

## Massey Says FERC Will Rewrite Order 888 Transmission Policy This Month

Commissioner William Massey says transmission stakeholder meetings scheduled for the week of Oct. 15, now known as "RTO Week" in the utility community, will fundamentally rewrite the commission's electric transmission policy under Order 888, taking the commission from a reactive to a proactive stance in the overseeing of electric wholesale markets.

Order 888 is the 1994 directive which required that transmission facilities be open to all companies that wanted to use them. It was written in the context of urging the industry to restructure itself under the watchful eye of the Federal Energy Regulatory Commission (FERC). But Massey tells *EnergyWashington* that the October meetings is the first part of a dramatic change in direction undertaken by FERC to force the formation of Regional Transmission Organizations (RTO)

"It seems to me that we finally have the political will to get this done," says Massey. "The commission is heading towards a much more aggressive stance." Massey says the exact form of the October meetings is not yet defined but will ultimately lead to a new directive.

"We will replace Order 888," predicts Massey. "This is a huge, ambitious step." But Massey warns that "there are hundreds of details that have to be filled in." He said commission chairman Pat Wood has told his colleagues that the October meetings will be used to establish "concrete protocols" for RTO organizations, with participation of the "brightest minds available, focusing on each of the core subject areas: congestion management, cost recovery, market monitoring, transmission planning, business and reliability standards, and the nature of transmission rights." Observers say the thorny issue of RTO governance will get special attention.

Commissioners have also agreed that transmission owners will be given the choice of joining an RTO or face revocation of their license to charge market-based rates. In addition, the utilities not participating in an RTO will be barred from merging. But Massey says this policy does not represent a mandate to participate in RTOs.

"We're simply saying that they can stay old fashioned cost-of-service utilities if they want to," says Massey. "In the past the signal was that it was a voluntary program and it was not clear how hard the commission was willing to push." And despite the hard line taken

by the commission with existing authority, Massey says he still supports congressional efforts to give FERC the ability to mandate RTO participation.

"This would be an important signal for Congress to send to states that might contemplate suing to reverse our RTO initiative," Massey says. Massey says the other key component to the commission's proposal is market design.

"We're looking for a high degree of standardization, so if I'm a small marketer I can do business in any region and be pretty much assured of what the rules will be," say Massey. Massey acknowledges that stakeholders are justified in grumbling that the commission's change in direction regarding RTOs imposes a great burden in terms of labor and finances.

"Unfortunately, we as an agency have handled this in the most inefficient way possible," Massey says. "There are some market participants that have headed down what may turn out to be a rabbit trail." But Massey predicts that the outcome will be worth the additional effort.

"I think that in two or three years, we will have a nation that is defined by four or five RTO markets with a common look and feel," says Massey. "The Western market will be similar to the Northeast market." Massey says the RTO will be "the transmission planning honcho." Massey says RTOs will find and fix transmission constraints that keep prices high.

"The die is cast," says Massey.

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# Electricity Restructuring

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## Electricity Restructuring Weekly Update

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### Table of Contents

#### [Federal:](#)

- Bingaman to Resume Work on Comprehensive Energy Bill
- Federal Trade Commission Issues Report on Electric Power Regulatory Reform
- Supreme Court Hears Arguments on Open-Access Rules

#### [FERC:](#)

- FERC Chairman Unveils Plans
- Maryland and DC Blast FERC on RTO plan

#### [Regional:](#)

- Southwest and Midwest Utilities Form Transmission Groups

#### [States:](#)

- [North Carolina](#)
  - North Carolina's Restructuring Plans Still on Hold
- [Pennsylvania](#)
  - Pennsylvania Retail Electricity Shopping Declines
- [Texas](#)
  - Texas' Electricity-Grid Operator Needs More Power Lines

### Federal:

Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-New Mexico) will resume consideration of a comprehensive energy bill the week of October 14. The bill includes provisions related to electricity restructuring, including expansion of the Federal Energy Regulatory Commission's (FERC) authority over municipal and cooperative utilities. The proposed legislation would also allow regional transmission organizations to rely on FERC to rule when transmission projects are delayed or rejected by state officials. Bingaman's legislation was discussed at greater length in the September 7, 2001 Electric Utility Restructuring Weekly Update.

