November 14 – 16, 2008

New Orleans, Louisiana

Session II:

Market Monitoring, Oversight, Abuse

November 14, 2008

7TH US-EU ENERGY REGULATORS ROUNDTABLE

Presentation By

Susan J. Court

Director, Office of Enforcement

Federal Energy Regulatory Commission

Market Monitoring of USA Energy Markets

- **Market monitoring in USA is multi-faceted, inasmuch as it is:**
  - Performed by Federal government (FERC) with respect to natural gas and electricity markets.
  - Conducted also in organized electricity markets by private citizens (market monitoring units or MMUs), who are individuals employed by or under contract with Regional Transmission Organizations (RTOs) or Independent System Operators (ISOs) (referred to here as RTOs).

- **Market monitoring as a concept:**
  - Assumes there is a market to monitor.
  - Originated in the late nineties as organized electricity markets began to develop.
  - Increased in importance as a regulatory function after meltdown of Western USA energy markets at turn of century.
  - Directed at understanding markets better and ferreting out wrongdoing.
  - At times has been used by FERC outside organized electricity markets with designation of Independent Market Monitors; however, the term is a misnomer as these "monitors" primarily oversee compliance by a company with its open (third-party) transmission access tariff.

- **Market monitoring policies have been articulated by FERC:**
  - In individual RTO orders,
  - In Order No. 2000, a major policy statement laying out elements of an organized electricity market, including the need for and policies to govern market monitoring,
  - In a May 2005 Policy Statement, and, most recently,
  - In Order No. 719, a Final Rule (issued October 17, 2008), which codifies what previously had simply been articulated as "policies" in 18 CFR § 35.28 (g)(3).

Key Changes Implemented by Order No. 719

- Removes MMUs from direct supervision of RTO management, and requires RTOs to provide MMUs with data access and adequate resources and personnel.
- Expands and further defines scope of MMUs' core functions.
- Clarifies MMUs' role with respect to market mitigation.
- Requires ethics standards for MMUs and their employees
- Requires RTOs to consolidate MMU provisions in one section of their tariffs.
- Expands information dissemination, including reduction in the lag time for the release of offer and bid data.
- Facilitates state commissions' access to information from MMUs.
- Establishes protocols for referrals of proposed market rule changes and alleged market rule violations to FERC advisory and enforcement staffs, respectively.

Purposes of Changes

- To provide MMUs with enhanced ability to monitor the markets by re-enforcing their independence and clarifying their responsibilities.
- To provide interested entities with the ability to receive additional market information.

And thereby…

- To improve market performance and transparency.
- To facilitate FERC's enforcement of RTO tariffs and its anti-manipulation rules by spelling out the MMUs' relationship with the regulatory agency.

Modifications to MMUs' Relationship with RTOs

- **MMUs are to report to the RTO boards of directors, with management representatives on boards excluded from oversight.**
  - Requirement assumes the MMUs are performing the core MMU functions:
    - Identifying ineffective market rules
    - Reviewing the performance of the markets
    - Making referrals to the Commission
  - MMUs may report to RTO management for administrative purposes (*e.g.*, pension, payroll).
  - MMUs must be provided adequate tools to do their job: access to market data, sufficient resources and personnel, full access to RTO database, and exclusive control over any MMU-created data.

- **RTOs have discretion in certain areas:**
  - MMU structure (internal, external or hybrid)
  - Location of MMU offices
  - Commission review of RTO contractual and employment arrangements with MMU

Expansion & Further Definition of MMUs' Core Functions

- **Rules.** MMUs must evaluate existing and proposed market rules, tariff provisions and market design elements and recommend proposed rule and tariff changes to RTO, FERC advisory staff, and other interested entities, such as state commissions and market participants.

- **Performance.** MMUs must review and report on the performance of the wholesale markets to the RTO, FERC, and other interested entities such as state commissions and market participants, on at least a quarterly basis and submit a more comprehensive annual report.

