UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Conference on Competition in Wholesale Power Markets	Docket No. AD07-7-000

**SUPPLEMENTAL COMMENTS OF
TRANSMISSION ACCESS POLICY STUDY GROUP
ON RTO ACCOUNTABILITY**

The Transmission Access Policy Study Group ("TAPS") appreciates the Commission's continued examination of competition in wholesale power markets, including the March 8, 2007 technical conference's consideration of the issue of enhancing the responsiveness of RTOs and ISOs. In his opening remarks at that conference, Chairman Kelliher stated:[1]

> In my view, as regulators we have a duty to constantly consider regulatory reform. That is what we are doing here today – considering possible reforms to FERC policy that could improve competition in the organized wholesale markets.
>
> This is an important conference. It could help shape reforms FERC may take to improve demand response, promote long term contracts, and assure accountability by RTOs and ISOs.
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> As I have indicated before, I fully expect at the end of this process the Commission will propose a number of significant policy reforms.

[1] Conference on Competition in Wholesale Power Markets, Docket No. AD07-7-000, Statement of Chairman Joseph Kelliher (Mar. 8, 2007), available at http://www.ferc.gov/EventCalendar/Files/20070508100528-05-08-07-AD07-7.pdf.

As TAPS has urged,[2] and as reiterated below, there are several concrete reforms that the Commission should take to improve RTO accountability. The Commission should:

- Define as a core goal of RTOs' mission the lowering of prices to consumers, consistent with the FPA's mandate and the Commission's orders.
- Allow hybrid boards that include a majority of independent directors and a minority of stakeholder directors to protect against insularity and management capture.
- Discourage single-slate voting and self-perpetuating RTO boards.
- Require accountability for the "T" in RTO through benchmarks that measure an RTO's success at planning, maintaining and expanding transmission to ensure that long-term transmission rights, both existing and new, are protected.
- Require stakeholder budget review, benchmarking studies, and cost-benefit analyses that demonstrate increased consumer value, not just production cost savings, as a condition of approval of RTO budgets and new market initiatives.
- Tie RTO senior management compensation to RTO performance as measured by the foregoing metrics.

A. RTOs Must Be Focused on Lowering Consumer Prices

A fundamental issue regarding RTO accountability is the standard to which RTOs will be held accountable. While the current discussion about accountability has arisen in the context of an examination of wholesale competition, such competition is not an end in itself. Rather, the end is the one articulated in the Federal Power Act Section 205: just and reasonable rates. 16 U.S.C. § 824d. In ensuring that rates are just and reasonable, the Commission must "curb abusive activities by public utilities and … protect

[2] *See* Comments of Transmission Access Policy Study Group, at 4, Docket No. RM04-12, Nov. 9, 2004, available at http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=10288195; Comments of Transmission Access Policy Study Group, at 3-4, Docket No. RM04-12, Aug. 26, 2005, available at http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=10771461.

consumers of electrical services from excessive rates."[3] As the Supreme Court has explained, Congress intended jurisdictional sales "at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest," and the Act was "framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges." *Atlantic Ref. Co. v. Public Serv. Comm'n,* 360 U.S. 378, 388 (1959).[4] Competition is not itself the goal but rather is the means by which the Act's directive for "lowest reasonable rates" is achieved.

The Commission has specifically tied competition and non-discriminatory transmission through independent grid operation to the goal of price reduction. In Order No. 888,[5] the Commission stated that "[n]on-discriminatory open access to transmission services is critical to the full development of competitive wholesale generation markets and the lower consumer prices achievable through such competition." Order No. 888 at

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[3] *Florida Power & Light Co. v. FERC*, 617 F.2d 809, 816 (D.C. Cir. 1980). *See also FPC v. Louisiana Power & Light Co.*, 406 U.S. 621, 631 (1972) ("The Natural Gas Act of 1938 granted FPC broad powers to protect consumers against exploitation at the hands of natural gas companies.") (internal quotation omitted); *Public Sys. v. FERC*, 606 F.2d 973, 979 n.27 (D.C. Cir. 1979) ("Both the Natural Gas Act and the Federal Power Act aim to protect consumers from exorbitant prices and unfair business practices.").

