

Competition Case Study The Southern Grids: 2000–2006

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In 1996, the Federal Energy Regulatory Commission (FERC) began requiring transmission owners to provide nondiscriminatory access to the use of their power lines. They implemented this policy just as a “sweeping restructuring” of the electricity sector was taking place in parts of the United States.¹ New state laws required the shedding of generation assets by electric utilities; power plants then entered the market as independent power providers. These changes resulted in greater quantities of wholesale electricity sales, as a growing number of utilities purchased power for resale rather than generate it themselves. Bulk power markets emerged to organize these transactions; FERC had approved five as of December 1999.



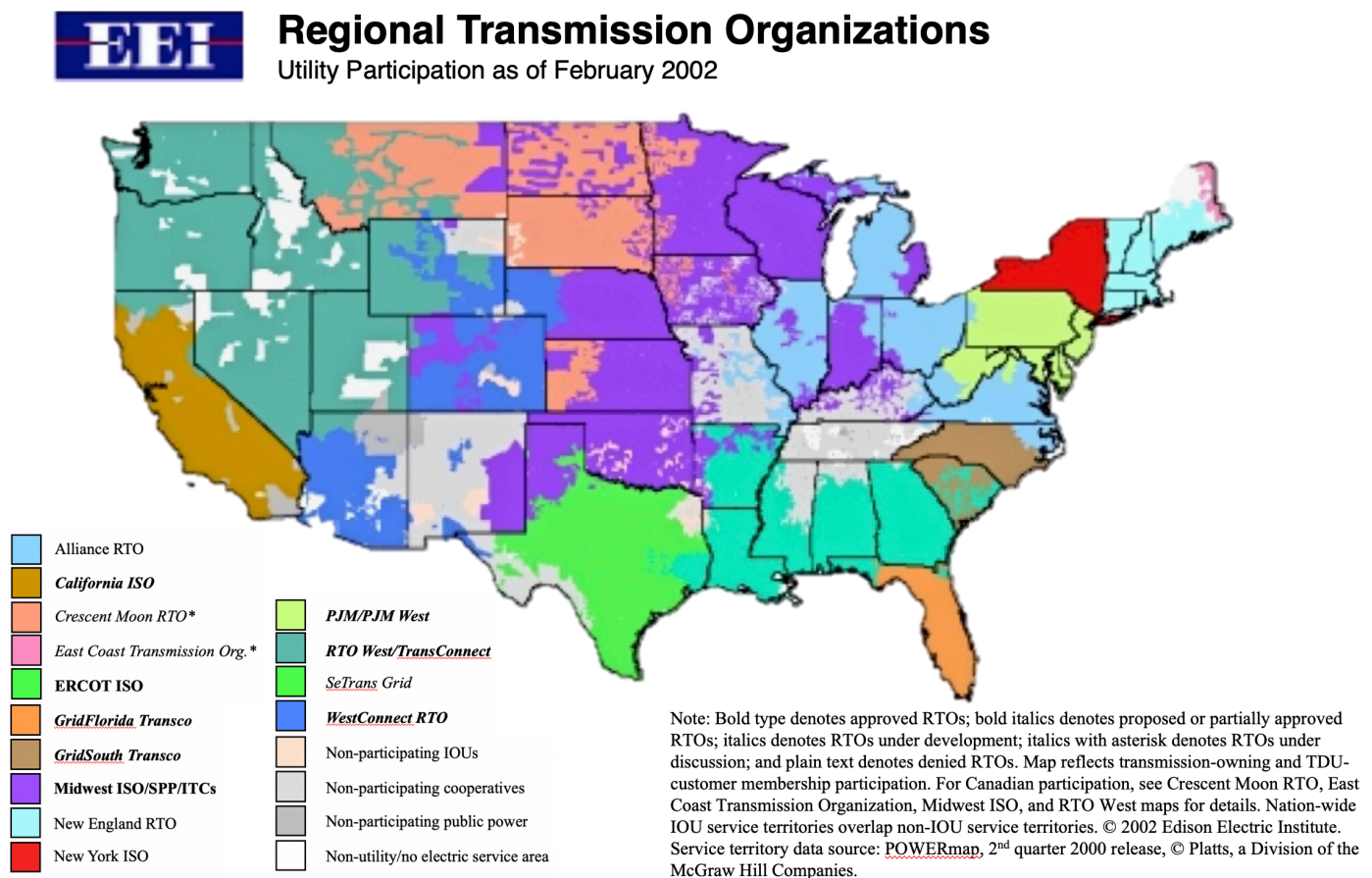
That month, the FERC issued Order 2000. Reflecting on the growth in market players and products,² the Order encouraged the expansion of Regional Transmission Organizations (RTOs) to run wholesale power markets and coordinate transmission planning. While the Order did not require RTO membership, it did require every public utility owning transmission in the United States to propose joining or creating an RTO.³ FERC expected RTOs to meet four minimum characteristics and 8 basic functions but otherwise left the design up to the proponents.⁴

