing and allocation of transmission and permits the exercise of market power (and thus unjust and unreasonable rates) in power markets; and

(4) proper price signals are not being sent to the marketplace, with the result that market-based rates in many places are distorted, and reasonably accurate price signals necessary for infrastructure additions are not being sent. (Para. 105).

Furthermore, the Commission set forth an extensive listing of examples of, "undue discrimination and impediments to competition that continue to exist in the electric industry" in Section III and Appendix C to the NOPR.¹⁰ NEM supports these findings and submits that the Commission has more than adequately demonstrated the basis and the necessity for the promulgation of these rules.

III. RTOs Should Be Mandatory

The Commission proposes to require that, "all public utilities that own, control or operate facilities used for the transmission of electric energy in interstate commerce to: (1) meet the definition of Independent Transmission Provider, (2) turn over the operation of its transmission facilities to an RTO that meets the definition of Independent Transmission Provider, or (3) contract with an entity that meets the definition of Independent Transmission Provider to operate its transmission facilities." (Para. 125). Independent Transmission Provider is defined in the NOPR as,

any public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce, that administers the day-ahead and real-time energy and ancillary services markets in connection with its provision of transmission services pursuant to the SMD Tariff, and that is independent (i.e., has no financial interest, either directly or through an affiliate, in any market participant in the region in

¹⁰ SMD NOPR, Appendix C, page 1.

which it provides transmission services or in neighboring regions). (Para. 126).

The NOPR set forth FERC's jurisdictional authority to mandate an entity that controls the transmission system. NEM questions why the NOPR did not mandate RTOs as the logical next step to Order 2000.

The ITPs as defined in the NOPR do not have specific geographical scope requirements. Therefore, it seems reasonable to assume that ISOs in the Northeast and Midwest that did not meet FERC's criteria for certification as RTOs, largely due to insufficient scope and configuration, could be certified as ITPs. Therefore, NEM is concerned that the SMD as drafted could even result in regression, that there may not be a Northeast RTO formed from the proposed merger of the New York and New England ISOs, and that the former Alliance (rejected on the basis of scope) could come back as the Alliance ITP. **NEM submits that FERC should mandate ITPs/RTOs with as large a geographical scope as possible.** NEM is concerned that unless this is rectified, the NOPR will permit and/or encourage numerous smaller ITPs to be formed thereby undermining the efficiency and uniformity goals of Order 2000 and SMD. Experience with similarly designed ISOs in the Northeast strongly suggests that relatively small ITPs with seams agreements are a poor substitute for RTOs with appropriate scope and configuration.

IV. Locational Marginal Pricing

The Commission proposed to use Locational Marginal Pricing (LMP), a market-based method of congestion management. **NEM supports the use of LMP in standard market design.** However, NEM is concerned that the ability of utilities to socialize LMP will make it difficult for retailers to serve customers in congested areas. Marketers won't

be able to compete against incumbents' default service prices if LMP continues to be socialized by state rate-regulated utilities. The areas of highest congestion have some of the most desirable customers. The major purpose of SMD is to achieve competitive neutrality. If LMP is socialized, competitive suppliers will be at a competitive disadvantage against the utility's bundled rate. Socialization of LMP could also disadvantage competitive suppliers in their ability to sell demand side resources. It is imperative that customers be able to recognize the value of demand side management products.

NEM suggests that FERC give guidance in the final rule encouraging states not to socialize LMP to permit more accurate price signals to reach congested areas. NEM recommends that utilities be required to differentiate their retail costs between congested points (passing through the LMP price signals) and non-congested delivery points. Additionally, LMP should not be reflected in the transmission and distribution portion of rates but rather the energy portion of a utility's bundled bill. The alternative would be for FERC to exercise its jurisdiction more fully with respect to sales of bundled transmission services in bundled retail sales.

In order to encourage new supply or demand response in the most constrained regions, the ITP should establish a nodal pricing system. However, this approach could be cumbersome and confusing for billing LSEs for their energy withdrawals, especially in network systems where the nodal pricing can vary significantly from street to street and occasionally changes as utilities rebalance network loads. As an alternative, NEM believes a zonal approach for billing LSEs for their energy withdrawals is acceptable

provided that the ITP establishes zonal boundaries with sufficient resolution to divide regions based on transmission constraints.¹¹

V. Pricing in the Real Time Energy Market

The Commission discusses two methods for determining real time energy market prices. Prices could be set on an ex ante basis "using near real time estimates" or on an ex post basis where the price is set as the "price of the actual marginal resource clearing the market in real time." (Para. 313). The Commission, "propose[s] to adopt the ex post rule because it creates incentives for bidders to act consistent with their bids." (Para. 315).