[4] While *Atlantic Refining* arose under Natural Gas Act, courts have "repeatedly recognized the similarity of the two statutes and held that they should be interpreted consistently." *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 686 (D.C.Cir. 2000), *aff'd sub. nom New York v. FERC,* 535 U.S. 1 (2002).

[5] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,539 (May 10, 1996), [1991–1996 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,036, clarified, 76 F.E.R.C. ¶ 61,009 (1996), *modified*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), [1996–2000 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 62 Fed. Reg. 64,688 (Dec. 9, 1997), 81 F.E.R.C. ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 F.E.R.C. ¶ 61,046 (1998), *aff'd in part and remanded in part sub nom. Transmission Access Policy Study Group v. FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC,* 535 U.S. 1 (2002).

31,652, footnote omitted. In Order No. 2000 (at 30,993),[6] the Commission was more emphatic:

> The comments on the NOPR overwhelmingly support the conclusion that independent regionally operated transmissions grids will enhance the benefits of competitive electricity markets. Competition in wholesale electricity markets is the best way to protect the public interest and ensure that electricity consumers pay the lowest price possible for reliable service.

More recently, the Report to Congress on Competition in Wholesale and Retail Markets for Electric Energy, by the Electric Energy Market Competition Task Force, Executive Summary at 2, tied the allocative efficiency that competitive markets are supposed to promote to the goal of lowering prices.[7]

Thus, the mission of Commission-authorized RTOs must include ensuring that consumers "pay the lowest price possible for reliable service." Order No. 2000, at 30,993; *see also* Written Statement of Marc Gerken on Behalf of American Municipal Power-Ohio, Inc., at 4, Docket No. AD07-7, May 8, 2007 ("Gerken Comments");[8] Prepared Statement of Roy Thilly, President and CEO of Wisconsin Public Power Inc., at 2, Docket No. AD07-7, Feb. 27, 2007 ("Thilly Comments").[9] The RTO itself is a monopoly service provider that is shielded from competitive pressures to keep costs down and can pass along its higher cost to consumers. Sellers in RTO markets, whether

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[6] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), [1996–2000 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,089, *order on reh'g*, Order No. 2000–A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), [1996-2000 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,092, *appeal dismissed for want of standing sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[7] Available at http://www.ferc.gov/legal/maj-ord-reg/fed-sta/ene-pol-act/epact-final-rpt.pdf.

[8] Available at http://www.ferc.gov/EventCalendar/Files/20070510095532-Gerken,%20AMP-Ohio.pdf.

[9] Available at http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=11272463.

transmission or generation sellers, likewise can pass along higher costs to consumers. Consumers thus ultimately bear the RTO's costs and the costs of markets RTOs create and organize. Unless lower consumer prices are a key part of the RTO's mission, the Commission will not apply the right standards to which it can hold RTOs accountable, and RTOs will not have the right incentives to ensure just and reasonable rates.

B. Consumer Representation Via Hybrid Boards Will Advance a Consumer-Focused RTO Mission

Chairman Kelliher posed the right question at the Technical Conference: "By insisting on complete independence by RTO Boards do we end up with isolated RTO Boards?" Technical Conference Tr. 222-23, Docket No. AD07-7, May 8, 2007. The answer is "yes." The pendulum has swung too far in the direction of independence at the price of accountability. As TAPS explains below, a hybrid, majority-independent/minority-stakeholder board provides independence without sacrificing accountability.

