

1 **Additional Concerns and Recommended Conditions**

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3 **Q. Turning now to the fifth section of your testimony, are there additional concerns raised**
4 **by the proposed merger?**

5 A. Yes. One concern is that CP&L may be forced to join a Regional Transmission Organization
6 (RTO) sooner than it otherwise would choose, and potentially on terms that are less favorable
7 than might be negotiated in the absence of the merger.

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9 **Q. How did CP&L deal with the RTO issue in its federal filing?**

10 A. In CP&L's filing with the FERC, CP&L's president and CEO, William Cavanaugh, III, stated
11 as follows:

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13 CP&L commits to foster development of an RTO in the Southeast
14 United States. If those efforts are successful, CP&L will file with the
15 Commission no later than 90 days after consummation of the merger an
16 application for approval of such a Southeast RTO in which CP&L will
17 participate. If those efforts are unsuccessful, CP&L will file an
18 application not later than 90 days after the merger closes and join an
19 existing Commission approved RTO. [Direct Testimony of William
20 Cavanaugh III, FERC Docket Nos. EC00-055, ER00-1520, pp. 13-
21 14.]
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23 Mr. Cavanaugh stated further that FPC is committed to the creation of an RTO in Florida.

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25 **Q. Do these options fully explicate the possibilities?**

26 A. No. Forming a RTO is a difficult and complex task, and consideration must given to a wide
27 range of possible structures. These include whether the RTO will earn a profit or operate more
28 like a co-operative and whether the utilities will retain ownership of the underlying transmission
29 assets or whether ownership will be transferred to the RTO. Other pertinent issues involve
30 pricing approaches (both within the RTO and between RTOs), the degree of public power
31 participation, the grandfathering of existing agreements, the form and extent of market
32 monitoring, the treatment of ancillary services, cost recovery mechanisms for RTO investments,

1 procedures for expanding the transmission system over time, and rules adopted for FERC's
2 "open architecture" requirements. Even this list does not exhaust the issues that must be
3 resolved before an RTO can function properly.

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5 Although CP&L is making a strong effort to determine the best course to follow in joining or
6 forming an RTO, there is a risk that it will be stampeded into prematurely making a firm RTO
7 commitment in order to gain approval of the merger by the FERC. Time pressures associated
8 with the merger approval process might force it to join or form an RTO that would not best
9 serve the interests of North Carolina customers over the long run.

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11 **Q. Has the Commission been concerned about the FERC's RTO requirements and their
12 potential impact on ratepayers?**

13 A. Yes. In the past the Commission has recognized the complex and difficult problems involved in
14 the formation of RTOs and has urged a slow and flexible approach. In a February 1999 letter
15 to the FERC the NCUC stated as follows:

16
17 While we might agree that RTO's offer certain benefits, we do not
18 believe FERC should establish regional districts and require individual
19 utilities to join an RTO, nor do we believe FERC has the authority to
20 require utilities to do so. Moreover, we are concerned that in
21 attempting to satisfy national goals for wholesale electric markets by
22 establishing RTOs, very real issues for locally-served retail customers,
23 including access to reliable, low-cost electricity, may be overlooked....
24 There are also important regional differences in the electric power
25 industry that necessitate a different pace of development for RTOs.
26 For example, regions that had pre-existing tight power pools or that
27 adopted state policies that required disaggregation for electric utilities
28 lent themselves to early development of RTOs. In other regions,
29 development may be slower, but there are good reasons for that
30 deliberate pace. [Letter from the North Carolina Utilities Commission
31 to David P. Boergers, Secretary, Federal Energy Regulatory
32 Commission, February 26, 1999, Docket No. RM99-2-00, p. 1.]
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1 Now, because of the merger, CP&L has had to abandon the “deliberate pace” envisioned by
2 the Commission in order to get FERC approval of the proposed merger.