- **Misbehavior.** MMUs must identify and notify FERC enforcement staff of instances in which a market participant's *or* the RTO's behavior may require investigation.

Clarification of Market Mitigation Activities

- **Scenario One**. If an RTO employs a hybrid structure (both internal and external MMUs), it may authorize internal MMU to conduct mitigation, with external MMU monitoring mitigation activities.

- **Scenario Two**. If an RTO does not employ a hybrid structure, the MMU may only perform *retrospective* mitigation; RTO would perform *prospective* mitigation (identified by FERC as potentially a source of a conflict of interest for an MMU).*

- **Scenario Three**. Regardless of structure, an RTO may allow MMU to conduct *retrospective* mitigation.

**Prospective mitigation affects outcomes on a going forward basis; all other mitigation would be considered retrospective.*

Application of Ethics Standards to MMUs and their Employees

- RTOs must include in their tariffs certain minimum ethical standards for the MMUs and the MMUs' employees, in order to re-enforce independence and to prevent conflicts of interests.
- Requirements identified include, but are not limited to:
  - MMUs may have no material affiliation with or financial interest in market participant,
  - MMUs may not engage in any market transactions,
  - MMUs may not be compensated, except by RTO, for expert witness testimony or other commercial service,
  - MMUs may not accept anything of value from a market participant, and
  - MMUs must advise a supervisor in event they seek employment with a market participant, and disqualify themselves from participating in any matter that would affect financial interest of a market participant.

Consolidation of MMU Tariff Provisions

- RTOs must include in their tariffs and centralize in one location all their MMU provisions.
- MMU provisions may appear elsewhere in the tariff in addition to being centralized in the MMU section, but a duplicative provision must include a notation that the provision in question can also be found in the central MMU section, and that MMU section controls.

Enhanced Information Dissemination

- MMUs are required:
  - to produce an annual state of the market report on market trends and the performance of the wholesale market
  - to report aggregate market performance metrics no less than quarterly
  - to make both annual and quarterly reports available to FERC, state commissions, RTO management and boards of directors, and market participants
  - to make staff available for regular conference calls with FERC, state commissions, states attorneys general, and the RTO; market participants shall not be excluded from such calls.

- RTOs are required to release bid and offer data on accelerated basis.
  - Release is reduced from six months to three months.
  - Identity of participants must be masked.

Tailored Requests for Information by States

- State commissions may make tailored requests to MMU for information:
  - Limited to general market trends and performance of the wholesale market.
  - Exclusive of information designed to aid state enforcement actions.
  - Take into account limited resources of MMUs and not be overly burdensome.
- State commissions may ask FERC to authorize release of otherwise proscribed data, provided they demonstrate a compelling need for the information and are able to ensure adequate protection for commercially sensitive material.
- Affected market participants must have opportunity to object and correct any inaccurate information proposed for release.
- RTOs must develop, and include in their tariffs, confidentiality provisions that would protect commercially sensitive material.

Referral Protocols for Market Rule Changes & Market Rule Violations

- **Market Rule Changes**:
  - **MMU:**
    - Must refer to the FERC Director of the Office of Energy Market Regulation all instances where the MMU has reason to believe market design flaws exist that it believes could effectively be remedied by rule or tariff changes.
    - Put the referral in writing, with enough information for informed decision making.
  - **FERC advisory staff** will consider whether and what to recommend to the Commission for action.

- **Market Rule Violations**:
  - **MMU:**
    - Must refer to the FERC Director of the Office of Enforcement all instances where the MMU has reason to believe that a market violation has occurred.
    - Put the referral in writing, with enough information for informed decision making.
    - Maintain the confidentiality of the referral.
  - **FERC enforcement staff:**
    - Must keep referral confidential and any resulting investigation non-public, unless otherwise ordered by the Commission.
    - Should provide MMUs with generic feedback regarding enforcement issues.
    - Will consider whether to initiate an investigation.

Thank you!