On October 16, 2000, FERC received four compliance filings from Southeastern utilities:

- Carolina Power & Light, Duke Energy, and South Carolina Electric & Gas proposed the GridSouth Transco, a for-profit limited liability company (LLC) serving the Carolinas.⁵
- The Southern Companies proposed a GridCo (envisioned as an LLC formed by the Companies, or a separate company), to manage transmission across Southern’s territory.⁶
- Florida Power & Light, Florida Power Corporation, and Tampa Electric Co. sought to create GridFlorida, a for-profit Transco to serve as Florida’s RTO.⁷
- Finally, Entergy presented a for-profit Transco “to operate under the oversight, and within the umbrella”⁸ of the recently proposed Southwest Power Pool (SPP) RTO.⁹

In March 2001, FERC provisionally granted approval for GridSouth¹⁰ and GridFlorida.¹¹ FERC had relatively minimal recommendations for GridFlorida, noting that the transmission owners had conducted a collaborative stakeholder process to design the RTO.

Figure 1: Map of Electricity Markets as of 2002



FERC also found that the GridSouth plan would “create a viable, stand-alone transmission business that complies with Order No. 2000,” with some adjustments.¹² The revisions echoed intervenor concerns about RTO independence from the founding transmission owners, and the need to protect against discrimination between market participants. FERC supported authorizing the Stakeholder Advisory Council to substitute four Board candidates,¹³ and enabling the RTO to reject utility transmission plans when nonincumbent actors proposed lower-cost projects.¹⁴

In a July 12, 2001 Order, FERC also directed the removal of the proposed GridSouth COO, finding that his joint position as a Duke officer “compromises the independence (and at a minimum the appearance of independence) of the RTO.”¹⁵ Instead, FERC ordered that the GridSouth Board be seated before a new COO was named (and before GridSouth could negotiate Reliability Operating Agreements with the founding utilities).¹⁶ In addition, FERC wanted interconnection decisions to sit more firmly under the RTO’s control. The agency agreed with intervenors that the utilities were proposing to be “overly-involved in the generation interconnection process,” and that “even the perception that the proposed process is biased may be a deterrent to expansion or increased participation in the regional generation market.”¹⁷

FERC scrutinized the geographic scope of both RTOs, although it did not initially hinge approval on the expansion of either market.¹⁸ FERC had encouraged GridFlorida to explore expanding the scope of the proposed RTO, but noted that this territory had “relatively weak ties” to other markets given physical barriers. In the case of GridSouth, FERC directed the utilities to discuss RTO membership or coordination with Santee Cooper, a South Carolina state-owned utility, and with utilities across the region.¹⁹ That spring, FERC rejected arguments that it should require GridSouth to reflect “natural market” boundaries or form one Southeast RTO.²⁰

That changed in the July 12, 2001 Orders, after the addition of two George W. Bush nominees to the FERC, Chairman Pat Wood and Commissioner Nora Brownell. In the GridSouth Order, the Commission announced (over the dissent of Commissioner Breathitt)²¹ that:

We favor the development of one RTO for the Northeast, one RTO for the Midwest, one RTO for the Southeast and one RTO for the West. ... [S]avings will be delayed, perhaps significantly, if RTOs are permitted to develop incompatible structures and systems, or if we approve RTOs that do not encompass wholesale market trading patterns.²²

The Order related the “somewhat positive” conversations GridSouth was having with Santee Cooper, the Tennessee Valley Authority (TVA), and the Southeastern Power Authority (SEPA), and the less productive conversations with Southern. Overall, FERC lodged its disappointment in “the lack of progress Applicants have made in expanding the RTO’s scope through the inclusion of additional members in GridSouth. ... In order to successfully encompass the natural market for bulk power in the Southeast, it is necessary that the Southeast transmission owners combine to form a single RTO.”²³