TAPS believes that hybrid RTO boards support a consumer-oriented RTO mission. Thilly Comments at 5; Gerken Comments at 6. While well-intentioned, the Commission's prior insistence on RTO boards with only independent (*i.e.*, non-stakeholder) directors, rather than boards that include both independent and stakeholder directors, has resulted in RTO boards that are remote from the issues they should oversee and are not affected by the RTO's costs or actions. This unfortunate aspect of RTO governance is seen in recent RTO actions. The Midwest ISO's Board voted to proceed with an incomplete Ancillary Services Market filing despite the overwhelming opposition to that proposal by MISO's stakeholders and despite insufficient, reliable evidence that the costs of the proposal justified any benefits. *See* Gerken Comments at 4-5. PJM's recent history reflects similar self-aggrandizement, whether in the form of the Reliability Pricing Model or now in the "Smart Grid" proposal being promulgated as part of PJM's strategic planning process. *Id.*

Boards comprising only independent directors are more prone to capture by RTO management. Indeed, it is not surprising that management representatives of PJM and the California ISO opposed the hybrid board at the May 8 technical conference. *See* Testimony of Audrey Zibelman on Behalf of PJM Interconnection, L.L.C., at 9-10, Docket No. AD07-7, May 8, 2007;[10] Comments of Yakout Mansour, President and Chief Executive Office of California Independent System Operator Corp., at 1, Docket No. AD07-7, May 8, 2007.[11] [12] Upper management, without intent, acts as an informational filter to the board. Independent directors are thus less likely to have sufficiently detailed knowledge of the facts on the ground to press management on the tough questions. Stakeholder directors from senior executive ranks, whose companies have a financial stake in the RTO's decisions and pay its bills, are more likely to ask the tough questions and be sensitive to the impacts of RTO decisions on the costs borne by those in the region. The results directly affect their pocketbooks.

The apparent deafness of RTOs to stakeholder concerns is not a question of the for-profit or not-for-profit status of the RTO. Responsiveness to customers is hardly the hallmark of monopoly service providers, which RTOs are. Where an organization has to

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[10] Available at http://www.ferc.gov/EventCalendar/Files/20070508160117-Zibelman,%20PJM.pdf.

[11] Available at http://www.ferc.gov/EventCalendar/Files/20070508084010-Mansour,%20California%20ISO.pdf.

[12] It maybe, however, that Ms. Zibelman's and Mr. Mansour's Comments were directed more at majority stakeholder (or all stakeholder) boards, because their comments do not address the independence safeguards associated with minority stakeholder boards.

compete for customers, board members can judge whether the organization is responding to customer needs by tracking sales; if customers are unhappy, they take their business elsewhere. By contrast, customers of RTOs who are stuck paying the costs of RTO initiatives, especially load serving entities within the RTO's footprint, cannot take their business elsewhere. The consumers, through the stakeholder process, may be able to provide advice to the board, but such advice can be overlooked or ignored without consequence for the board. Adding a profit motive would not fundamentally alter this dynamic.

In short, although Order 2000 expressly envisioned achievement of RTO independence through disinterested or balanced stakeholder boards,[13] the track record of Commission-preferred, completely disinterested RTOs boards, however well-intentioned, has left RTOs dangerously unresponsive to the stakeholders they serve. To enable RTOs to achieve their intended purpose, the Commission should provide for hybrid boards comprising both independent and senior executive level stakeholder directors. Independent directors should hold a majority of board seats to prevent capture of the board by stakeholders. The stakeholder minority, however, should be substantial and

[13] *See* Order 2000, at 31,073 (1999): "Many commenters urge us to impose specific, detailed requirements on RTO governance. Commenters make recommendations on many different aspects of governance: the desirability of stakeholder, non-stakeholder or hybrid boards… In the Final Rule, we have decided not to impose any specific requirements on RTO governing boards other than the general requirement that they must satisfy the overall principle that their decisionmaking process should be independent of any market participant or class of participants." The Commission discussed various stakeholder and non-stakeholder board models in the Northeast, California and Texas, concluding: "Given the variety of governance forms that exist or are proposed for ISOs and the limited experience with these different approaches, the Commission believes it is premature to conclude that one form of governance is clearly superior to all other forms in every situation." *Id.*

balanced among stakeholder interests. The goal is to give stakeholders a meaningful voice at the table, not veto power over the disinterested majority.[14]

