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Rapporteur's Report

Section I: Regionalism: What's the Problem?

The emergence of competitive wholesale electricity markets have led to dynamic regional power markets that transcend traditional local markets, franchise territories, state boundaries, and international borders. Although multi-state and international transactions are nothing new, their complexity and numbers have increased. This development has raised a number of public policy questions including transmission constraints, market power, mergers and acquisitions, coordination problems, and voluntary institutions such as ISOs and/or RTGs that are emerging on a regional basis and are not subject to regional accountability. Regulation of transmission, matters and generation siting and planning, IRP, and other planning related issues in the context of regional holding companies and other multi-state companies, pose policy challenges as well. In addition, existing and potential U.S. -Canada and U.S. -Mexico electricity trade raises new questions for regulators.

First Speaker:

In order to deal with the present realities of the electricity industry, as well as insure the legitimacy of the emerging competitive markets, regional governance structures need to be established. Despite the inherently limited powers of such organizations, Congress has traditionally been extremely

anxious about the concept of regional governance and interstate compacts within the republic. Given the federal government's distrust of regional institutions, assuaging their concerns will require a focused effort. Furthermore, Congress could easily restrain the authority of such an alliance of states. In

most areas the U.S. electricity networks are interconnected with those of Mexico and Canada. However, under Article I, Section 10 of the U.S. Constitution, states' regional governance structures would naturally be prohibited from entering any treaty, alliance, or confederation with foreign governments.

Since the electricity industry is becoming increasingly international in scope, an inclusive regional governing structure for the western states would entail Canada and Mexico's presence. A formal treaty between the countries must be completed in order for this type of governing institution to be legitimate.

What should be the structure of a regional governance institution for the electric services industry in the West? Some industry leaders propose that each state have one vote, a concept which California, understandably, does not enthusiastically embrace. Another method would base votes on the number of Congressional House seats the 12 western states occupy, bestowing California with a natural majority, and clear control over the region's policy. In addition, these proposed regional elections do not address the political fate of British Columbia, Alberta or our southern neighbors, although they are all significant factors in the industry. The debate over whether to base the industry's governing structure on regional jurisdiction or on population needs to consider the legal perspective, which will focus on where the institution is chartered. Corporate tradition defers to the chartering state for governance issues. There are an increasing number of problems that defy the present jurisdictional capabilities of an individual state but are nonetheless not properly considered under the national government's purview. Such issues

are fundamentally regional in character, dimension and impact. Although regional governance institutions would hold many advantages over the present system in resolving concerns, the current debate in the West on methods of strengthening transmission organizations reveals the intractability of many problems.

Second Speaker:

I will briefly overview the Canadian power industry, which is radically different than its U. S.- counterpart. Canada has few vertically integrated provincial monopolies, and few wholesale customers outside of Ontario. Eighty-five percent of the utilities are crown corporations, only 15 percent are private. Eighty-five percent of the energy is produced by four provinces, and sixty percent of the energy is hydro. Canada has the second-lowest power rates in the world, despite the often huge distance involved in inter-provincial trade. Only in eastern Canada is the idea of utilities trading with their neighboring provinces attractive. Despite less interregional activity, Canada's jurisdictional issues are as difficult as those in the United States.

The division of responsibilities between the federal and provincial governments derives from the 1867 Constitution Act. The federal government is responsible for exports of electricity, construction and operation of international power lines, and activities related to nuclear energy. These responsibilities fall under the auspices of the National Energy Board (NEB). The provincial government must handle everything else, including setting prices on generation and transmission distribution. The jurisdictions of the federal and provincial governments are quite distinct.

Neither the federal government nor the provinces regulate imports. One prominent issue was Newfoundland's desire to move its electricity from large hydro-projects into the U.S. The amendment of the National Energy Board Act in 1982 allowed the government to forge a "corridor" through a province for the construction of international power lines. The corridor avoids existing transmission, enabling the government to negotiate a settlement with the province rather than infringe on individual customers.