NEM recommends the use of ex post settlement for real time energy pricing and that ex ante pricing be used for strictly informational purposes. Ex post settlement will reflect real time dispatch and flows. Ex post settlement will reflect more of what actually happened in the market and allow market participants to settle on what actually flows.

VI. Demand Response

The Commission has carved out a significant role for demand side resources in the NOPR. For instance, the day ahead market is to, "allow full participation by both the supply side and the demand side of the market." (Para. 269). Furthermore, "[e]ach region's resource adequacy requirement could be satisfied by a combination of generation, transmission, and demand response infrastructure." (Para. 503). NEM agrees with the Commission that demand response should play a pivotal role in the market.

¹¹ NEM notes that taxes are built into utility rates by city using that approach.

Prior to the issuance of the NOPR, the Commission repeatedly recognized the value of demand response systems to increase the availability of supply and contribute to the reliability of the grid. NEM submits that market-based conservation, distributed on-site generation and load-shifting measures have the ability to lower energy prices without imposing mandatory price caps that distort market signals to final end-uses. NEM urges the Commission to permit true price competition to allocate demand-side resources as it does supply-side resources. Liquidity of demand responses can be extremely cost-effective and facilitate efficient short-term solutions to both transmission and generation constraints.

NEM recommends that negawatts should be treated the same as megawatts and should be permitted to set the market clearing price. NEM also recommends that there should be a standard contract for the sale of demand, in order for demand to become a liquid, tradeable commodity in the market.

VII. Market Power Mitigation

The NOPR defines market power as, "the ability to raise price above the competitive level." (Para. 393). The NOPR states that market power can be exercised, "if the generator can withhold physical power (physical withholding) or cause physical power to be withheld through inflated bids (economic withholding)," (Para. 393) as well as, "by creating barriers to entry so other suppliers cannot reach the market or by causing other supplier's production costs to increase." (Para. 393, n. 196). The Commission proposes three mandatory market power mitigation components and one voluntary measure. The first measure is a must-run obligation with a bid cap applicable in concentrated

geographic markets. (Para. 399). The second measure is a safety net bid cap, "such as the \$1000 per megawatt-hour cap currently used in the Northeast markets and Texas." (Para. 400). The third measure is the resource adequacy requirement that NEM will further discuss in comments to be submitted January 10, 2003. The fourth voluntary measure would be like the Automatic Mitigation Procedure (AMP) used by NYISO. The measure would be applicable in, "situations when non-competitive conditions may exist, by examining and possibly limiting bids from individual suppliers into the day-ahead and real-time spot markets if those bids are high due to withholding rather than scarcity." (Para. 402). Mitigation "could be triggered by predetermined conditions or triggers (such as a sustained period of prices significantly above competitive levels), or by significant infrastructure problems in the market (e.g., sustained tight reserve conditions, as might be due to drought)." (Para. 402).

The NOPR states that, "[m]arket monitoring should be conducted on an on-going basis by a market monitoring unit that is autonomous of the Independent Transmission Provider's management and market participants." (Para. 429). The market monitor would examine, "the functioning of the markets run by the Independent Transmission Provider as well as the conduct of individual market participants." (Para. 431). This would entail monitoring, "factors that might lead to economic inefficiency," market rule problems and barriers to entry as well as, "the exercise of market power." (Para. 431).

NEM recognizes that market power mitigation may need to be utilized on an interim basis, but NEM submits that the proposed mitigation measures must be subject to reassessment as the market matures and not become a means of price regulation. **NEM submits that the Commission should provide a clearer definition of market power so**

there may be a predetermination of who, in fact, has it. The definition of market power included in the NOPR does not include any notion of being able to sustain the increase of market prices over competitive levels or a clear definition of what "competitive levels" are deemed to be. **Although the proposed definition of market power hinges on competitive prices, much is left unsaid with respect to what may be included in competitive prices. Suppliers must have an opportunity to recover their fixed and variable costs. Those costs must necessarily include opportunity costs and a reasonable return that accounts for the risks faced by suppliers when they supply their capacity, energy, and ancillary services in deregulated markets. Indeed, any analysis of competitive prices must consider the entire range of product markets, as well as the real-time, day-ahead, and resource adequacy markets.** Understanding how all of the markets interact and how products are offered in those markets is imperative to knowing whether suppliers are truly raising prices above competitive levels or merely seeking reasonable compensation for a valuable product. By focusing too closely on particular bids, the ITP could overmitigate, thereby restricting the ability of suppliers to recover their legitimate long-run costs and dampening price signals required for demand response.

