

November 15, 2002

Magalie Roman Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Re:** Remediating Undue Discrimination through Open Access Transmission  
Service and Standard Electricity Market Design  
Docket No. RM01-12-000

**Joint Comments Urging Withdrawal of Standard Market Design NOPR**

Dear Secretary Salas:

On behalf of more than 200 officials and entities that include public utility commissioners, attorneys general, local elected officials, consumer advocates, public utilities, municipalities unions and businesses, we are submitting the attached comments to the Federal Energy Regulatory Commission (FERC) on its proposed rules for standard market design.

For purposes of the required Executive Summary: these comments recommend that FERC withdraw its proposed rules on the following grounds:

- The rules constitute an over-reaching of FERC authority into retail responsibilities now executed by the states.
- FERC bases its rules on the unjustifiable finding that a vertically-integrated utility that gives priority to its own customers engages in undue discrimination.

We hope you take these comments into account when making decisions on standard market design in the coming weeks.

Sincerely,



Marilyn Showalter, Chairwoman  
Washington Utilities and  
Transportation Commission



James Y. Kerr, Commissioner  
North Carolina Utilities Commission

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Remedying Undue Discrimination through )  
Open Access Transmission Service and ) Docket No. RM01-12-000  
Standard Electricity Market Design )

**JOINT COMMENTS URGING WITHDRAWAL OF PROPOSED RULES**

The undersigned officials and entities offer the following Joint Comments urging the Federal Energy Regulatory Commission (Commission) to withdraw its Standard Market Design Notice of Proposed Rulemaking, issued July 31, 2002.

All notices, comments and other correspondence should be sent to the following:

Marilyn Showalter, Chairwoman  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
Olympia, Washington 98504

James Y. Kerr, Commissioner  
North Carolina Utilities Commission  
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**JOINT COMMENTS URGING WITHDRAWAL OF FERC'S  
PROPOSED RULES ON STANDARD MARKET DESIGN**

- 1       In meeting its obligation under the Federal Power Act, the Federal Energy Regulatory Commission fulfills a role that is critically important for electricity consumers. But the Commission's role -- to ensure just and reasonable wholesale power and transmission rates -- is neither isolated from, nor superior to, the role that states must play to ensure fair and reliable *retail* service. Consumers will not be well served if the roles of the Commission and the states are confrontational. Our respective roles must be complementary. Unfortunately, in its proposed rules for a standard market design, the Commission has chosen to over-reach the authority that Congress has delegated to it, based on the Commission's unsupported "finding" that a vertically integrated utility that gives priority to its own customers engages in "undue" discrimination.
- 2       The most profound aspect of the Commission's proposal is its assertion of Commission jurisdiction over major elements of retail electricity service. It amounts to a transfer of authority to the Commission and a loss of

control by the states over, among other things, demand forecasting, resource planning, demand-side management and marketing, and the ability to ensure that transmission is available to meet retail service obligations. The result is not only a confrontation with state law and usurpation of state ability to protect consumers at the retail level, but also immense investment uncertainty--at a time when the merchant plant industry is in crisis, and when utilities must be able to plan for and recover the costs of meeting retail needs.

- 3 Jurisdiction is profoundly important because it determines *who gets to decide* retail electricity policy. If the Commission is "successful" in intruding into retail jurisdiction, it will have pre-empted the rights of the elected members of the legislatures and other state constitutional bodies in all of the 48 lower states to determine appropriate retail policy. State legislatures will have lost the ability to ensure that their citizens and businesses are served by a retail system that provides adequate, reliable, and affordable electricity. Meanwhile, whatever rules the Commission adopts are just the rules of the day. With its on-going authority, the

Commission can be expected to modify the rules over time. *This is why the debate over the proposed operational rules—troubling as they may be—pales in importance to the debate over who will have the right to impose them, and to modify them over time.*

4 The Commission's unprecedented and unjustified move has engendered enormous controversy, expended considerable political capital, and eroded the respect and trust the Commission needs if it is to oversee effectively a rapidly changing wholesale electric industry. The Commission proposes to supplant state policies that protect retail consumers with new and untried institutions and rules, implementing a new and untested market theory. In the name of transforming the wholesale industry, the Commission would dis-integrate our retail system, turning our joint state-federal regulatory structure on its head. By subordinating the retail system to the perceived needs of the wholesale system, the Commission has lost sight of those who should be the ultimate beneficiaries: *end-use consumers*--not generators who have no public service obligation and whose interests are solely commercial. A wholesale

market “solution” that cripples the well-founded retail policies chosen by the elected representatives of a majority of states is not a solution at all.

