

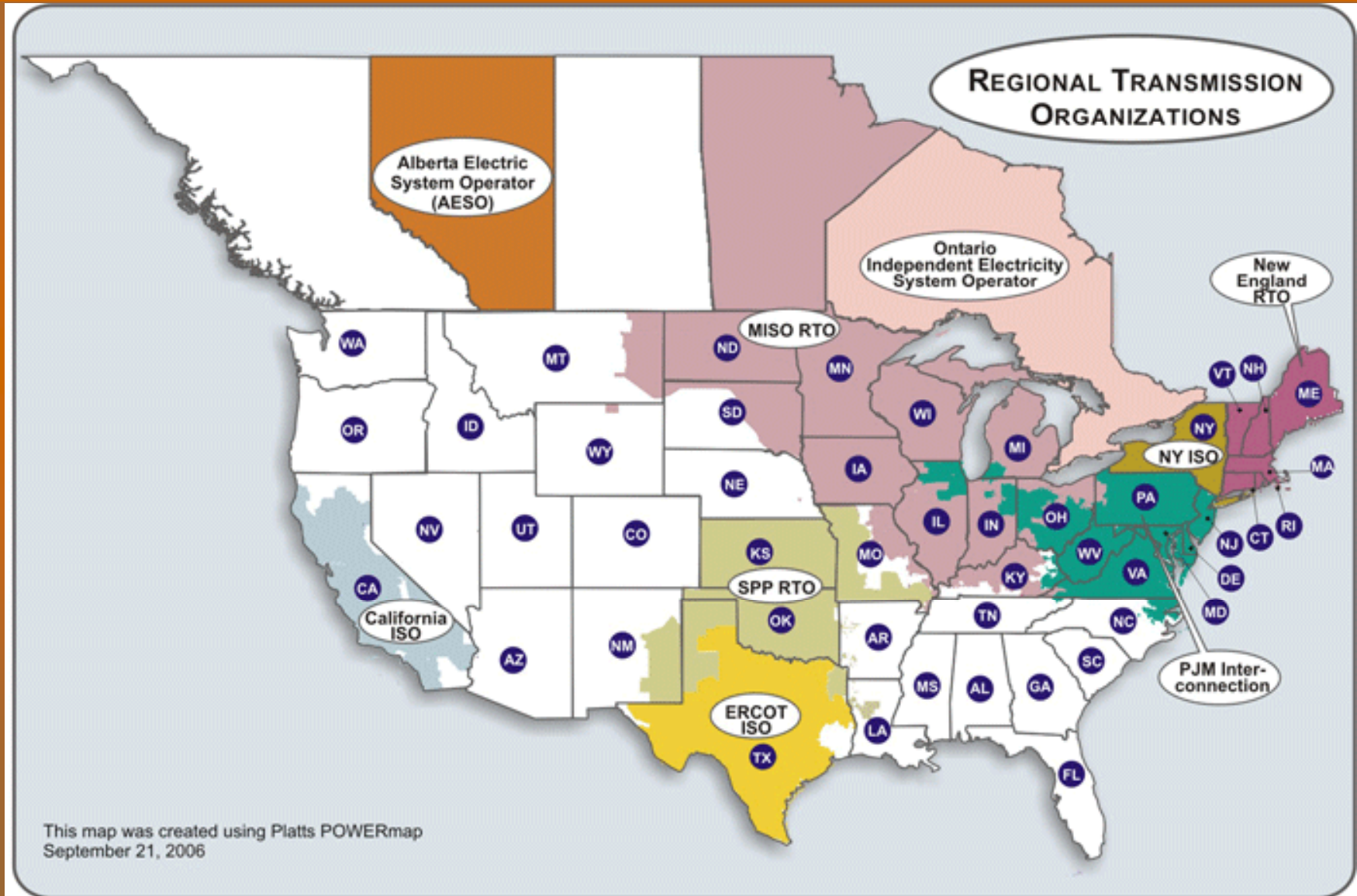
# IF NOT RTOS AND ISOs, WHAT ELSE?