In 1994, negotiations between the federal and provisional governments towards developing an interprovincial trade agreement began. The agreement sought to increase free trade among the provinces--an internal, Canadian "NAFTA." Not surprisingly, consensus on the electricity segment of the bill has not yet been reached. An inter-utility trade study, released by the federal government in 1994 upon request by the federal minister, examined the potential for regional bodies and other mechanisms to enhance cooperation and trade. The study recommended that voluntary cooperation continue in federal monitoring, and in regional planning entities with or without mandated federal power. The federal government has yet to comment on these suggestions, as they would essentially establish regional transmission groups. The government has announced that in 1997 legislation will open transmission access for independent power producers who would like to wheel through Quebec. This relatively minor law doesn't grant suppliers the right to serve customers within Quebec, but it does allow IPP's to relocate their power, and may prove to have significant future ramifications.

The study further concluded that the planning, development and operation aspects

of the power system lend themselves to regional regulatory oversight. The regulatory and business structure in this country instills in electric utilities the desire to preserve and protect entrenched positions, and to become stewards of existing assets. If regulation has helped to create industry's underachievement, how can another regulatory scheme generate better outcomes in the future? We don't really want to create another layer of regulation. In Canada, the installation of a regional body may do just that. The MacDonald Commission Report of 1996 suggested that along with the introduction of competition, the generation assets of Ontario Hydro should eventually be privatized. However, in a recent survey, the public overwhelmingly said they believe electricity is too important to be privatized. It is unclear whether all provinces will pursue restructuring efforts with the same vigor as Alberta.

Third Speaker:

The very nature of the American regulatory and business structure creates institutions, such as electricity utilities, which steward existing assets and protect entrenched positions, rather than make new contributions. What role has regulation played in causing the electric industry to underachieve, and what regulatory scheme might create better outcomes? FERC has received praise for the consistency of its regulation, its ability to argue complex issues while maintaining a detached professionalism. At the state level, utilities tend to appeal to local interests to facilitate arrangements, and to mete out preferential treatment to defend against changes in public policy. On the state level, local utilities succeed at a higher rate than out-of-state utilities; cases are decided faster, returns on equity are better.

Fourth Speaker:

The electricity industry is becoming increasingly an inter-state market, with active competition in both power sectors, and imminent direct access for retail customers. Physical markets are being defined by the ability to move power, and by transmission constraints which block access to customers. Since transmission rates effect the market's economic ability to access customers, regional markets emerge and state and service territory boundaries diminish in importance. The boundaries of these regional markets will approximate those of existing regional institutions, such as power pools, reliability regions, and the larger multi-state holding companies. The terms and price of accessed inter-state transmission will be determined by FERC.

The Commission has incorporated the regional dynamic into its recent regulation, attempting to balance the need to insure access to inter-state transmission with states' legitimate concerns about traditional boundaries of utility regulation. FERC's distinction between inter-state transmission and local distribution expressed deference to the states, categorically asserting its intention to respect traditional areas of state regulation, such as the collection of retail stranded costs and the modification of open-access tariffs to accommodate direct retail access.

In response to this changing dynamic in the marketplace, FERC has encouraged the development of regional institutions to resolve these issues. Order 888 mandates that tight power pools and holding companies file joint pool or system-wide tariffs by the end of 1996. Transmission planning and citing, traditionally

outside FERC's jurisdiction, is particularly well-suited to a regional approach. Siting authority resides with the individual states--FERC and other states cannot force a state to site a transmission facility. Furthermore, as merchant power plants become the preferred method of serving identified native load, the absence of clearly-defined economic benefits will make convincing a state to site a plant tougher. Regional integrated resource planning rests on the assumption that both the industry and various levels of government will cede authority to the regional body. In the past; the Federal Communications Commission has convened joint boards under its Communication Act Authority, but has treated them as merely advisory. Government's reluctance to yield its power is exemplified by its experience in pollution control. At regional conferences on ozone transport in the Northeast and Mid-Atlantic states, individual states insisted on retaining their veto power. There was no higher authority to moderate the disputes within the regional body and avoid regulatory gridlock. On wholesale rates, transmission access, and pricing, the FERC plays the role of arbiter, but on other issues regional structures must internally resolve their debates. Regional bodies must also protect the interests of those outside the governance's defined borders.

