

# **ALLIANCE OF STATE LEADERS PROTECTING ELECTRICITY CONSUMERS**

March 25, 2003

The Honorable Mary Landrieu  
United States Senate  
724 Hart Senate Office Building  
Washington DC 20510

Dear Senator Landrieu:

## **Re: In Support of Jurisdictional Amendments to the Federal Power Act**

We are writing in support of your proposed amendments to clarify federal-state jurisdiction under the Federal Power Act. The draft of March 25, 2003, addresses the concerns you have previously expressed about the jurisdictional claims in FERC's standard market design (SMD) proposal.

In its proposed rules, FERC has unwisely chosen to over-reach the authority that Congress has delegated to it, based on the Commission's unsupported "finding" that a vertically integrated utility that prefers its own customers engages in "undue" discrimination. On this slender thread, FERC attempts to assert jurisdiction over major elements of retail electricity service. FERC's assertion of jurisdiction amounts to a transfer of authority to the Commission and a loss of control by the states over, among other things, demand forecasting, resource planning, demand-side management and marketing, and the ability to ensure that transmission is available to meet retail service obligations. The result is a confrontation with state law and usurpation of state ability to protect consumers at the retail level. FERC's jurisdictional assertion also fosters immense investment uncertainty--at a time when the merchant plant industry is in crisis, and when utilities must be able to plan for and recover the costs of meeting retail needs.

The language in your proposed bill would resolve the jurisdictional debate in two ways. First, it refutes FERC's unsupported claim of "undue discrimination" by stating that it is not "undue discrimination" for a transmission utility to reserve capacity or rights related to its lines necessary to serve retail customers at bundled rates (Section 7). Second, it clarifies the limits of FERC jurisdiction as we believe they have long existed: The Commission's jurisdiction does not extend to matters within the jurisdiction of the states including the retail sale of electric energy and any component service, including transmission.

Jurisdiction is profoundly important because it determines who gets to decide retail electricity policy. If the Commission were successful in asserting its intrusion into retail jurisdiction, it would pre-empt the rights of the elected members of the legislatures in all of the 48 lower states, except Texas, to determine appropriate retail policy. State legislatures would lose the ability to ensure that their citizens and businesses are served


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by a retail system that provides adequate, reliable, and affordable electricity. Meanwhile, whatever rules the Commission might adopt would be just the rules of the day. With its

on-going authority, the Commission would be expected to modify the rules over time. This is why the debate over the proposed operational rules in SMD—troubling as those proposed rules may be—pales in importance to the debate over who will have the right to impose them, and to modify them over time.

In your proposed bill, you have offered a means for settling this debate and allowing FERC and the states to work together to meet the real challenges we face in protecting electricity consumers and building properly functioning wholesale electric markets. We applaud you for recognizing that the jurisdictional issues are the key to all of the many discussions in Washington, and for having the courage to address them head-on. We look forward to continuing to work with you on this measure.

Sincerely,



Jim Kerr  
Alliance co-chair  
North Carolina Utilities Commission



Marilyn Showalter  
Alliance co-chair  
Washington Utilities and  
Transportation Commission

cc: Members of the Senate Energy and Natural Resources Committee