TAPS members know from their own experiences with joint action agencies and generation and transmission cooperatives, where member customers serve on the boards, that this model leads to organizations highly responsive to costs. Two TAPS members serve on the board of the American Transmission Company, LLC ("ATCLLC"), which reflects the hybrid structure proposed above. Stakeholder representatives mean better communications between stakeholders and independent board members (with less opportunity for management to selectively screen the information available to the board), more open and informed decision-making, and more open debate – all goals the Commission should seek to foster.

Further, a stakeholder minority does not mean the loss of independence. The majority, independent directors would remain in control. According to the President and CEO of ATCLLC:

> Our company has had a hybrid board since its inception, and the board has always upheld the corporate mandate for independence from all users. To the satisfaction of all observers, ATCLLC has always acted independently while benefiting from the support, experience and expertise of utility and non-utility board members.

[14] Any such stakeholder involvement would need to be consistent with Order 2000's requirement that "[t]he Regional Transmission Organization must have a decision making process that is independent of control by any market participant or class of participants," 18 C.F.R. § 35.34(j)(1)(ii), and its general guidance that "[w]here there is a governing board with classes of market participants, we would expect that no one class would be allowed to veto a decision reached by the rest of the board and that no two classes could force through a decision that is opposed by the rest of the board." Order 2000, at 31,074.

Prepared Statement of José Delgado, President and Chief Executive Officer of American Transmission Company, LLC, at 6, Docket No. AD07-7, May 8, 2007.[15] Indeed, the Commission itself has found that ATCLLC retains independence:

> The Commission has approved the creation of a stand-alone transmission company, and allowed innovative rate treatments, for American Transmission Company (ATC), which is jointly-owned by investor-owned utilities which contributed their systems, and by public power customers which contributed cash in return for equity stakes in ATC with limited voting and governance rights. The Commission remains comfortable that the governance structure of ATC allows some degree of participation by market participants, but ensures the operational and managerial independence of the stand-alone transmission company.

Policy Statement Regarding Evaluation of Independent Ownership and Operation of Transmission, 111 F.E.R.C. ¶ 61,473, P 9 (2005), footnote omitted.

Experience has taught us that direct involvement of senior executives of representative stakeholders on a hybrid board would make a big difference. The RTO stakeholder process today typically involves middle level employees of stakeholder companies, because the committees have no decision-making power. Employees at this level are likely to be most concerned about protecting their company's narrow interest and may lack the broad perspective of senior executives in fashioning practical accommodations without the need to consult back home. TAPS believes that the current structure contributes to polarization and deadlock. In contrast, direct involvement of senior executives on a hybrid board will bring a different and broader perspective that should be valuable to independent board members and RTO management. Participation

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[15] Available at http://www.ferc.gov/EventCalendar/Files/20070508084032-Delgado,%20ATC.pdf.

of stakeholder executives in a hybrid board could fundamentally alter the nature of the stakeholder input provided and the degree to which independent board members are responsive to that input. Further, executives are often involved in major issues and can more readily compromise to break deadlocks than can mid-level managers.

TAPS recognizes that the Commission may be limited in its ability to directly dictate RTO governance, *see California Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395 (D.C. Cir. 2004), but it still has other tools at its disposal to make RTOs more responsive to customer. The Commission can set and presumably adjust the standards for obtaining and retaining approval as an RTO. Indeed, the D.C. Court's decision strongly affirmed the Commission's conditioning power. *Id.* at 404. Further, the Commission determines which costs RTOs will be permitted to pass through to customers as part of its responsibilities to ensure that RTO transmission and wholesale rates are just and reasonable. Thus, the Commission is not powerless to effect needed change.