Formalized institutions for regional regulation remain problematic. The existing regional institutions, such as the power pools, RTGs, and ISOs, do provide de facto regional regulation, for while these bodies are not technically regulators, state regulators have considerable influence over the utility participants within their jurisdiction. In the case of multi-state mergers, can states coordinate reviews of the proposals and develop a common record? Can they share

information with FERC?

FERC should resist ceding its authority to a regional body in order to protect interstate commerce. Areas where FERC's authority is lacking -- transmission siting for non jurisdictional owners, the PUHCA -- are not necessarily well-suited for regional regulation. If Congress does not enhance FERC's authority in these realms, regional forums would prove useful in highlighting these issues. However, any new regional body must replace existing bodies, not merely be an additional agency which adds to the regulatory burden.

General Discussion

: Interstate compacts can include foreign entities with Congressional approval. Mexico views energy as an import industry, and wants to be treated as fair and stable trading partner. The issue of regionalism, at least in the West, is more a question of U.S. cooperation with Mexico, than of California's relations with Wyoming. Entering into diplomatic negotiations with a foreign power qualifies as treason under the Constitution. Regionalism cannot be conceived as strictly a Congressional issue, and voluntary compacts between individual states and Mexico must include safeguards to avoid becoming de facto compulsory. An independent system operator which allowed voluntary participation and remained subject to review by existing bodies, could best persuade Mexico, Canada, and the WSCC to enter a formal regional mechanism with contractual rules and procedures.

The huge disparity between the Canadian/U. S. models of litigation, dispute resolution, and contract modalities, and the corresponding Mexican versions, will produce

suboptimal results which will disrupt the regulatory process. The tendency to create an "internal NAFTA" mentioned earlier produces treaties which grant Mexican and Canadian interests most-favored status within U.S. markets. These treaties override any state regulation, and contain little to no reciprocity. Mexico can sell their products to the various markets without complying to U.S. or Canadian standards and regulations.

Canadian utilities have voluntarily participated in Western **RTG's** in the past, and became integrated in the market to as great a extent as their provincial regulators would allow. Similarly, the Canadian provinces, in some cases, are part of the NERC reliability regions. In reaction to this summer's Western system difficulties, NERC rules have been updated and strengthened. Under the federal Power Act, FERC does not have direct authority over power imports or exports. FERC can define the conditions under which a foreign entity can sell power in the United States as a marketer, and has exercised this authority in connection with the marketing affiliates of Canadian utilities.

: The evolution of the electric utility industry has left the Rocky Mountain West awash in a power surplus. Rates are at an all-time low, and peak loads in Colorado, Nevada, New Mexico, and Arizona are growing at between three to seven percent per year. Within 5-10 years, the existing regional power surplus will have been exhausted, just as California loads are likely to be growing again. The load growth can be met by exhausting existing power generation capability while constructing additional short-term natural gas based capacity. However, even a slight increase in gas prices renders base load coal-fired power plants untenable, therefore, cost-effective,

long-run resources need to be built. Unless the costs of certain resources are lowered, assuming the intermittency problems associated with solar and wind remain unsolved, the region will return to a coal-fired capability. There must be a regional effort to learn to capitalize on solar wind and geothermal resources. State-based systems could enact charges, such as a renewable portfolio standard, to fund the development of natural resources.

: **ISO** governance will invariably choose the most economically efficient course of action, a practice which ignores renewable resources. FERC is also unlikely to include renewable resources in its basic platform. Voluntary inter-state compacts can best formulate a plan for transmission planning, access, and pricing, and can produce a truly regional vision for the industry's future. In the absence of federal legislation which includes renewables, can state regulators afford to consider renewables independently in a restructured, retail environment? The competitive disadvantage a state would incur under this scenario argues for a shared, regional approach. Will states be willing to cede authority to a regional body or will the regional body merely serve as a forum whose proposals must be ratified by the states?