FERC then directed Southern, SPP, Entergy, and GridSouth to mediation, and encouraged others (GridFlorida, TVA, and SEPA) to participate. Notably, however, of the state commissions, only Arkansas fully participated. The mediator commented that this may have been because the states were “taken by surprise” by FERC’s directive.²⁴

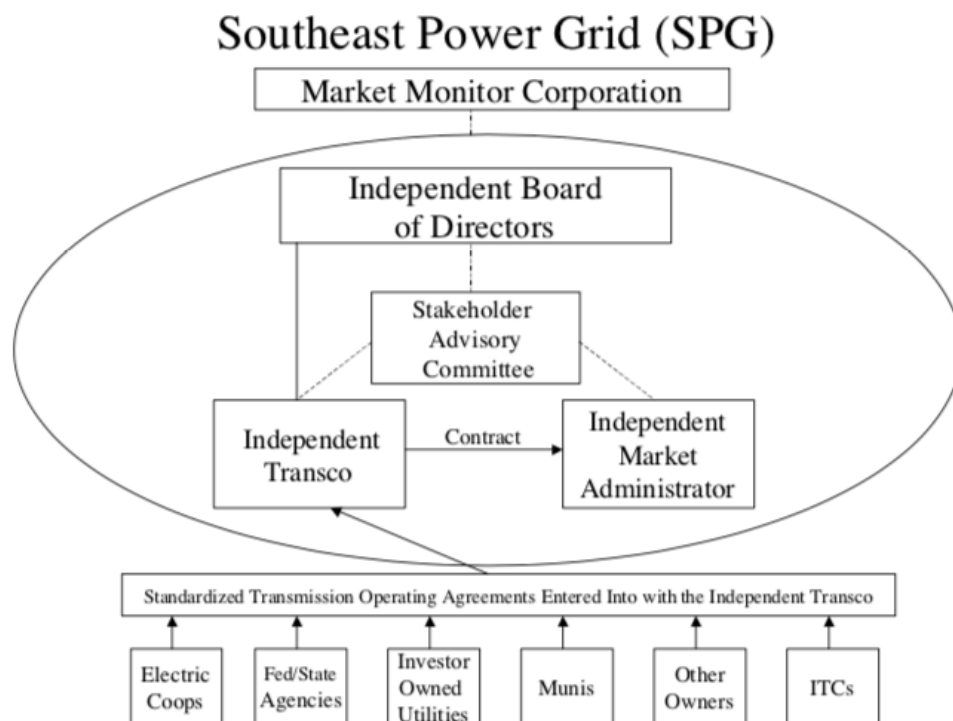
“To successfully encompass the natural market for bulk power in the Southeast, it is necessary that the Southeast transmission owners combine to form a single RTO.”

FERC, July 12, 2001

The parties began with four basic “models” for a Southeastern RTO, tracking the proposals filed with FERC in October 2000. Early on, GridSouth and GridFlorida merged their models. Entergy then joined these utilities to

discuss a broader regional framework, which the group designated the Collaborative Governance Model. Like GridSouth and GridFlorida, the model featured a for-profit transmission company with an independent Board. Mediation resulted in the creation of an Independent Market Administrator, which would enable public power and cooperatives to participate without having to join a for-profit company. Transmission owners could divest their facilities to the Transco, transfer operational authority to the Transco, or divest or transfer operational authority to a third-party Independent Transmission Company (ITC in Fig. 2).

Fig. 2. The Southeast Power Grid as Envisioned by the Parties to Mediation.



The Southern Companies remained wedded to their model, designated the Independent System Administrator Model. Here, the transmission owners would retain ownership of the infrastructure and could remove the administrator for cause. The mediator expressed reservations about the independence of this model, given these and other design elements.