*Electric Power Daily Online, October 4, 2001*

A new report has been issued by the Federal Trade Commission (FTC) that examines state retail electricity programs and their ability to provide consumer benefits. Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform: Focus on Retail Competition compares state and federal authority on competitive issues and implementation of successful retail competition programs. The FTC report finds that most electric markets are in a transitional phase. The benefits of a competitive

market will not be realized until the advent of full competition, without price regulation, has been achieved. The report also explains that competitive wholesale markets must accompany competition in retail markets. The report notes, "... as wholesale and retail markets become regional, governing policies and jurisdictional approaches also must move in that direction for wholesale and retail competition to be successful." The FTC report also cites that artificially low "standard-offer rates," which are provided to customers who do not choose a new supplier, may act as a barrier for new retail suppliers. These low rates reduce the incentive for customers to seek alternative suppliers. The report urges retail suppliers to offer competitive metering and billing services in addition to variable pricing for generation services. Standardized labeling of power products and services, enforcement of truth-in-advertising laws, and consumer education efforts will help consumers make informed decisions.

*Federal Trade Commission, October 3, 2001*

The Supreme Court heard arguments on Wednesday on Federal Energy Regulatory Commission (FERC) jurisdiction to regulate wholesale transmission services and power sales. The Court's ruling will have an important impact on the U.S. power market. It could either open the transmission grid to retail competition or limit competition to the retail level. As Dow Jones reports, "The case has great ramifications for congressional debate on electric industry restructuring legislation and FERC's ongoing efforts to promote competition as a surrogate for regulation." Nine states, led by New York, argued that FERC overstepped its authority with Order 888, that required utilities to open their transmission lines to competing power merchants. Lawrence Malone, general counsel for the group, argued that the order preempted state authority to regulate retail sales and set rates. In 1999, FERC carried the order further by mandating that utilities turn over control of their power lines to independent regional transmission organizations, or RTOs. The states are appealing the District of Columbia Court of Appeals decision in June 2000 that upheld FERC's orders. Currently, FERC is working to establish four RTOs to control the nation's transmission system. Meanwhile, Enron, the largest U.S. wholesale power player, argued that FERC violated federal law because it did not require access to transmission lines when utilities kept transmission and retail sales as one operation. This bundled service remains in many states where competition is not yet allowed. Caught in the middle, FERC argued that its orders were issued to achieve a balance between giving competitors equal access to power lines and leaving retail market issues to the states.

*Dow Jones, October 4, 2001*

## **FERC:**

Pat Wood, the Federal Energy Regulatory Commission's new Chairman, has proposed a set of issues on which he wants the Commission to focus. At the Commission's September 26th meeting, Wood proposed the following for FERC's upcoming agenda: ensuring adequate generation capacity; transmission constraints; regional transmission organizations (RTOs); energy infrastructure; standards of conduct for transmission providers; market monitoring and enforcement; and market based rates. One important proposal unveiled at this meeting would mandate that transmission owning utilities be given until December 15, 2001, to join an approved RTO or lose their right to charge market based rates. Additionally, Wood recommended that mergers would only be approved for power entities belonging to operational RTOs. "Once the entire country is covered by RTOs," he said, "states will have the option to deregulate on the retail level or not." Wood

also proposed a rulemaking on market design and structure in order to make a seamless national power marketplace. A new transmission tariff would replace the pro forma open access transmission tariff established by Order 888. Staff at FERC discussed changing the Commission's methodology for assessing market power for the purpose of approving market-based rate applications. While none of the proposals were voted on, the meeting was important for opening up discussion and addressing the Commission's key challenges and objectives for the coming year. A series of commissioner-led workshops will be held at FERC's headquarters from October 15-19, 2001. Congestion management, cost recovery, market monitoring, transmission planning, business and reliability standards, and the nature of transmission rights have been proposed for discussion at the workshops.