C. The Commission Should Take Other Steps to Protect RTO Boards from Insularity

Accountability and responsiveness will be further enhanced by a director nomination process that offers real choice. *See* Gerken Comments at 6. Today, RTO board nominating committees usually propose a single candidate for each seat, often as part of a slate. The vote is effectively a plebiscite – up or down. One is reminded of so-called democratic elections in other countries where only a single party's candidates appear on the ballot. A process that offers a real choice between two candidates for each open board seat, or offers a slate of four candidates for three seats, would bring greater legitimacy and accountability to the board. At minimum, individual candidates should be subject to an up or down vote, rather than being considered only as a full slate. While we recognize concerns about discouraging participation of well-qualified candidates, we are not convinced that good candidates would be unwilling to subject themselves to a greater degree of stakeholder scrutiny.

The Commission should also eliminate the self-perpetuating board model, which is inimical to responsive and accountable RTOs. For example, ISO-NE's governance structure allows the incumbent board to re-nominate its own members at the end of their terms and limits the role of the nominating committee, which is also dominated by board members, to filling gaps after the ISO-NE board identifies incumbent directors to be placed on the proposed slate.[16] In approving this structure, the Commission said it would be independent of any market participant, *ISO-New England, Inc., et al.*, 106 F.E.R.C. ¶ 61,280, P 56 (2004), but ignored concerns that the ISO-NE board structure would not provide accountability or responsiveness to stakeholders.

Finally, a requirement for open meetings (except for personnel, litigation, and other sensitive matters) would also bolster the board's sense of public responsibility and purpose. As a not-for-profit entity, with public interest responsibilities, secrecy serves no legitimate purpose and contributes to board isolation and capture by management. While some RTOs are more open than in the past, others have a long way to go, continuing to meet primarily behind closed doors with open meetings as staged events.

D. RTO Accountability Must Include Transmission Planning and Expansion to Fulfill Long-Term Rights

As Roy Thilly described to the Commission at its February 27, 2007 Technical Conference in this proceeding, another aspect of RTO accountability involves planning

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[16] While in theory age and term limits protect against complete self-perpetuation, the board-dominated nominating committee, or the board itself, can waive those limits.

the grid to provide long-term transmission rights. Thilly Comments at 5. Where an RTO determines those rights based upon a simultaneous feasibility test, the grid must be built to maintain the simultaneous feasibility of long-term rights for both existing and new resources in order for these rights to fulfill the goals of FPA Section 217(b)(4), as added by Section 1233 of the Energy Policy Act 2005, Pub. L. No. 109-58, 119 Stat. 594, 958 (2005).

The Commission's recent Order accepting MISO's Long-Term Transmission Rights ("LTTR") Proposal, *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 F.E.R.C. ¶ 61,143 (2007), illustrates the basic problem. Although the Commission directed MISO to strengthen the link between long-term rights and transmission planning and expansion (*id.* at P 193), the Order suggests that it is *LSEs* that will end up holding the bag if either MISO or specific MISO Transmission Owners fail to construct the upgrades needed to maintain the feasibility of existing long-term rights.[17] In addition, with respect to LTTRs for LSEs' *new* long-term baseload resources, the Order concludes that MISO is not required "to provide advance guarantees of LTTRs before the [new] generation facilities go into service." *Id.* at P 155. In other words, transmission customers are expected to finance and make huge generation and transmission investments with no assurance that they will receive long-term rights and be able to make reasonably priced deliveries from their own units to serve their own loads.

These provisions put the risk of RTOs' failure to plan on LSEs that have no control over the planning and construction process. The Commission should adopt

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[17] If long-term rights within MISO become infeasible during their term, LSEs no longer have the right to automatically convert them into FTRs (*id.* at P 55); and the Order suggests that the term of already-allocated long-term rights could be curtailed by subsequent Commission decisions (*id.* at P 149).

measures that would hold RTOs and Transmission Owners—the entities in the best position to control and manage the risks of that process—accountable, by requiring them to share the burden of failing to plan and build necessary transmission upgrades.