Despite modest progress made in mediation, the pressure to create a Southern RTO, combined with the California energy crisis, effectively ended the prospects for GridSouth and GridFlorida. In particular, state utility commissioners appeared to feel blindsided by FERC’s change in approach.²⁵ In all likelihood, this reaction prompted FERC’s action to launch state PUC Commissioner-FERC RTO conversations in early 2002.²⁶ Based on the transcripts, the talks were unsuccessful in winning over reluctant state regulators. Yet they reveal some state PUC support for a Southern RTO, particularly among regulators facing the prospects of regulating utilities in multiple RTOs: Arkansas, Texas, and Mississippi.²⁷

Other state utility commissioners were open at least in theory to the idea of a larger market; South Carolina asked for detailed modeling of the Eastern Interconnect to identify the natural markets that one or more RTOs could best approximate.²⁸ However, resistance among many of the state commissions posed a serious obstacle to robust region-wide RTO discussions. Moreover, frustration persisted around the perception that FERC had changed the rules midstream. In one meeting, a South Carolina commissioner complained that, “those of us in the Carolinas we have an empty building in Fort Mill, South Carolina, near Charlotte that was going to be the

Exploring Retail Choice in North Carolina

Alongside discussions of RTO creation and wholesale competition, North Carolina also contemplated retail choice. In April 1997, the state's General Assembly passed a bill to establish a 23-member Study Commission on the Future of Electric Service.³³ (One of the members, Daniel Clodfelter, is a commissioner on the North Carolina Utilities Commission; another member, then-State Senator Roy Cooper, became the Governor in 2016.) The legislation directed the Study Commission to “determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina.”³⁴

The Study Commission was to evaluate, among other things, “fair treatment of competing power providers”; “environmental impact of restructuring”; “customer choice of electric providers”; “functional unbundling of electric power generation, transmission, and distribution services”; and the impact of competition on low-income consumers, clean energy and energy efficiency programs, public energy expenditures, economic development, and public power.³⁵ The Study Commission also considered a retail choice bill introduced in October 1997.³⁶

With State Senator David Hoyle at the helm, the Commission retained the consulting firm RTI to complete a series of studies. RTI was asked to assess the economic and environmental ramifications of restructuring, with an assumed start date of 2004.³⁷ Over the next several years, these studies were published and submitted to the General Assembly.

In public hearings, battle lines were quickly drawn, as residential customers raised concerns that competition might ignore the needs of that customer class, while large industrial users and public power pressed for rapid restructuring.³⁸ Municipal utilities in particular saw deregulation as a way to shed their ownership interests in the one-unit Shearon Harris Nuclear Plant.³⁹

In April 2000, the Study Commission unanimously approved its recommendations, which were submitted in a final report to the General Assembly in May. The Commission “recognize[d] that competitive retail electric service is on the way for the entire country – pushed along by the unfolding of competition in wholesale electric sales and the general trend in the United States to move away from heavily regulated services where possible.”⁴⁰ In keeping with this trend, the Study Commission supported the concept of fully competitive retail electric service as of January 1, 2006.⁴¹ The Commission also recommended guardrails to ensure adequate supplies of power and environmental protection, for instance by establishing a “public benefit fund to address low income, renewable energy, and energy efficiency issues which may not be met in a deregulated market place,” and requiring a threshold amount of clean energy to be produced in state.⁴²

The Study Commission was scheduled to recommend specific language to the legislature in 2001, to pursue these goals.⁴³

Meanwhile, in 1996, the California legislature had restructured that state's electricity industry. Now, in January, March and May 2001, California residents faced rolling blackouts from contracted power supply.⁴⁴ In April 2001, the investor-owned utility Pacific Gas & Electric filed for Chapter 11 bankruptcy,⁴⁵ unable to pay for power after wholesale electricity prices in the newly restructured market soared far above the retail price caps set by law to protect ratepayers. While restructuring was not alone responsible for the bulk power woes in California, the experience discouraged other states from pursuing this policy.

North Carolina was no different. According to individuals knowledgeable of these events, the Study Commission met just once more in the spring of 2001 (one version of the story said the meeting began with a moment of silence for the California energy crisis), and then disbanded.

Grid South headquarters, and so some people have moved forward and gotten along the road, and then only to have the roadblock put up.”²⁹

Over the next two years, the GridSouth utilities secured deferrals from FERC to proceed, pending discussions with other Southern utilities, FERC rulemaking, and FERC-commissioned cost-benefit studies. Momentum had been lost. On December 22, 2004, FERC terminated the GridSouth proceeding. “It is now apparent that the matters at issue in this proceeding have been overtaken by superseding events.”³⁰ Eight months later, the utilities notified FERC that they “have elected to terminate the GridSouth Transco project.”³¹ On June 19, 2006, following the Florida utility commission’s decision to terminate its GridFlorida docket and an announcement that the utilities had dissolved GridFlorida, FERC likewise terminated the GridFlorida docket.³²