: Regional bodies would have to address non-jurisdictional entities, such as municipalities, co-ops, and federal institutions. The creation of regional structures must not impinge on the development of a level playing field, and a competitive, progressive market. Transmission siting absolutely cries out for some kind of regional approach, for there is currently',

authority whatsoever that exists beyond the boundaries of an individual state. The fear is that coal generation in the midwest will

increase so that the more lucrative east coast markets will buy the inexpensive excess production, which will be accompanied by environmentally problematic air emissions. Can individual regional bodies reach consensus on such divisive environmental issues? States will need to employ some time of coordinating mechanism for regimes of retail access as well, and develop a coherent market so that the rules aren't appreciably different from state to state. State regulators are most anxious to retain control over transmission and generation siting.

: The movement to create an ISO in the northwest U.S. has resulted in "Indigo." Originally comprised of seven investor-owned utilities in Oregon, Washington, Idaho, Montana, and northern Nevada, "Indigo" has added public utilities, and had its members sign a contractual "understanding." Transmission owners, transmission-dependent power marketers, IPPs, and regulatory staff choose independent board members who are unaffiliated with the transmission owners. If Indigo does unite the system's transmission facilities, it would have the authority to enact a single tariff which would be filed with FERC and administered under their guidelines. A final word of caution: while there are clear advantages of regional structures, some positive attributes of the current system may be lost under regionalism.

: On the other hand, regional institutions would introduce yet another layer of intrusive government to the industry, while stirring traditional government agencies to cling more tenaciously to their threatened power. Furthermore, there is no government institution which can claim a significant shared adherence in the Western part of Canada, the Western part of the United States, and the

Western part of Mexico. Nevertheless, some means of dealing with these issues quickly, perhaps without creating regulatory bodies or governance structures, must be discovered.

: Who will coordinate and discipline the ISOs? Who's going to insure that the ISOs behave and follow the rules? The NERC compliance team has now proposed that the "Independent Interconnection Operator" be created to impose uniformity and a cooperative spirit on the ISOs. Informal regulatory institutions do exist on a regional basis, aggrandized in ISOs and RTGs and PXs. FERC has emphasized that the ISOs stay independent, without an economic interest in the marketplace. Its independence may further muddle jurisdictional wranglings between FERC and the states.

: Until very recently there have been few players who could generate electricity and sell it into the market; IRP was deemed necessary at a time of rapid construction of nuclear plants. With the addition of other wholesalers into most areas, the idea of reviving some remnant of **IRP** seems anachronistic. Who will be required to participate? The assumption that a regional regulatory body can handle all the resource planning ignores very basic market changes.

Session 2: Regional Regulation: What are the issues? What are the experiences?

Fifth Speaker:

The Port Authority's organization, finances, and intergovernmental relationships provide insight into how interstate agencies operate and whether their systems can be adapted to the electric industry. The Port Authority resulted from political accident which divided the port of New York's jurisdiction between New York and New Jersey. In 1917, the Interstate Commerce Commission declared that historically, geographically and commercially, New York and northern New Jersey constitute a single community. The ICC urged New York and New Jersey to study and solve their common problems by creating a joint agency. The two states forged the Interstate Compact, signed in 1921. The Port Authority's stated goal was to provide transportation, terminals, and other commercial facilities within the port district. The Compact sought better coordination of the port's infrastructure to increase economic growth that would benefit the entire nation. The Port Authority is a semi-independent agency, modeled after private industry's organizational structures. Employees use long-range planning to insure continuity within the Authority's policies. The Port Authority consists of 12 commissioners, six of whom are appointed by the governor of New York, six by the governor of New Jersey. Prospective commissioners are subject to confirmation by the respective states' senates. Appointments have traditionally been rewarded on the basis of one's record of business accomplishments and public service. Commissioners serve overlapping six-year terms without pay. The executive director, appointed by the chairman of the Port

Authority, supervises a staff of approximately 7000 employees. Any action taken by the Port Authority is subject to gubernatorial veto.

