

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Long Term Transmission Rights in  
Markets Operated by Regional  
Transmission Organizations and  
Independent System Operators

Docket No. AD05-7-000

**SUPPLEMENTAL COMMENTS OF THE  
TRANSMISSION ACCESS POLICY STUDY GROUP**

The Transmission Access Policy Study Group (“TAPS”) respectfully submits Supplemental Comments in response to the Commission’s May 11, 2005, “Notice Inviting Comments on Establishing Long Term Transmission Rights in Markets with Locational Pricing” in the above-captioned proceeding (“May 11 Notice”). Specifically, TAPS: (1) clarifies that the long-term transmission rights recommended by TAPS in its June 27, 2005 Comments are not intended to last beyond the end of the LSE resource commitments with which they are associated; and (2) urges the Commission to clarify the definition of “Load-Serving Entity” (“LSE”) to expressly include joint action agencies and generation and transmission (“G&T”) cooperatives.

**A. *Long-Term Rights Should Be Available for Terms Up to the Length of the LSE’s Resource Commitment***

It has come to TAPS’ attention that our June 27, 2005 Comments may have been misread to suggest that we are proposing eternally-renewable long-term transmission rights.<sup>1</sup> To avoid confusion, we wish to make clear that our intent was that long-term rights could not be renewed beyond the end of the LSE’s resource commitment. We

---

<sup>1</sup> See, e.g., “EPSA Warns FERC on Long-Term Rights,” *Electricity Daily*, July 11, 2005, at 1 (stating that in TAPS’ earlier filing in this proceeding [June 27, 2005 Comments], TAPS suggested eternally-renewable

believe that this limitation was implicit in TAPS' June 27 Comments. TAPS recommended tying long-term rights to specific resource commitments; and our preferred solution, Dispatch Contingent FTRs, would necessarily terminate when the LSE's resource commitment ended.

In order to prevent any additional misunderstanding, however, we wish to clarify that TAPS recommends long-term transmission rights tied to an LSE's specific resource commitments, and that the long-term transmission rights associated with a particular resource not extend beyond the term of the LSE's commitment to that resource. If, as TAPS has proposed, long-term transmission rights are implemented in the form of rights of ten-year duration, with a rolling right to renew, the renewal right would be limited to the duration of the associated LSE resource commitment. For example, assuming a ten-year notice period for renewals, an LSE with a thirty-year resource commitment would receive an initial ten-year right, with a rolling right to renew that the LSE could exercise each year during years 1 through 20. If the renewal right is exercised annually through the 20<sup>th</sup> year, the remaining 10-year term of the long-term right, as renewed, would cover the full 30-year duration of the LSE's resource commitment.

***B. The "Load-Serving Entities" Eligible to Receive Long-Term Rights Should Include Joint Action Agencies and G&T Coops***

The definition of "Load-Serving Entity" in the May 11, 2005 Staff Discussion Paper attached to the May 11 Notice, appears not to include municipal joint action agencies or G&T cooperatives. According to the Staff Paper (at 3 n.3), "[a]n LSE is any entity that serves retail load." As the Commission is aware, however, many municipal

---

long-term transmission rights).

systems have created joint action agencies that aggregate their municipal loads for purposes of obtaining power supply and transmission in wholesale markets. In such cases, the joint action agency, not the individual municipal members, enters into contracts for wholesale transmission service with transmission providers, nominates and schedules wholesale transmission service, and enters into wholesale power supply arrangements to serve municipal systems. G&T cooperatives perform similar functions for retail distribution cooperatives. Joint action agencies are wholly-owned and controlled by their municipal distribution members. The interest of these entities is the interest of their distribution system members, many of which are too small to participate individually in the new organized electricity markets.

Any long-term rights regime should reflect the real-world operation and contractual arrangements existing in the industry. Joint action agencies and G&T cooperatives should be deemed “load-serving entities” for purposes of obtaining long-term FTRs or other long-term transmission rights in RTOs with locational markets.

Broadening the definition of “load-serving entity” in this manner is fully consistent with, and in fact will be required by, Section 1233 of the Energy Policy Act of 2005, which was signed into law on August 8, 2005.<sup>2</sup> This provision adds to the Federal Power Act a new Section 217 that would, among other things, require “[t]he Commission [to] exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of

---

<sup>2</sup> Energy Policy Act of 2005, 109th Cong., H.R. 6 (H. Rept. 109-190).

load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long term basis for long term power supply arrangements made, or planned, to meet such needs.” According to Section 217(a)(2), “load-serving entity” “means a distribution utility or an electric utility that has a service obligation;” and Section 217(a)(1) defines “distribution utility” to mean “an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through 1 or more additional State utilities or electric cooperatives, provides electric service to end-users.”<sup>3</sup> These provisions expressly encompass municipal joint action agencies and G&T cooperatives within the definition of “load-serving entity.” The Commission should apply that definition here.

---

<sup>3</sup> According to new Section 217(a)(4): “The term ‘State utility’ means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any 1 or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any 1 or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power.”

## CONCLUSION

TAPS requests that the Commission accept TAPS' brief Supplemental Comments and provide for the long-term rights necessary to ensure just and reasonable wholesale power rates, in accordance with the supplemental comments set forth above, as well as the comments TAPS previously filed in this proceeding.

Respectfully submitted,

*/s/ Cynthia S. Bogorad*

---

Robert C. McDiarmid  
Cynthia S. Bogorad  
William Huang

Attorneys for  
Transmission Access Policy Study  
Group

Law Offices of:  
Spiegel & McDiarmid  
1333 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 879-4000

August 9, 2005