5 There may well be problems to solve and improvements to be made both in federal regulation of wholesale services and in state regulation of retail services. We are confident that these problems, once clearly identified, can be constructively addressed and that evidence-based solutions can be found. For example, over the past two years the states and other parties have expended thousands of hours and millions of dollars on the task of proposing regional transmission organizations (RTOs). All of us face near-term decisions on the wisdom of using regional transmission organizations to ensure equitable access to transmission. We are convinced that consumers will benefit if both the Commission and the states focus on identifying and solving *real* problems, whether through RTOs or other means. But the Commission’s unprecedented and aggressive jurisdictional reach, which shifts the ground rules and undermines trust at many levels, disrupts useful aspects of the RTO process and the ability to make informed decisions.

6 We urge the Commission to recognize the limits of its own reach and respect the partnership it must forge with the states, and to:

- Withdraw the proposed rulemaking.
- Refrain from asserting jurisdiction over the transmission component of bundled retail sales.
- Refrain from asserting jurisdiction over power supply planning functions.
- Refrain from asserting jurisdiction over demand-response functions.
- Refrain from mandating the transfer of transmission operations from vertically integrated utilities to independent transmission providers.
- Refrain from imposing highly-complex and untested market mechanisms across the whole nation.
- Focus on improving the wholesale electricity market through better monitoring and better enforcement.
- Return to voluntary regional transmission system discussions.
- On a regional, cooperative basis, identify real (not theoretical) problems and fashion evidence-based, practical solutions.
- Before implementing any new programs or market designs, subject them to a rigorous cost-benefit-risk analysis that measures net benefits to end-use consumers.

**JOINT COMMENTERS**

**ALABAMA**

AlabamaPublicServiceCommission  
JimSullivan,President  
JanCook,Commissioner  
GeorgeWallace,Commissioner

**ARKANSAS**

ArkansasPublicServiceCommission  
BettyDickey,Commissioner  
SandraHochstetter,Chair

**CALIFORNIA**

CaliforniaPublicUtilitiesCommission  
LorettaLynch,Chair  
CarlWood,Commissioner  
GeoffreyF.Brown,Commissioner

TheUtilityReformNetwork  
NettieHoge,ExecutiveDirector

**COLORADO**

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KenReif,Director

**GEORGIA**

GeorgiaPublicServiceCommission  
Lauren“Bubba”McDonald,Chair

**IDAHO**

IdahoPublicUtilitiesCommission  
PaulKjellander,President  
DennisHansen,Commissioner

**KANSAS**

KansasCorporationCommission  
BrianMoline,Commissioner

**KENTUCKY**

KentuckyPublicServiceCommission  
MartinHuelsmann,Chair

**LOUISIANA**

LouisianaPublicServiceCommission  
JayBlossman,Chair  
IrmaMuseDixon,Commissioner  
JimmyField,Commissioner  
DonOwen,ViceChair  
DaleSittig,Commissioner

**MISSISSIPPI**

MississippiPublicServiceCommission  
MichaelCallahan,Chair  
NielsenCochran,Commissioner  
Dorlos“Bo”Robinson,  
Commissioner

**NEBRASKA**

NebraskaPublicServiceCommission  
AnneC.Boyle,Chair  
LowellC.Johnson,Commissioner

**NEVADA**

AttorneyGeneralofNevada  
FrankieSueDelPapa

NevadaPublicUtilitiesCommission  
DonSoderberg,Chair

**NEW MEXICO**

NewMexicoAttorneyGeneral  
PatriciaMadrid  
  
NewMexicoPublicRegulationCommission  
HerbHughes,ViceChair  
LyndaLovejoy,Chair  
RoryMcMinn,Commissioner  
TonySchaefer,Commissioner