Although the Port Authority was designed to be self-supporting, it does not have the power to levy taxes. The Port Authority finances the building of new facilities by pooling revenues from existing ones. For example, revenues from the Holland tunnel were sufficient to finance several other vehicular crossings. The Authority is currently examining a number of alternate financing methods such as privatizing facilities, and entering public/private partnerships. Port Authority bonds, like state and local bonds, are not subject to federal income tax. Its property is also untaxed, but in order entice municipalities to host its facilities, the Authority often agrees to make payments in lieu of taxes. In creating the Port Authority the states did surrender a small amount of their sovereignty. Local municipalities feared their authority would similarly be compromised. In order to minimize potential infringement of state and local sovereignty, the compact includes various restraints on the Port Authority's powers.

There are three necessary ingredients for an interstate agency? 1) The agency must be designed only to fulfill those needs that cannot satisfactorily be executed by individual states or the federal government. 2) It must confine itself to matters of regional interest. 3) Legislators must be willing to cede some sovereignty to the regional body.

Congress has never delegated its authority to approve compacts to an administrative agency or the President, instead choosing to exercise its power directly. There are certain situations where it has given advance consent for certain types of compacts. For instance, it gave advance consent for all states to enter into agreements regarding airport facilities. Although the compact authorizes no formal oversight mechanism, facilities involved in interstate commerce such as airports, interstate bridges, and tunnels are subject to applicable federal regulations. For example, airports are under the jurisdiction of the Federal Aviation Administration. The Port Authority can be sued for violations of the commerce clause, such as issuing higher rates for residents outside its borders. Though authorized by federal statute, the Port Authority is not insulated from lawsuits or court decisions.

There are over 200 municipalities in the Port Authority's jurisdiction. Cooperating with the municipalities, rather than exercising direct control, has always been the guiding ethos of the Authority. Governors have veto power over Port Authority actions, and new projects require bi-state legislation. On fare or toll increases, public hearings are held before commissioners vote. A majority of commissioners from each state is required to pass a resolution.

Sixth Speaker:

In preparing for the process of political reform, certain public policy judgements must be made. The transition should focus less on whether the governing institution is regional in nature, and more on its specific manifestation; who would operate the new institution and when. I have constructed a template which

lays out various aspects of the jurisdictional questions associated with regulation (see attached) which I will use as the basis for my discussion. For example, should forums exploring the issues of mergers be held on a state, regional or federal level? Should there be one overarching forum, or should multiple layers of commissions be established to review each other? Would the regional bodies review the states, or should the federal institutions review the regionals? The sequence of review is just as crucial as the form of the emerging governance.

Coordination methods in multi-forum review will require particular emphasis. For example, a number of states have both a retail restructuring proceeding and a merger pending. Which review should be initiated first? Should ISOs be created to address pending mergers? Some industry officials believe in a moratorium on mergers until regional transmission pricing is established to dissuade investors from exploiting the various transmission pricing problems that arise from "pancaking." The argument against the merger freeze counters that instating the ISOs could take up to five years, costing the industry billions of dollars in regulatory inefficiency. How is the industry to be structured so that people are free to produce and consume at a high level? Congress will soon weigh in by deciding whether to change the Federal Power Act, and the Holding Company Act.

However, the D'Amato bill doesn't purport to be anything other than a narrow response to a particular sliver of the industry. One advantage of having only one commission with broad powers is that exclusive authority bears exclusive blame. A unilateral system will potentially increase economic efficiency

through self-imposed performance standards deriving from greater accountability. However, there is political value in the multilateral approach as well; no single area of governance can gain too much power, or assume too much blame. Visions of regional coordination often founder on the feasibility of coordination. State commissioners' average term is a mere 3.6 years, making it difficult to maintain a high level of bureaucratic talent professionalism.