While the Southern Gridcos did not launch, the GridSouth and GridFlorida dockets reflect a concerted effort by the utilities to explore market creation, and sustained engagement by regulators and stakeholders around the proposed governance structure. Some observers interviewed for this case study noted that GridSouth lay the groundwork for and morphed into the [North Carolina Transmission Planning Collaborative](#), which exists today as the local transmission planning entity. The Collaborative coordinates transmission planning in the service territories of Duke Energy Carolinas, Duke Energy Progress, Electricities of NC, and the North Carolina Electric Membership Corporation, across North and South Carolina. The Collaborative published its first joint Transmission Plan in 2006; this organization meets FERC’s planning requirements set out in Orders [890](#) (from 2007) and [1000](#) (from 2011, with later amendments).

ENDNOTES

¹ FERC Order 2000 (Dec. 15, 1999), at 2.

² Order 2000, at 12–21.

³ Order 2000, at 709; 18 C.F.R. §35.34(c).

⁴ See, e.g., 94 FERC ¶ 61,363 (Mar. 28, 2001), at 13 (“the Commission has determined that a variety of organizational forms for RTOs, including for-profit transcos, are acceptable so long as they meet the minimum characteristics and functions”).

⁵ Notice of Filing, 65 Fed. Reg. 64,207 (Oct. 26, 2000).

⁶ Petition of Southern Company Services, Inc. for Declaratory Order, Docket No. RT01-77 (Oct. 16, 2000).

⁷ Order No. 2000 Joint Compliance Filing of Florida Power & Light Company, Florida Power Corporation, and Tampa Electric Company, Docket No. RT01-67 (Oct. 16, 2000).

⁸ Application of Entergy Services, Inc. for Approval of a Regional Transmission Organization and Approval of the Transfer of Transmission Assets to a Regional Transmission Organization, Docket No. RT01-75 (Oct. 16, 2000).

⁹ RTO Proposal of Southwest Power Pool, Inc., Docket No. RT-01-34 (Oct. 13, 2000). SPP included utilities covering portions of Arkansas, Louisiana, Mississippi, and Texas. FERC approved the SPP as an RTO in 2004.

¹⁰ 94 FERC ¶ 61,273 (March 14, 2001), on rehearing, 95 FERC ¶ 61,282 (May 30, 2001).

¹¹ 94 FERC ¶ 61,363 (Mar. 28, 2001).

¹² 94 FERC ¶ 61,273 (March 14, 2001), on rehearing, 95 FERC ¶ 61,282 (May 30, 2001).

¹³ 94 FERC ¶ 61,273 (Mar. 14, 2001), at 17–18 (drawing from the GridFlorida model for this directive).

¹⁴ 94 FERC ¶ 61,273 (Mar. 14, 2001), at 59–60. In the March 12 and July 12 Orders, FERC also directed GridSouth to strike a sentence in the OATT agreement that said, “transmission owners will continue to be responsible for planning their systems to serve their native load customers.” 96 FERC ¶ 61,067 (July 12, 2001), at 30–31.

¹⁵ 96 FERC ¶ 61,067 (July 12, 2001), at 4. The Intervenor had gone further, charging that the appointment “creates a strong impression that the proposed GridSouth RTO is merely an extension of its three founding members.” *Id.*

¹⁶ 96 FERC ¶ 61,067 (July 12, 2001), at 25–28.

¹⁷ 96 FERC ¶ 61,067 (July 12, 2001), at 11.

¹⁸ FERC ¶ 61,273 (Mar. 14, 2001), at 27 (noting that GridSouth is “represents a good first step toward the creation of an RTO in the Southeast region and can serve as a platform for the formation of a larger RTO in the Southeast”); 94 FERC ¶ 61,363 (Mar. 28, 2001), at 28.