E. RTO Accountability Can Be Advanced Through Benchmarking and Budget Controls

The Commission also has the means at its disposal to bring discipline to RTO costs as part of the rate review process.[18] Indeed, various mechanisms can be put in place individually, or in combination, to bring a "reality" check on RTO expenditures.

TAPS supports a requirement for an independent, biennial study of all RTOs that benchmarks each RTO's operating costs, as well as the costs of particular RTO functions, against the costs of other RTOs and, where possible, against the costs of non-RTO transmission providers. *See* Gerken Comments at 6. Benchmarking can serve as a guide to the prudence of RTO costs, especially those that exceed the benchmark, and permit assessment of whether the RTO is achieving the goal of lowering consumers' costs. However, while the information provided by a benchmark is useful, it cannot be deemed dispositive. If all of the RTOs are performing poorly, consumers are not protected if the least poorly performing RTO sets the bar. To counteract this regression towards a mediocre mean, the Commission also should consider some form of "zero-based budgeting" that requires each RTO to justify its expenditures from the bottom up, based upon its own characteristics and functions. In any event, setting RTO rates based upon benchmark may not work, because rates could end up too high or too low, given a particular RTO's costs and those reflected in the benchmark.

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[18] The metrics discussed here should also guide senior management compensation, as discussed below.

Another mechanism, and one that would benefit from benchmarking studies, are detailed, biennial, independent cost-benefit analyses (with results shown by state at delivery point levels) and RTO efficiency audits. These analyses should not be limited to whether the RTO achieves product cost savings. Rather, the standard should be tied to the RTO mission – bringing value via reduced consumer costs. Such value cannot be delivered to the end-use customer unless (a) the RTO generates cost savings through efficiencies, and (b) those savings, or a very significant portion of them, are reflected in the delivered price of wholesale energy.

Assuming a hybrid board, as recommended above, the independent firm could be selected by the board. Otherwise, stakeholders should select the firm. In either case, the firm should report to both stakeholders and the board, and provide an opportunity for comments. These reports need to examine not only the RTO's costs, but the costs imposed on the RTO's customers because of the RTO's actions and programs. For example, an RTO that does not properly carry out its transmission planning and expansion obligations such that reliability deteriorates and congestion costs increase should receive a negative assessment. Public reporting of the results of these studies could put significant pressure on RTO management.

In addition to overall cost/benefit assessments, the Commission should require RTOs to assess the cost/benefits of new initiatives or major rule changes *before* undertaking them, again taking into account both RTO costs and costs to market participants. For example, Phase II development of the SPP RTO would involve the addition of financial transmission rights for market-based congestion management. Once SPP develops a high level design for Phase II, it says it will conduct a cost-benefit analysis to determine if the benefits of FTRs outweigh their costs. *See Southwest Power Pool, Inc.*, 106 F.E.R.C. ¶ 61,110, P 121, *order on reh'g*, 108 F.E.R.C. ¶ 61,003 (2004). If (as a result of the study's positive results) the new initiative/major rule change is undertaken, the RTO should be required to track the real costs and benefits (including both those of the RTO and market participants). Accountability will not be achieved if the RTO is not measured against its own expectations.

Another diagnostic tool is an annual public reporting of various RTO performance measurements. One such measure is congestion. A congestion report should (1) quantify congestion costs, (2) identify the location of congestion, (3) specify measures taken to reduce congestion costs, and (4) track progress of the congestion cost reduction efforts (*e.g.*, transmission siting/construction). Another measure involves interconnection and service queue reports that would describe (1) interconnection and transmission service queues, (2) any backlogs/delays in proceedings such requests,[19] and (3) specific measures taken or to be taken to eliminate such backlogs. A third measure is annual reporting on reliability/outage statistics. A fourth could be structured to track whether aggressive planning and expansion targets are being met. These RTO performance measurements should be publicly reported, with an opportunity for comment.