As noted, the definition of market power included in the NOPR provides an insufficient basis for developing market mitigation tools. Any market mitigation plan must control the abuse of market power, not its mere existence. Market power is only abused when the party possessing market it, engages in behavior that cannot otherwise be justified. Moreover, such apparent behavior over a short period is less likely to be an abuse of market power as compared to sustained behaviors.

Mitigation should only occur when the possession of market power is abused to such a degree that the positive effects of the mitigation activity will outweigh any negative impacts caused by the mitigation. NEM is concerned that, the long-term effects of market mitigation, particularly the muting of price signals that would encourage the construction of new supply resources necessary for sustained reliability, as well as demand response, may be lost in the shadow of the political and regulatory expediency of regulating lower prices into a market.

NEM also recommends that market power mitigation should not be used as a price control mechanism, but rather it should be used against those not acting in conformance with proper behavioral rules. NEM also submits that there is a danger that if the market is mitigated too much, it will not send the proper price signal and thereby undermine long-term reliability.

Finally, all market participants must be monitored. For instance, when a market is dominated by one buyer, that buyer can possess and abuse market power by forcing prices below competitive levels for a sustained period.

With respect to certain specific proposals, NEM submits that there are problems with the AMP mechanism that is used in NYISO. The AMP utilizes automated mitigation procedures based on bidding histories. The problem with this is that a skew in price may happen for various reasons, such as a change in business cycle, a change in either the performance or operating costs of the generating unit, or a planned outage, that does not involve the exercise of market power for which the AMP cannot easily account for. An additional problem with the NYISO AMP is that reference prices are set based

on three month old bidding behavior. Accordingly, summer reference prices are established based on springtime bids and summer bid prices only effect fall reference prices, when the AMP is unlikely to be triggered. Accordingly, AMP rules allow suppliers to negotiate a reference price based on cost. Therefore, almost by definition, the marginal generating unit will not recover its fixed costs and the market will not experience scarcity prices because reference prices will at best track production costs.

NEM submits that the New York market did not reflect the actual scarcity that existed in summer 2002. There was extended record heat during the summer in the region. Reserves were exhausted, and yet there were low prices. Scarcity pricing was taken out of the market and higher production costs and value during warmer periods was not reflected in market prices. There are several known and probably some unknown reasons for this. Mitigation measures that restrict bids to variable costs and fail to include appropriate opportunity costs will never yield scarcity pricing. In addition, because demand response received out-of-market subsidies, this signal was also muted. The absence of scarcity pricing not only skews market pricing but adversely influences future investment decisions and can obviate the need to hedge load positions through bilateral contracts because an overly mitigated market provides LSEs with a regulatory hedge. **NEM recommends that a Market Monitoring Unit (MMU) be instituted that is competitively neutral, independent and that looks at all aspects of the market and all market participants.**

VIII. Software Systems

The Commission proposes that SMD software must have the following characteristics: "transparency (the ability to understand what the software does), testability (the ability to

understand and compare performance) and modularity (the ability to change software modules without changing other software)." (Para. 352). The Commission further proposes, "that the input and output data systems and other Electronic Data Interchange be standardized in a common data including a data dictionary (glossary and/or data definitions) and common network descriptions." (Para. 354). The NOPR discussed two approaches to standardize data transfer between modules, open systems and standardization. Under an open systems approach, "each vendor [would] develop and publish the interface to the next module in the system." (Para. 358). Whereas the standardization approach, "would define a set of minimum specific standard functions for each software module and specify the interfaces to be used between modules." (Para. 358). The Commission stated that the standardization approach should be used. (Para. 358).

NEM recommends that software should not dictate market rules but that market rules should dictate the software. Systems with regional subtleties will require each party to make a customized solution. The industry and the country need a standardized solution - software should be implemented only once and shared by market participants on a cost-effective basis. NEM also submits that the requisite standards and technologies to accomplish SMD exist today and that SMD can be implemented at a low cost.

NEM cautions that "standard" should not mean identical to existing ISO structures, i.e., don't just reapply older solutions. FERC should avoid replication of existing systems because customers will benefit from a competitive selection process. The historical costs of implementation have been in the hundreds of millions of dollars.