EXNET/Bruder, Gentile & Marcoux, L.L.P.  
The Thirteenth Annual FERC Briefing:  
Infrastructure Development for the Next Generation  
March 7, 2007



Thomas L. Blackburn, Esquire  
Bruder, Gentile & Marcoux, L.L.P.  
1701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, D.C. 20006-5805  
Telephone: 202/296-1500  
Facsimile: 202/296-0627  
E-Mail: [tlblackburn@brudergentile.com](mailto:tlblackburn@brudergentile.com)

# CURRENT (AND SOMEWHAT EXAGGERATED) RTO COVERAGE



## HAVE WE SEEN THE CREATION OF THE LAST ISO?

- FERC seems to no longer consider ISOs the only way to achieve regional transmission planning and open markets.
- In Order No. 890, FERC adopted regional planning requirements that may achieve the same benefits as ISO-based regional planning.
- In Order No. 890, FERC also rejected proposals to require security-constrained economic dispatch in non-RTO/ISO regions.
  - ✓ It stated that essentially requiring Day 2 RTO markets to be adopted in every region of the country is not necessary to remedy undue discrimination.

## WHAT ARE THE CHALLENGES FACING NON-RTO/ISO TRANSMISSION PROVIDERS?

- Increased obligations to plan transmission systems on a regional basis.
- Increased obligations to construct transmission facilities.
- Increased pressure to consider construction of multi-utility transmission lines.
- Financing pressures associated with transmission construction.
- Increase in the number of OATT and OASIS compliance obligations.
- “Aggressive” FERC oversight and enforcement of tariff, OASIS and Standards of Conduct obligations, including civil penalties.

# WHAT SOLUTIONS ARE UTILITIES ADOPTING TO ADDRESS THESE CHALLENGES?

- Independent coordinators of transmission service
- “RTO Lite” solutions
- Joint transmission construction projects

## INDEPENDENT TRANSMISSION SERVICE COORDINATORS – THE DUKE MODEL

- Duke was the subject of two audits that found violations of the OATT and Standards of Conduct.
- Duke turned over responsibility for all OASIS functions to the Midwest ISO.
- Duke has retained all other transmission functions.
- Duke's transmission customers objected to the extra cost that resulted from the turnover, but the FERC rejected their arguments.

# INDEPENDENT TRANSMISSION SERVICE COORDINATORS – THE DUKE MODEL

## ➤ Independence:

- ✓ The service coordinator must be financially and operationally independent of the transmission provider and have no financial stake in the markets served by the transmission system.
- ✓ It must have access to whatever data it determines is necessary to perform its functions.
- ✓ Duke may accept sub-delegations of authority but may post them on the OASIS
- ✓ Duke may terminate its contract with the service coordinator, but must file a notice of termination with FERC.

# INDEPENDENT TRANSMISSION SERVICE COORDINATORS – THE DUKE MODEL

## ➤ Filing rights:

- ✓ FERC did not require Duke to give the service contractor the right to make FERC filings to change the scope of its duties.
- ✓ However, Duke must file the service contractor's proposed revisions and state its reasons for opposing them.
- ✓ The service contractor need not have filing rights with respect to the rates or terms of transmission service.
- ✓ The service contractor is not a public utility. However, Duke's contract with the service contractor must be filed with FERC because it affects the terms of transmission service

## INDEPENDENT TRANSMISSION SERVICE COORDINATORS – THE ENTERGY MODEL

- Entergy came under scrutiny on several occasions as a result of transmission practices that the FERC alleged violated Order Nos. 888 and 889.
- Entergy also wanted to take advantage of FERC's offer to allow "non-traditional" pricing to transmission providers who turn over tariff administration to an entity that meets the "independence" standard of RTOs and ISOs established in Order No. 2000.
- Entergy contracted with Southwest Power Pool to be its transmission service coordinator.