After consensus on coincident or overlapping authority has been reached, the matter of which forum should be consulted first must be resolved. In multi-jurisdictional matters, it must be established that, for example, FERC merger proceedings precede state merger decisions, or state pre-judgment laws preclude it from taking positions in FERC proceedings. The issue of substantive sequence of review seems absent from much of our debate. State PUC's and FERC are evaluating a merger's effect on competition without first deciding what products are subject to competition. This is the biggest crime we are committing as regulators. FERC's jurisdiction over competition could be construed narrowly as focusing on the issues of generation and transmission alone, but there is no evidence in Section 203 that limits the FERC's jurisdiction to merely the issue of generation transmission. FERC should be viewing its powers more broadly, and analyze the effect of mergers on retail markets. Most merging companies assume they will lose their hold over generation in the near future, a realization which is accelerating mergers and their subsequent effects. Substantive sequence review is a significant prerequisite to jurisdictional debates.

Seventh Speaker:

Regional regulation will appeal to New England because of its small sizeable load, its tradition of capacity constraint, and its number of multi-state utilities. Regulators in New England face common issues and problems, and its startlingly small retail sales relative to the rest of the country makes regional regulation a more attractive option. The political environment recognizes that energy is a common issue. New England's regional group of commissioners, the New England Conference of Public Utility Commissions (NECPUC), includes commissioners in six states whose purview includes electricity, gas, telecom, and cable, depending on the state's regulatory authority.

NECPUC requires four affirmative state votes to pass a resolution, and two negative votes to veto one. In the event of a tie, no action is taken. New England has coalesced around common problems in the past. When the retail transmission agreement fell apart in 1986, the New England regulators began to work together more closely. In 1993 the NEES states successfully negotiated a memorandum of understanding on IRP. This cooperation proved enormously valuable in resolving issues, and allowed NECPUC to serve as a bully pulpit from which to sway public opinion.

The actions taken within many of these regional organizations are not legally binding, as the notion of voluntary participation is quite strong. NECPUC resolutions are subject to state laws and rules of intervention. NECPUC decisions can thus be overturned and ignored. The success of these informal organizations hinges on the level of its member PUCs commitment, and their willingness to

sacrifice a level of state sovereignty for the regional good. Although these organizations rely on a high level of consensus, they are susceptible to major policy divisions between commissioners and the state legislatures. Do the six New England states have to move as one? What happens if they do not? Is wholesale competition the ultimate goal? What about the issues of retail competition in each state?

In addition to these questions, there is a great deal of uncertainty about standard costs, bankruptcies and mergers. Although the New England commissioners are acting comprehensively and in concert, the state legislatures are addressing these issues in a piecemeal, haphazard fashion. In addition, some legislatures cooperate with their state commission, others defer to its judgment, others want it merely to advise. New England may be able to rally around the issue of NEPOOL reform. Currently under FERC jurisdiction, NEEPOOL forces the PUCs to focus on specific issues like the power exchange, the ISO, and the RTG. Does New England need a compact among the states to deal with NEEPOOL reform, or will it only cause more unnecessary regulation and process? In the absence of divestiture and a regulatory framework, the non-voting transmission trust unites the ISO's interest with the public's. The future of regional regulation in New England will depend on how successfully retail competition transforms traditional ties from a institutional, to a more informal base. NEEPOL will be a catalyst to future retail integration by requiring common principles, guidelines, and framework from which to institute reform. This integration may potentially lead to a super-regional mechanism for oversight and dispute resolution.

Eighth Speaker:

The present concerns over regionalism are not new. The electric industry has debated sovereignty and responsibility for years, and coordination among utilities has traditionally taken place outside the aegis of state regulatory bodies. These coordinating committees grew into the ten regional bodies which cover the entire nation. After the Northeast blackout of 1965, the industry, at Congress's urging, created the North American Electric Reliability Council (NERC), -and renamed the regional bodies "reliability councils." Some kind of a federal system is unavoidable, since all decisions cannot be centralized. However, neither state regulators nor any conceivable regional coalition can solve the international problems. The solution, a shaky one at best, calls for the creation of several commissions, and several conventions.

