

112 FERC ¶ 61, 073
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Sudeen G. Kelly.

Remedying Undue Discrimination
through Open Access Transmission Service
and Standard Electricity Market Design

Docket No. RM01-12-000

ORDER TERMINATING PROCEEDING

(Issued July 19, 2005)

1. In 2002, the Commission issued the Standard Market Design (SMD) Notice of Proposed Rulemaking (NOPR) in this proceeding.¹ For the reasons given below, we are exercising our discretion to terminate this proceeding.

Background

2. On July 31, 2002, the Commission issued a NOPR proposing to remedy remaining undue discrimination and establish a standardized transmission service and wholesale electric market design to provide a level playing field for all entities seeking to participate in wholesale electric markets, while recognizing certain regional variations. The Commission explained that it was proposing to provide new choices through a flexible transmission service and an open and transparent spot market design that would provide the right pricing signals for investment in transmission and generation facilities. The Commission also explained that it was proposing regulatory backstops to protect customers against the exercise of market power when structures do not support a competitive market, *i.e.*, market monitoring and market power mitigation. The Commission further proposed to exercise jurisdiction over the transmission component of bundled retail transactions and to require all transmission owners and operators that had not yet joined a regional transmission organization (RTO) to contract with an independent entity to operate their transmission facilities.

¹ *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking*, 67 Fed. Reg. 55,452 (Aug. 29, 2002), FERC Stats. & Regs. ¶ 32,563 (2002).

3. The Commission received extensive comments on its proposed rule raising a variety of concerns, including the following: (1) the Commission's proposed assertion of jurisdiction over transmission used to provide retail service to native load customers infringed on state jurisdiction; (2) other specific features of the proposed rule also would infringe on state jurisdiction; (3) the transition process to the new proposed transmission service would not provide sufficient protection for existing customers; (4) the proposed rule was too prescriptive in substance and implementation and did not sufficiently accommodate regional differences; and (5) the proposed rule did not provide sufficient clarity on cost recovery for investment in new transmission facilities.

4. On April 28, 2003, in response to the comments it received on its proposed rule, the Commission issued a Wholesale Power Market Platform White Paper laying out a revised proposal for building a wholesale electric market. The Commission reiterated its overall goals, proposed a more flexible approach to regional needs and expressed an intent to focus on the formation of RTOs. The Commission recognized the need for additional changes to its proposed rule and indicated that: (1) it would not assert jurisdiction over the transmission rate component of bundled retail service; (2) nothing in the Final Rule would change state authority over resource adequacy requirements and regional transmission planning requirements; (3) regional state committees would determine how firm transmission rights should be allocated to current customers; (4) implementation would be tailored to each region and modifications would be allowed to benefit customers in each region; (5) each RTO would be required to have a clear transmission cost recovery policy outlined in its tariff; and (6) it would eliminate the proposed requirement that public utilities create or join an independent entity, but would require them to join an RTO or independent system operator (ISO).

5. While a number of entities expressed support for certain of the changes proposed by the Commission in its White Paper, many entities continued to oppose the Commission's fundamental goals. For example, several entities spoke out against any national one size fits all approach, even with the modifications set forth in the White Paper, while others expressed concern with the ever-escalating costs of RTOs. Still others preferred that the Commission take a more regional approach that would allow markets to develop on a voluntary basis, instead of the mandatory approach to RTOs proposed by the Commission. A number of entities also expressed concern about the proposed regional state committees, including their concern that they would have to spread their scarce resources over a multitude of forums.

Discussion

6. Since issuance of the SMD NOPR, the electric industry has made significant progress in the development of voluntary RTOs/ISOs (*e.g.*, Midwest Independent Transmission System Operator, Inc. and Southwest Power Pool, Inc.). This has allowed interested parties, through region-specific proceedings, to shape the development of

independent entities to reflect the needs of each particular region. The Commission has also indicated that it intends to consider revisions to the Order No. 888 pro forma Open Access Transmission Tariff to reflect the electric utility industry's and the Commission's experience with open access transmission over the last decade.

7. Given the continuing development of voluntary RTOs and ISOs and the Commission's expressed intent to look into revisions to the Order No. 888 pro forma tariff in a separate proceeding, we have concluded that the SMD NOPR has been overtaken by events. Accordingly, we will exercise our discretion to terminate this proceeding.

The Commission orders:

Docket No. RM01-12-000 is hereby terminated.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.