# INDEPENDENT TRANSMISSION SERVICE COORDINATORS – THE ENTERGY MODEL

## ➤ Independence:

- ✓ FERC required SPP to have complete control over granting and denying transmission service requests, system impact studies and administration of the OASIS.
- ✓ FERC rejected provisions precluding SPP from utilizing Boston Pacific to perform functions for Entergy.
- ✓ FERC required Entergy to establish a basis for compensating SPP so that compensation issues would not compromise SPP.
- ✓ FERC required the adoption of stakeholder review processes.

# INDEPENDENT TRANSMISSION SERVICE COORDINATORS – THE ENTERGY MODEL

## ➤ Termination rights:

- ✓ FERC limited Entergy's right to terminate its agreement with SPP because a threat of termination might influence SPP's independence.
- ✓ The contract with SPP automatically terminates in four years unless Entergy files to extend it. However, Entergy's transmission pricing flexibility terminates if that happens.

## ➤ Amendments:

- ✓ The contract with SPP may not be amended unilaterally.
- ✓ Amendments proposed by FERC or third parties are subject to the public interest standard.

## INDEPENDENT TRANSMISSION SERVICE COORDINATORS – THE MIDAMERICAN MODEL

- MidAmerican turned over a greater degree of control to TranServ than Duke.
  - ✓ MidAmerican agreed to do so to settle enforcement action by the FERC with respect to tariff administration and allegations of preferential treatment for its merchant function.
- However, MidAmerican did not attempt to obtain the pricing flexibility that Entergy sought, and the Commission did not require the same level of independence as it did for Entergy/SPP.

# INDEPENDENT TRANSMISSION SERVICE COORDINATORS – THE MIDAMERICAN MODEL

## ➤ Independence:

- ✓ FERC required MidAmerican to prohibit any affiliate or market participant from being the service coordinator.
- ✓ MidAmerican may not have veto authority over the service coordinator's choice of subcontractors.
- ✓ MidAmerican must file any proposed changes in the scope of the service coordinator's work.

# ALTERNATIVE TRANSMISSION ORGANIZATIONS: THE MID-CONTINENT SYSTEMS GROUP MODEL

## ➤ What is the MCSG?

- ✓ The MCSG consists of 13 members of MAPP who are not MISO members.
- ✓ 11 of the 13 are not FERC jurisdictional. (MidAmerican and NorthWestern are public utilities.)
- ✓ The MCSG owns 19,000 miles of transmission 115 kV and above and has a peak transmission load of 14,200 MW.
- ✓ The MCSG is considering turning over tariff administration functions to a transmission system coordinator. Currently, they are considering having the system coordinator offer a menu of services and allowing each transmission provider to choose which services it will take.

## THE MID-CONTINENT SYSTEMS GROUP MODEL

- The MCSG is considering adopting a regional open access transmission tariff that will supplement, rather than replace, the tariffs of the members and the MAPP Schedule F tariff.
- The Tariff would be administered by an service coordinator, but the members would continue to be the transmission providers and maintain control of their systems.
- The Tariff would offer regional short-term firm and non-firm point-to-point transmission service and long-term regional network contract demand transmission service. Network integration transmission service would not be offered because that service is available under the members' tariffs.

## THE MID-CONTINENT SYSTEMS GROUP MODEL, *continued*

- Transmission service would be priced on a postage stamp basis rather than on a license plate basis.
- Transmission planning would continue to occur on a regional basis under the auspices of MAPP.
- Currently, the MCSG plans to discuss its proposal with the FERC within the next couple of months.
- The target for the commencement of transmission service is June 2008.

## CHALLENGES FOR THE MCSG

- Most of the MCSG members are not subject to FERC jurisdiction.
- Adopting a postage stamp rate will likely subject the members to FERC jurisdiction over the cost of service that is included in the postage stamp rates for transmission service.
- Non-jurisdictional members also must consider whether they want to be subject to FERC oversight with respect to the terms and conditions of service, including the obligation to construct transmission facilities to accommodate requests for service.