FERC should put the onus on competitive software suppliers to get the status quo out of the marketplace and get systems in place for the lowest possible cost, considering that the software can be re-used if the standards are implemented and reliable enough to allow standardized inputs and outputs.

NEM argues that standards are needed for architecture and infrastructure. The key is standardization of data and how it is communicated. Existing software can perform the functions in the NOPR. **There must be open architecture that is web-architected and component-based. Standard data dictionaries are also needed. NEM strongly urges the Commission to require the use of XML in the SMD software systems.** Proven XML-based messaging protocols exist today. Historically, incumbents have used variations in EDI to prevent competitive entry, and XML makes that less likely. XML also has tools available today through multiple vendors that allow the software to conform more easily to standards and a more competitive market structure. XML is also easily readable (unlike other formats such as CSV) which will assist business personnel as well as technical experts in testing and troubleshooting.

ISO systems have not been subject to a rigorous audit. Such an audit is needed to ensure transparency. **FERC should consider requiring an independent audit that questions the pricing methodologies.** Such an audit will build confidence in the market.

If the SMD utilizes open standards in existence today as a strawman for the wholesale market, implementation time can be reasonable. The best way to ensure an operational market is to implement the processes in stages. This will allow for a

more stable environment for all. It will also reduce the chances of any misdirection of software that could, in turn, increase costs to users of the systems.

NEM recommends that FERC take an active role in the standards development process to ensure timelines are met. There is a need to fix processes today. SMD standards development will take time to complete. FERC involvement will ensure that process timeline slippage is resolved on an expeditious basis, thereby minimizing adverse financial and political consequences.

IX. Composition of Stakeholder Committees

With respect to guidance of the ITPs, the Commission stated that they, "continue to believe that an active stakeholder process is needed and that to fully satisfy the independence principles of Standard Market Design, these stakeholder committees must be used to advise the Board of Directors rather than function as a decision making body." (Para. 560). The Commission proposed, "to require that an Independent Transmission Provider approved by the Commission must have at a minimum committees that reflect six stakeholder classes: (1) generators and marketers, (2) transmission owners (this sector would include vertically integrated utilities), (3) transmission-dependent utilities, (4) public interest groups (e.g. consumer advocates, environmental groups, citizen participation), (5) alternative energy providers (e.g. distributed generation, demand response technologies, renewable energy), and (6) end-users and retail energy providers (i.e. load serving entities that do not own transmission or distribution assets).

NEM submits that in the current ISOs/RTOs the balance of power rests with customers and the proposed sector breakdown further perpetuates this imbalance. **NEM**

recommends that the overall make-up of the committee should be such that no group (consumer interests/environmental interests/utilities/etc.) is able to take the plurality.

NEM also recommends that the proposed stakeholder groupings of generators/marketers and end-users/retail energy providers be separated. NEM submits that the entities within these groupings do not have a complete identity of interests and therefore individual classes should be instituted for each group. However, once the groups are separated, the ITP must ensure that the sector breakdown, as well as the voting mechanisms, does not create an imbalance favoring buyers over sellers or vice versa. Furthermore, the finer the breakdown of stakeholder groupings, the more useful the information will be to the independent Board when it is considering stakeholder input in its decision-making process. **NEM also recommends that FERC definitively set forth the segments to avoid the formation problems recently encountered in the NAESB Wholesale Electric Quadrant process.**

X. Credit Policies and Procedures

Currently, there are subjective and varying credit policies and procedures for ISOs/RTOs across the country. NEM recommends that a section in the final rule and tariff should pertain to credit policies and procedures. **There must be uniform guidelines established for evaluation and examination of each market participant's creditworthiness, and credit requirements must be realistic.**

XI. Conclusion

NEM's comments as set forth above should be construed consistently with NEM's strong overall support for the proposed rules. It is within this context that NEM recommends that: 1) FERC should mandate ITPs/RTOs with as large a geographical scope as possible; 2) states should be encouraged not to socialize LMP; 3) ex post settlement should be used for real time energy pricing and ex ante pricing should be used strictly for informational purposes; 4) negawatts should be treated the same as megawatts; 5) the concepts of market power and competitive pricing need to be better defined consistent with NEM's suggestions; 6) the NYISO AMP mechanism is flawed; 7) a standardized software solution for SMD should be implemented utilizing XML technology; 8) the proposed stakeholder groupings of generators/marketers and end-users/retail energy providers should be separated, and the stakeholder committees should be structured so that no group is able to take the plurality; and 9) uniform creditworthiness requirements should be adopted.

Respectfully submitted,

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