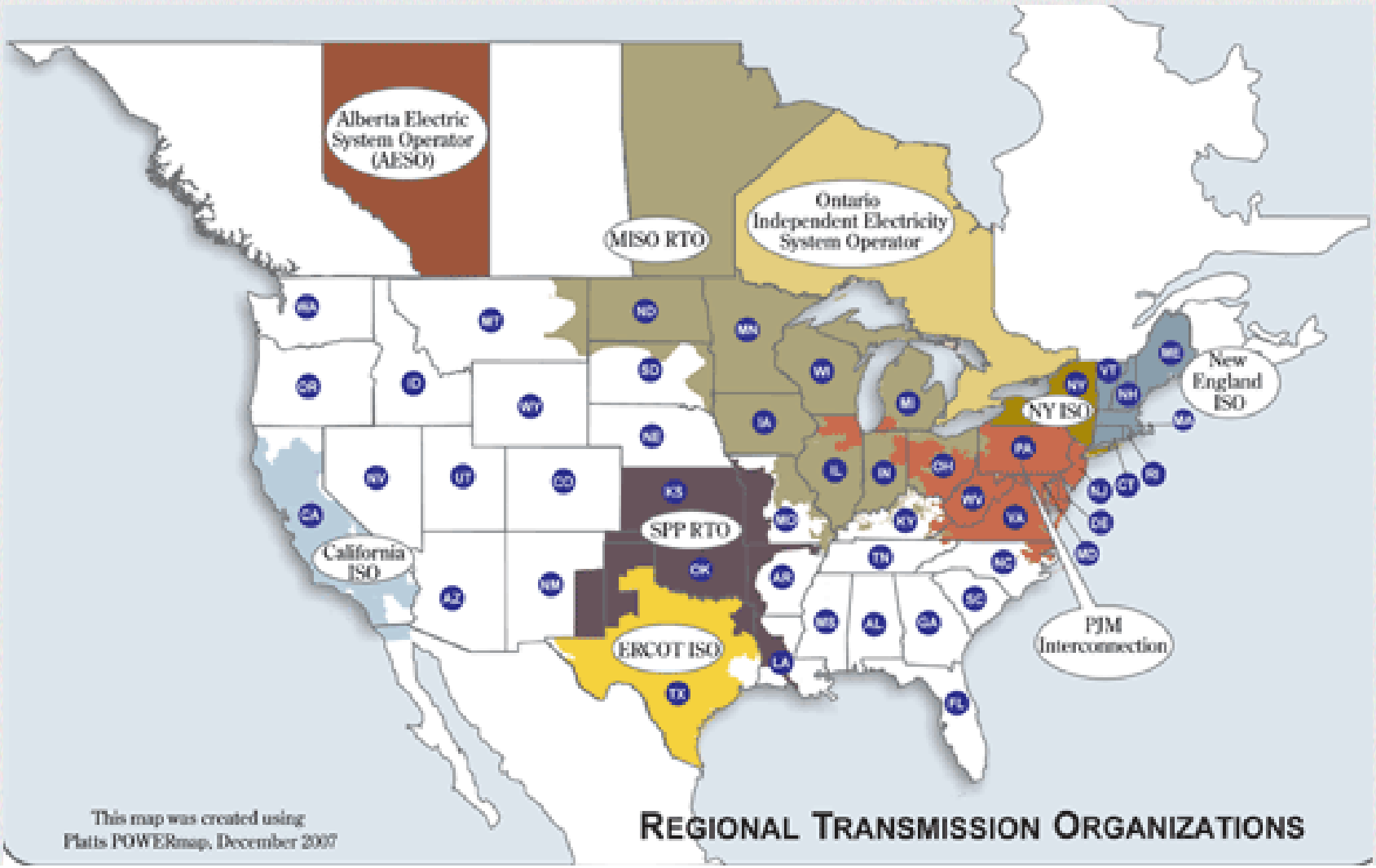
For further information:

susan.court@ferc.gov

www.ferc.gov

Addenda

Regional Transmission Organizations



Federal Energy Regulatory Commission

