

HOW SAUSAGE GETS MADE AT FERC...

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FERC's proposal to foster more competitive markets through a common set of regional rules and standards for electric power (SMD) has reached a major crossroads. In the "white paper" issued on April 28, FERC wisely acknowledged that it is better to get half a loaf than to go hungry, and proposed to trim back their original proposal for SMD.

Let's briefly review some of the major proposed changes...starting with the name. In the white paper, SMD has become the "Wholesale Power Market Platform" (WPMP). This simple change reflects FERC's desire to disassociate itself from an acronym that had become synonymous - rightly or wrongly - with federal attempts to usurp states' rights, and which had incurred the wrath of legislators nationwide.

Next - and this is a major change - is the proposed new approach to resource planning. Under SMD, FERC indicated that RTOs would determine the optimum regional mix of generation, transmission and load response, including the proper level of reserves, and could compel that mix to be implemented through RTO-sponsored competitive bidding and RTO-determined combinations of proposals. States would have served on an advisory panel that would have input into resource planning, but the RTOs would have had the final say.

The white paper reverses this position 180 degrees. RTOs/ISOs will develop regional transmission plans, but their recommendations will only be advisory to the states, which will make their own decisions regarding the proper mix of resources, as they do now. FERC indicates its expectation that regional state committees will jointly consider resource plans, regional tariffs and regional transmission projects to streamline siting. However, FERC's authority to convene such committees is unprecedented, the membership and authority of such committees is unclear, and that part of the WPMP proposal could still encounter

resistance or face indifference. Moreover, it is unclear what happens with such "regional" committees in single-state RTOs/ISOs such as New York and California. Whether this leg of the WPMP stool will stand is open to question.

FERC also agrees in the white paper not to push its vision of congestion management. They offer flexibility on whether regions should utilize LMP; they appear to have dropped the concept of congestion revenue rights; and they have eliminated the provision of SMD that FTRs would be auctioned off in the future. Rather, where there are nodal markets, the white paper indicates that the states can decide how to allocate FTRs to the load-serving entities, both for existing load and changes over time. FERC also agrees not to assert its authority over the transmission component of bundled retail rates, even though the Supreme Court unanimously granted FERC that authority.

However, FERC does lay down some new markers and holds the line on some of SMD's provisions. The main thrusts of the white paper are to: a) reinforce the provisions of open access and non-discrimination of Order 2000; and b) foster competitive markets and appropriate investment (while avoiding debacles like California). To do so, FERC proposes to retain the provisions of SMD under which RTOs will oversee regional day-ahead, real-time and ancillary service markets. They would require all utilities that have not yet done so to join RTOs or ISOs (either would be acceptable), and as in SMD, would still require that these entities evaluate the system impact of new generation rather than individual utilities.

Further, FERC would continue to insist on regional market monitoring, enforcement programs and independent RTO boards. They will require that utilities and RTOs work to eliminate seams and pancaked rates, while allowing regional flexibility on tariff design. Regional state committees, in conjunction with transmission owners, would need to design and implement an efficient regional tariff that would send the appropriate transactions signals and not serve as a barrier to trade, but that tariff could be zonal ("license plate") or regional ("postage stamp").

Some items are conspicuous in their absence. For example, FERC makes no mention of whether incentives for new transmission (higher allowed ROE), proposed with some fanfare in January, would become part of its WPMP. Is FERC backing off its support of new transmission? If they are requiring utilities to join RTOs/ISOs then they are presumably withdrawing the 50 basis point ROE increase proposed in January for companies to do so. They make no mention of

ITCs (for-profit transmission entities that would come under the RTOs' umbrella) except to say that the functions previously identified for ITCs versus RTOs would remain unchanged.

FERC also does not venture into the realm of whether there should be capacity markets, and of what type. There is no mention of renewable energy or environmental implications. Finally, there is no timeline - only a promise to convene more regional discussions before issuing its next market proposal or final rulemaking. From this point forward, FERC may just stick to individual regional rulemakings, using the principles espoused in the white paper, rather than a seeking to implement a sweeping standard market design.

Finally, FERC has implicitly set up two major classes of RTOs - those already approved, and those yet to be approved. FERC makes clear that the white paper, and future market design proposals, will not affect its previous RTO decisions. Those already approved, such as MISO and PJM, would operate under their FERC-granted authority, including the RTO provisions on resource planning, congestion management, etc., while states will be shown much more deference in those RTOs yet to be approved.

Given these changes, WPMP may seem to some as though it may stand for "whatever people may propose"; others may call it "RTO-Plus" or "SMD-Minus". However we refer to it, there is a real question mark about whether FERC's latest initiative will achieve its goals of facilitating markets and encouraging appropriate investment. However, what is not surprising is that FERC needed to retreat from its grand vision, and that they are practicing the art of the possible.

Making markets can be messy - like making sausage. The incremental approach, showing how a few fully functioning wholesale markets can benefit consumers, and then making progress in other regions on a case-by-case basis, may be the best (and only) way for FERC to go for the time being.