- ¹⁹ 94 FERC ¶ 61,273 (Mar. 14, 2001), at 29. Status reports with FERC suggest that GridSouth utilities and Santee Cooper met on several occasions, had “sufficiently productive [exchange] to justify some cautious optimism,” but never reached agreement. See Status Report, Docket No. RT01-74 (May 14, 2001).
- ²⁰ 95 FERC ¶ 61,282 (May 30, 2001), at 7–8.
- ²¹ 96 FERC ¶ 61,067 (July 12, 2001), at 39–40.
- ²² 96 FERC ¶ 61,067 (July 12, 2001), at 2.
- ²³ 96 FERC ¶ 61,067 (July 12, 2001), at 7–8.
- ²⁴ Mediation Report, Docket No. RT01-100-000 (Sept. 10, 2001), at 123.
- ²⁵ See, e.g., North Carolina Utilities Commission Motion for a Stay of the July 12, 2001 Order on Compliance Filing and the Order Initiating Mediation, Docket No. RT01-74 (Aug. 13, 2001) (“The July 12 Orders drop any pretense that meaningful State participation is appropriate, must less that it’s required”).
- ²⁶ FERC Order Announcing the Establishment of State-Federal Regional Panels to Address RTO Issues, Modifying the Application of Rule 2201 in the Captioned Dockets, and Clarifying Order No. 607 (Nov. 9, 2001).
- ²⁷ FERC Transcript of Southeast State-Federal Regional RTO Panel Discussion (Feb. 15, 2002), at 26 (Arkansas), 61 (Mississippi), and 90 (Texas).
- ²⁸ *Id.*, at 64–65.
- ²⁹ *Id.*, at 96.
- ³⁰ Order Terminating Proceedings (Dec. 22, 2004), at 2.
- ³¹ GridSouth Transco, LLC, CPL Company, Duke Energy, South Carolina Electric & Gas; Notice of Filing, 70 Fed Reg. 49916 (Aug. 25, 2005).
- ³² 115 FERC ¶ 61,341, Order Terminating Dockets (June 19, 2006).
- ³³ An Act to Establish the Study Commission on the Future of Electric Service in North Carolina, North Carolina S.B. 38 (1997); S.L. 1997-40. The Commission was later expanded to 30 members
- ³⁴ North Carolina S.B. 38 (1997), Section 2.
- ³⁵ *Id.* at Section 2(3), (8), (13), (14), and (15)–(19).
- ³⁶ Customer Choice in Electricity Act of 1997, North Carolina House Bill 1127.
- ³⁷ See, e.g., Estimates of the Benefits and Detriments of Electric Industry Restructuring in North Carolina, [Volume 1: Overview of Methodology and Summary of Results Final Report](#) (Oct. 1999).
- ³⁸ The Future of Electric Service in North Carolina, [Task 1: Public Hearings](#) (Oct. 1998).
- ³⁹ In the 1970s, Duke and Progress were constructing nuclear plants as interest rates began skyrocketing. To raise much-needed capital for the projects, the utilities approached public power entities and offered ownership shares. In 1975, state legislation authorized North Carolina municipal utilities to form a joint agency which could, in turn, co-own generation assets with investor-owned utilities. Two years later, North Carolina amended the state constitution to enable municipal utility ownership of generation resources with private entities. In 2015, Duke Energy agreed to buy back the ownership shares. See Senate Bill 305: NCEMPA Asset Sale (2015), [https://dashboard.ncleg.net/api/Services/BillSummary/2015/S305-SMTD-74\(sl\)](https://dashboard.ncleg.net/api/Services/BillSummary/2015/S305-SMTD-74(sl)); John Downey, [Duke Energy Closes \\$1B-plus Purchase of Power-Plant Shares from N.C. Municipal Utilities](#), Charlotte Business Journal (July 31, 2015).
- ⁴⁰ Study Commission Final Report, at 3.
- ⁴¹ Study Commission Final Report, Recommendation 1, at 7; see also <http://www.utilityregulation.com/content/reports/North%20Carolina.htm>.
- ⁴² Study Commission Final Report, Recommendations 5 and 6, at 9–11.
- ⁴³ Study Commission Final Report, at 4; Recommendation 4, at 9.
- ⁴⁴ See, e.g., Nancy Vogel and Nancy Rivera Brooks, [Rolling Blackouts Push Energy Crisis from Threat to Reality](#), LA Times (Jan. 18, 2001); The Congressional Budget Office, [Causes and Lessons of the California Energy Crisis](#) (September 2001), at ix; Jennifer Coleman, [Rolling Blackouts Hit California](#), The Washington Post (May 8, 2001).
- ⁴⁵ Laura M. Holson, [California’s Largest Utility Files for Bankruptcy](#), The New York Times (Apr. 7, 2001).