**NEW HAMPSHIRE**

NewHampshirePublicUtilities  
Commission  
NancyBrockway,Commissioner

NewHampshireOfficeofConsumer  
Advocate  
MichaelW.Holmes,Consumer  
Advocate

**NORTHCAROLINA**

NorthCarolinaUtilitiesCommission  
JoAnneSanford,Chair  
JimKerr,Commissioner  
J.RichardConder,Commissioner  
RobertV.Owens,Jr.,  
Commissioner  
SamJ.Ervin,IV,Commissioner  
LorinzoL.Joyner,Commissioner  
MichaelS.Wilkins,Commissioner

**NEWYORK**

PublicUtilityLawProjectofNewYork  
GeraldNorlander,Executive  
Director

**OREGON**

OregonPublicUtilitiesCommission  
JoanSmith,Commissioner

PublicPowerCouncil  
JerryLeone,Manager

**SOUTHCAROLINA**

SouthCarolinaPublicServiceCommission  
BuddyAtkins,Commissioner  
H.ClayCarruth,Jr.,Commissioner  
MignonL.Clyburn,Chair  
RandyMitchell,Commissioner  
BobMoseley,Commissioner  
William"Bill"Saunders,  
Commissioner  
NickTheodore,Commissioner

**SOUTHDAKOTA**

SouthDakotaPublicUtilitiesCommission  
JimBurg,Chair  
PamNelson,Commissioner

**TENNESSEE**

TennesseeRegulatoryAuth ority  
SaraKyle,Chair  
PatMiller,Director  
DeborahTaylorTate,Director

**UTAH**

UtahCommitteeofConsumerServices

**NATIONAL**

UtilityWorkersUnionofAmerica  
DonaldE.Wightman,President

NationalConsumerLawCenteronbehalfof  
itslow -incomeclients  
CharlesHarak,StaffAttorney

**WASHINGTON**

WashingtonAttorneyGeneral  
ChristineGregoire

WashingtonPublicUtilitiesDistrict  
Association  
SteveJohnson,ExecutiveDirector

WashingtonUtilitiesandTransportation  
Commission  
DickHemstad,Commis sioner  
PatOshie,Commissioner  
MarilynShowalter,Chair

SeattleCityLight  
GaryZarker,Superintendent

TacomaPublicUtilities  
MarkCrisson,ChiefExecutive  
Officer

NorthwestPowerWorks  
DonGodard,Co -chair  
SteveLoveland,Co -chair

Endorsersinclud e:  
CityofAberdeen  
AgriNorthwest  
AlderMutualLightCompany

Atlas,ChehalisPlant -Quali-Cost  
 BentonCityEconomic  
 DevelopmentCommittee  
 CathlametKiwanis  
 CentralGrange#360  
 CityofCheney  
 ClarkCountyCommission  
 C.M.HoltzingerFruitCo.  
 ColumbiaColstor Inc.  
 ColumbiaRiverCarbonates  
 CityofCosmopolis  
 Cowlitz-WahkiakumCouncilof  
 Governments  
 DeGoedeBulbFarms,Inc.  
 DesertHillsFruit  
 TownofEatonville  
 EchoBayMinerals  
 EconomicDevelopmentCouncilof  
 MasonCounty  
 CityofEllensburg  
 ElmhurstMutualP owerandLight  
 Company  
 EmeraldPeople'sUtilityDistrict  
 EmeraldShoresHomeowners'  
 Association  
 FerryCountyChamberof  
 Commerce  
 FerryCountyBoardof  
 Commissioners  
 FerryCountyFairAssociation  
 FerryCountyHospitalDistrict#1  
 CityofForest Grove  
 GraylandCranberryAssociation  
 GraysHarborChamberof  
 Commerce  
 GraysHarborCountyCommission  
 GraysHarborEconomic  
 DevelopmentCouncil  
 GraysHarborPublicDevelopment  
 Authority  
 GraysRiverGrange  
 HarneyElectricCooperative  
 HarstineIsland CommunityClub  
 CityofHoquiam  
 IBEWLocal77  
 IBEWLocal125