F. RTO Senior Management Compensation Must Be Tied to Performance Measures

TAPS strongly supports tying compensation of RTO senior management to specific performance measures. There is no question that top executives will focus effort

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[19] Mr. Gerken described the unacceptable delays in PJM's responding to AMP-Ohio's interconnection application for a new baseload plant. Gerken Comments at 5; *see also* Tr. 241-42.

on those matters that will have a significant impact on their own compensation. Those measures should include:

- achievement of the RTO's consumer-cost lowering mission;
- independently-determined measures of customer satisfaction;
- reductions in congestion costs;
- RTO cost containment;
- reduction in interconnection and transmission queues;
- meeting aggressive planning and construction targets; and
- other objective measures of high quality service quality.

The intent would be to develop performance criteria that truly measure whether the RTO is meeting the transmission needs of those in its region in a cost-effective manner. Customer surveys, performed by an independent entity retained by stakeholders, could play an important role. Management of RTOs that exceed demanding performance goals should be rewarded with compensation bonuses. On the other hand, management of RTOs that falls short should share in the RTOs' customers' pain.

The benchmarking and diagnostic tools described above, including adherence to an RTO mission of attaining the lowest reasonable prices, provide some criteria by which performance can be judged and compensation modified. Plainly others will need to be developed. We recognize that identifying the appropriate measures against which performance must be assessed is not a simple proposition. The bar must be set high so it truly incents good performance, not mediocrity, but should not be set at an impossible-to-achieve level. Care must be taken to develop standards that are not readily gamed. Unintended consequences must also be a concern. Nevertheless, because incentive compensation can be a crucial step in making management think of their customers as their constituents, not a nuisance, we think this is an effort worth pursuing.

G. Enhanced But Balanced Stakeholder Review of ISO Budgets is Crucial and Should Not Undermine Independence

An essential cost containment and accountability tool is enhanced stakeholder review of the RTO budget. This would best be accomplished through the hybrid board structure suggested above. If a hybrid board structure is not adopted, at minimum the Commission should require advance stakeholder committee review of each RTO's annual budget, with a specific allowance for stakeholder rejection or modification of the budget where a substantial majority of stakeholder sectors agrees. If the RTO board believes that a modified budget jeopardizes its ability to meet its obligations, the board should be permitted to appeal to the Commission. Such an appeal should occur with sufficient time and factual support to permit the Commission to resolve the issue, with meaningful consideration of the stakeholder rejection, *before* the budget takes effect.

The annual budget review process should include capital budgets reflecting the total expected costs of a project, rather than just the current year's cost for a multi-year project. Stakeholder review of RTO decisions involving major expenditures is essential if costs are to be contained. Once the undertaking is made, and the initial money is spent, the board and stakeholders will have no choice but to approve increased expenditures, time and time again, to get the job done well. Commission review of later RTO budgets will be ineffective to rein in these costs.

The stakeholder budget approval process is needed because current advisory processes do not effectively check RTO expenditures. TAPS members' experiences are not that stakeholders are able to check RTO expenditures, but rather that the RTO gets a blank check to get the job done, regardless of cost. To introduce some meaningful stakeholder oversight and to allow the Commission to reasonably rely upon the stakeholder process to provide some semblance of a check, the review process set forth above must be adopted.

Timing of this budget review process is everything. Refunds will be ineffective to remedy excessive RTO expenditures. If advance review by the stakeholders and, if necessary, the Commission, is not completed before the budget goes into effect, not only would market participants pay for an RTO's budget, but they would also pay for any refunds. As a result, traditional refund mechanisms are effectively meaningless to making market participants whole. The RTO budget expenditures need to be limited to those approved by stakeholders or, in the event of RTO appeal to the Commission, otherwise found just and reasonable, *before* they are incurred.

CONCLUSION

TAPS thanks the Commission for its consideration of these comments and urges adoption of the accountability measures outlined above.

Respectfully submitted,

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