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4 **Q. What is the current status of CP&L’s RTO negotiations?**

5 A. The Company has endeavored to keep the Public Staff informed and updated about the current
6 status of its RTO efforts. However, the sensitive business nature of many aspects of the inter-
7 utility discussions requires that major portions of the negotiations be privileged and confidential.
8 In general, it is fair to say that CP&L is continuing to assess its options in an effort to choose its
9 most rational course. In any event, due to the nature of the process and the many other parties
10 involved, the process is still in flux at the time of this filing, and no definitive decisions have been
11 made.

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13 **Q. Without being too specific, would you broadly outline some of the major options being
14 investigated by CP&L?**

15 A. CP&L has been examining three primary options. One is the formation of a Southeast regional
16 RTO with other Carolina utilities, possibly including the membership of other entities in the
17 Southeast or developing operating agreements with them. A second option is to join the
18 Alliance RTO that has filed with the FERC. The utilities involved with the Alliance are Virginia
19 Power, AEP, FirstEnergy, Consumers Energy, and Detroit Edison. The geographic area
20 covered by the Alliance includes parts of Virginia, West Virginia, Kentucky, Ohio,
21 Pennsylvania, Indiana, and all but a very small part of Michigan, as well as Virginia Power’s
22 service area in North Carolina. A third option is to join the Midwest ISO (MISO), which is
23 operating in Wisconsin, Illinois, Indiana, Kentucky, and Missouri.

24 **Q. If the Company decides to join the Alliance or MISO, what do you see as potential
25 downsides?**

26 A. In neither case would the geographic scope fit well with CP&L’s intended positioning as a
27 Southeastern super-regional energy supplier. The Alliance RTO extends from Virginia to

1 northern Michigan, while MISO stretches from Kentucky up to northeast Wisconsin and over
2 to Missouri. Needless to say, these states are not encompassed within even a very generous
3 interpretation of the “Southeast.” Forming an RTO with MISO also would mean belonging to
4 an RTO that is not contiguous with CP&L’s service territory. In addition, joining an existing
5 organization might deprive the Company of a voice in decisions about structure, pricing and
6 other such issues that have already been negotiated by the current members. Similarly, joining
7 an RTO that is primarily concerned with transmission systems to the north of CP&L’s system
8 might result in a situation in which CP&L’s specific needs (e.g., strengthened ties with Florida
9 and Georgia) might not be given much consideration by the RTO’s other members. Finally,
10 unless they can be induced to join, Duke and South Carolina Electric & Gas Company
11 (SCE&G) would not necessarily be in the same RTO as CP&L, which is not an optimum
12 situation.

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14 **Q. Of the two RTO policy directions mentioned by Mr. Cavanaugh—forming a new
15 Southeast RTO or joining an existing RTO—which do you feel is preferable?**

16 A. The best approach would probably be for CP&L to be a participant in a southeastern RTO
17 that would include Duke, SCE&G and possibly other utilities in nearby states. Given CP&L’s
18 long-term goals, it might be desirable to develop a southeastern RTO that includes both CP&L
19 and Florida Power. However, this alternative may not be viable within the time-frame for the
20 FERC’s approval of the merger.

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22 **Q. Time constraints may force CP&L to join an RTO that does not include other Carolina
23 utilities, to the potential long-term disadvantage of both the Company and North
24 Carolina ratepayers. Given this risk, what recommendation do you have for the
25 Commission?**

26 A. As a condition of approval of the merger, the Commission should require that any contract
27 regarding CP&L’s membership in an RTO contain a regulatory out clause making CP&L’s

1 involvement conditional upon state regulatory approval, as well as federal approval. In
2 addition, to the extent a southeastern RTO does not prove to be viable in time for CP&L to
3 meet its RTO filing commitment to the FERC, the Commission should require that any filing at
4 the FERC and any contract related to CP&L joining an RTO other than one with a
5 southeastern focus contain a provision allowing the NCUC to require CP&L to withdraw and
6 join a subsequently developed southeastern FERC-approved RTO.

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