IBEWLocal280  
 IBEWLocal483  
 IBEWLocal659  
 CityofKennewick  
 KennewickRedAppleMarket  
 KootenaiElectricCooperative  
 LakeviewLight&Power  
 LampsonInternational,LLC  
 LaneCountyPamonaGrange  
 LewisCountyBoardof  
 Commissioners  
 MasonCountyBoardof  
 Commissioners  
 MasonCountyEconomic  
 DevelopmentCouncil  
 MasonCountyRepublicanCentral  
 Committee  
 CityofMcCleary  
 MercerRanch  
 MidStateCooperative  
 CityofMilton  
 CityofMilton -Freewater  
 MontesanoChamberofCommerce  
 NespelemValleyElectricCompany  
 NorthMasonCountyChamberof  
 Commerce  
 NorthMasonKiwanisClub  
 NorthMasonLionsClub  
 OhopGrange  
 OhopMutualLightCompany  
 CityofOmak  
 OregonAFL -CIO  
 OregonMunicipalElectricUtiliti es:  
     CityofAshland  
     CityofBandon  
     CityofCascadeLocks  
     CityofDrain  
     CityofForestGrove  
     CityofHermiston  
     CityofMcMinnville  
     CityofMilton -Freewater  
     CityofMonmouth  
 OregonTrailElectricCooperative  
 PacificCouncilofGovernments  
 PacificCountyBoar dofCounty

Commissioners  
 PacificCountyEconomic  
 DevelopmentCouncil  
 ParklandLightandWaterCompany  
 PascoChamberofCommerce  
 CityofPateros  
 PeninsulaLightCompany  
 PierceCountyCooperativePower  
 Association  
 PortofGraysHarbor  
 PortofWahkiak umNo.2  
 ProsserEconomicDevelopment  
 Association  
 RaymondChamberofCommerce  
 RaymondKiwanis  
 CityofRepublic  
 RepublicBusiness&Professional  
 Women  
 RepublicAreaChamberof  
 Commerce  
 RepublicKiwanis  
 CityofRichland  
 SalemElectric  
 SanPoilGrange  
 SandpiperFarms  
 SeattleCityLight  
 CityofShelton  
 Shelton-MasonChamberof  
 Commerce  
 CityofSouthBend  
 SouthBendKiwanis  
 SouthPierceCountyFire&Rescue,  
 PCFD#15  
 SpringfieldChamberofCommerce  
 SpringfieldUtilityBoard  
 SunheavenFarms  
 SurpriseValleyElectrification  
 Corporation  
 TabaforMill,Inc.  
 TacomaPower  
 TilamookPUD  
 Tri-CityChamberofCommerce  
 TRIDEC(Tri -CityIndustrial  
 DevelopmentCouncil)  
 CityofVancouver,WA  
 WaferTech

WahkiakumChamberofCommerce  
 WahkiakumCountyBoardof  
 C ommissioners  
 WashingtonFruitandProduce  
 WashingtonPublicUtilitiesDistrict  
 Association:  
 AsotinCountyPUD  
 BentonCountyPUD  
 ChelanCountyPUD  
 ClallamCountyPUD  
 ClarkPublicUtilities  
 CowlitzCountyPUD  
 DouglasCountyPUD  
 FerryCountyPUD  
 Franklin CountyPUD  
 GrantCountyPUD  
 GraysHarborCountyPUD  
 JeffersonCountyPUD  
 KitsapCountyPUD  
 KittitasCountyPUD  
 KlickitatCountyPUD  
 LewisCountyPUD  
 MasonCountyPUDNo.1  
 MasonCountyPUDNo.3  
 OkanoganCountyPUD  
 PacificCountyPUD  
 PendOreilleCountyPU D  
 SkagitCountyPUD  
 SkamaniaCountyPUD  
 SnohomishCountyPUD  
 StevensCountyPUD  
 ThurstonCountyPUD  
 WahkiakumCountyPUD  
 WhatcomCountyPUD  
 EnergyNorthwest  
 WashingtonStateGrange  
 WashingtonStateLaborCouncil,  
 AFL-CIO  
 CityofWashougal  
 CityofWestport  
 WestsideWaterworks  
 WillapaValleySchoolDistrict