A large portion of regulators' time is spent trying to reduce power failures to a tolerable level. It is useful to distinguish power failures in distribution from power failures in power. Power failures are generally failures in the distribution system. Power failures should be the primary concern of the local utility manager and the state regulator. The issues associated with the operations of new, short-term power markets must be dealt with by a collective body. NERC and the regional reliability councils need to be expanded and adapted to the competitive market system. This shift requires a substantial change in both how the state and federal regulators handle the industry "voluntary organizations," and how the industry itself redefines those commissions. The industry has always insisted that the arrangements in their coordinating committees

and the regional reliability councils be strictly voluntary. The essence of a voluntary body is that no one in the organization has the power to impose fines and penalties. If a utility were to refuse to obey NERC's standards and fulfill its responsibilities, theoretically it could be disconnected from the grid and isolated. But there are no practical financial penalties, because NERC does not have the authority to impose fines.

As independent entrepreneurs begin to run generators, NERC's resolution process is insufficient to impose discipline. A recent report by the Compliance Task Force created by NERC has proposed that NERC's role shift dramatically to address a changing competitive market. It proposed that the NERC become an agent for inter-regional coordination. NERC will assume that responsibility in the same way the recent Reliability Councils have assumed the states' duties by, for example, proposing national standards to the federal regulatory bodies. The Compliance Task Force believes the NERC should abandon its voluntary approach and create a system of fines and penalties, to be levied by the independent system operator on generators, users, and distribution companies. These fines would be approved by the regulator, either the National Energy Board, the FERC, or the Mexican Regulatory Body. The NERC would strive to administrate these taxes consistently.

Furthermore, the independent inter-connection operator should have the power to impose fines on the independent system operators who do not fulfill their responsibilities. The objective is to create the necessary and sufficient conditions for a competitive generating market.

There is no real need for an interstate compact on siting. A compact would only

create a diversion of authority. Ideally, FERC should determine need for transmission facilities, because need is a multi-state issue.

General Discussion:

: Generations have always been perceived as a financial risk. Therefore, vertically integrated utilities or GENCOs have focused on the generating business, and their interests have in turn dominated the NERC. When independent power producers arrived on the scene, they were invited to join the NERC Board of Trustees, even before FERC. Unacceptably, NERC became a default operation of the generating sector of the industry. If NERC can extricate itself from its current generator power base, and become a voluntary coordinating body, large, complex inter-state compacts can be avoided.

: The states, rather than sacrificing for the larger benefit of the industry, have tried to maintain as much sovereignty as possible. The struggle may result in so many compromises that the PUC's power will be unduly hampered.

: Although another layer of regulation is regrettable, something must address the industry's long-term problems, and a regional collection of PUCs with legislative public interest powers is ideally suited to the task. Unless this regional structure becomes a reality, authority to block transmission lines must remain with the states. The environmental community will also battle to protect state transmission siting authority unless regional planning is established.

The objective of regional planning's objective is to create a forum for efficient decision-making about the electric utility industry which

will produce fair results. The environmentalist strategy of blocking transmission access will only result in the industry's using inefficient technology to construct additional power plants. Pretending that transmission doesn't reduce the need for generating plants which cause pollution detracts from their cause. Environmentalists should support transmission access.

: The market-driven basis of the industry includes rapidly increasing discount rates, and until a structure is in place to deal with the long-term issues of the industry, states are not going to sacrifice their rights to environmentalists with short-term perspectives. An unpleasant reality of a modern economy are rampant externalities which are nearly impossible to predict.

: As the market evolves, are the various regions in the U.S. sufficiently diverse in resource mix and other characteristics that different types of institutions might be more appropriate in certain places? Can FERC review the inevitable regional regulatory oversight?