*The Energy Daily, September 27, 2001*

Both the Maryland and Washington DC public service commissions have expressed concern over the Federal Energy Regulatory Commission's (FERC) initiative to integrate the U.S. Northeast transmission network. In a new plan proposed by FERC Chairman Pat Wood, utilities would have to submit plans by December 15, 2001, to join a regional transmission organization (RTO) or lose the right to sell electricity in the wholesale market. Catherine Reilly, Chairman of the Maryland Public Utility Commission, is concerned about the plan's effect on the Northeast's economy and the potential for creating another California-type crisis. The Maryland Commission held hearings on RTOs in Baltimore on Wednesday and Thursday of this week.

*Reuters, October 3, 2001*

## **Regional:**

FERC's push for utilities to merge their networks into regional transmission organizations (RTOs) came one step closer to being realized this week. Six Southwestern utilities have signed an initial "Memorandum of Understanding" regarding the formation and operation of an RTO and plan to file with FERC by mid-October. The new RTO, WestConnect, will be created by Arizona Public Service Co., Salt River Project, El Paso Electric Co., Public Service Company of New Mexico, Tucson Electric Power Co., and Texas-New Mexico Power Co. In addition, six Midwestern utilities filed with FERC last Friday to create an independent, for-profit transmission company, TRANSLink. The utilities include Alliant Energy, Corn Belt Power Cooperative, MidAmerican Energy, Nebraska Public Power District, Xcel Energy, and Omaha Public Power District. "A for-profit entity, focused solely on the growth and enhancement of a robust transmission system over a large region, will be much more effective than either the current situation or transferring operational control to an independent system operator," said Wayne Brunetti, chairman, president, and CEO of Xcel Energy. The six companies have asked FERC to expedite their application so that TRANSLink can be formed by early next year.

*Megawatt Daily, October 2, 2001 and Omaha World-Herald, October 2, 2001*

## **States:**

### **North Carolina**

The North Carolina Study Commission on the Future of Electric Service has decided to place its restructuring deliberations on hold until early next year. Study Commission meetings were interrupted early in 2001 due to the length of the state legislative session, which occupied several Study Commission members. Members of the Commission have expressed

concern about implementing electricity restructuring. Sen. Kay Hagan, D-Guilford, explained that, "I can't see us doing anything...There are so many people worried about...California." Hagan and Rep. Mary Jarrell, D-Guilford, also on the Commission, have urged North Carolina to take the steps necessary to avoid the same problems experienced in California. Neither legislator foresees the Study Commission resuming its deliberations until January 2002.

*High Point Enterprise, NC, October 1, 2001*

### **Pennsylvania**

According to figures released last Tuesday by the Pennsylvania Office of Consumer Advocate, electricity retail shopping fell during the third quarter of 2001. The number of consumers buying from alternative suppliers dropped 8% from July 1st. This decline is less than the 32% drop that occurred between April and July; total electric load has declined by 10% since July. 337,918 or 6.4% of the customers in the state are buying 1,458 MW from other suppliers, or approximately 6% of the state's total load. Again, this is less than the 67% decline in electric load purchased from other suppliers that occurred between April and July. According to the Electric Power Daily Online, "Load fell more dramatically than customer participation in the spring because many of the expiring long-term contracts were held by large industrial and commercial customers." Pennsylvania opened its electricity market to competition in 1999. In April of 2000, 10% of the state residents chose alternative energy suppliers, subsequently, high gas prices and tight electric capacity drove up wholesale prices in the summer of 2000. Many alternative suppliers pulled out of the market, as they were unable to offer competitive prices. Participation in the retail electricity market has been declining since then.

*Electric Power Daily Online, October 4, 2001*

### **Texas**

An annual report released on Monday by the Electric Reliability Council of Texas states that Texas needs more electricity transmission lines, raising concern as the state plans to open its electricity market to competition in January 2002. Without adequate transmission lines, congestion problems will likely arise and the flow of power may be interrupted. The report has identified six zones where more lines are needed to deliver power from south to north Texas and to bring electricity into the Dallas area. Eight major projects are being developed to address the problems and others are being considered.

*Houston Chronicle, October 2, 2001*

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