: The regions are not diverse enough to warrant such a strict regional focus. A broad federal role could handle the many common issues with some tailoring to specific issues. The siting issue should remain firmly in the hands of the states.

: Washington, D.C. and Boston are completely different worlds from Kansas and Missouri. The environment, the traditions, and the economic interests differ quite substantially, and cannot be ignored. Building on the already existing institutions which are more attentive to regional concerns creates a more successful marketplace.

: Marketing and politics are the two most effective means of conflict resolution. However, because the political system has performed so poorly in the electric industry in the past, it is being hastily dismissed as an viable strategy for a settlement. The states have always dealt with the regional reliability councils by largely determining their rate of return on generating assets. If the reliability councils and ISOs are apathetic toward these rates, states will have little input in deciding matters of transmission in their state, since the rate of return on distribution assets are locally-based, and the rate of return on transmission assets is insignificant. The two principal methods of conflict resolution, the market and politics, are not equally credible to most of the industry, disillusioned with how the political system has served electricity in the past.

: When one draws a distinction between the physical and the transactional, some events do not necessarily vary by region. If the holding company act is repealed, regional differences in merger policy will be blurred--utilities will be able to merge with whomever they please. Pollution levels vary by region so much that a region might have cause to block transmission. Generation costs differ a great deal, but in such areas as transactions, market power, uniformity and merger policy, the relationship between divestiture and merger, the relationship between transmission pricing and mergers and market power, regional differences are minuscule.

: Those who argue for regional differences believe in the principal "Let a thousand flowers bloom." This argument fails to consider that many areas of the industry are regionally homogeneous, and that those true differences are more likely to be on the physical side than

the economic side.

: Any new regulatory institutions should be voluntary because voluntary groups are more likely to cooperate and negotiate in good spirit. Assuming that a federal panacea is out of the question, regulation by voluntary systems is the most attractive option. However, the money and pressure of the new commercial market may burden the voluntary systems. Some oversight and coercion will be mandatory. NERC offers certain incentives to persuade members to perform efficiently. NERC is preferable to many regulatory layers who concern themselves with only a specific area of the industry, such as generating or transmission interests. NERC has the capacity to act in the broader public interest. Quasi-voluntary organizations which can enforce regulations deemed to be in the public interest, will have to be ultimately defended by FERC. FERC will have to learn to examine these regional structures and decide what needs to be changed, and how these changes are to be implemented.

: Proposals must be simultaneously made to the National Energy Board (Canada), the FERC, and the Mexican regulators. All three must approve the exact same set of rules. Regional ISOs cannot levy fines unless they are operating under rules that have been approved by the NEB and the FERC. FERC should not be expected to attend to details. The independent system operators must lead the reform effort, as they will comprise the volunteer organizations that will coordinate governments and avoid problems of international treaties.

: **FERC** doesn't have the staff, the authority, or the will to protect public interests adequately. However, PUC's should not be able to

overturn FERC regulation as they see fit. FERC should continue to implement the broad policies. FERC performs its Congress-defined duties quite well, but those responsibilities are wisely limited. The Congress has not charged the FERC with making decisions with respect to the environment, resource selection, or integrated resources planning. Those political decisions should be made either by Congress in addressing restructuring comprehensively or by the states within a voluntary regional compact. However, a voluntary compact may not produce legislation that is in the public interest, so Congressional approval should be required. On the other hand, the regional commission should identify aspects of Congressional proposals which are not good policy.

: The distinction between reliability and economic issues can be used to delegate many decisions to the quasi-voluntary industry organizations. I think the industry needs to perpetuate that distinction. The emerging voluntary organizations are much more diverse than the relatively homogeneous reliability councils. Many conflicting interests are competing for attention within the compacts.

: Unfortunately, FERC is a long way from removing the generators from the ISOs, and market power will continue to override "governance." Until FERC finds the necessary political support, it will issue piecemeal legislation with little overarching theory behind it.