UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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| Locational Exchanges of Wholesale Electric Power | Docket No. RM11-9-000 |

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

The Transmission Access Policy Study Group ("TAPS") submits its comments regarding the Commission's February 17, 2011 Notice of Inquiry ("NOI") regarding the propriety of locational exchanges of wholesale electric power.[1] As demonstrated below, TAPS believes that locational exchanges ("LEs") serve legitimate purposes that enhance the Commission's policy goals of enabling the efficient and reliable use of generation resources and the transmission grid, reducing congestion, and facilitating investment in remotely located renewable resources. Based on its examples regarding how LEs are used and the benefits they provide, TAPS sees no problem that needs to be addressed by this Commission.

However, if information submitted by others demonstrates that certain LEs may create adverse impacts, TAPS urges the Commission to be careful in formulating any new rules limiting LEs, so as not to prevent TAPS members and other load-serving entities from engaging in the types of transactions described here, which are vital to enable load-serving entities to overcome logistical hurdles to full use of their valuable resources. TAPS is particularly concerned that a number of recent proposals, initiated or

[1] Locational Exchanges of Wholesale Electric Power, Notice of Inquiry, 76 Fed. Reg. 10,353 (Feb. 24, 2011), FERC Stats. & Regs. ¶ 35,570 (2011).

approved by the Commission, will raise costs to end-users at a time when the economy is still struggling and consumers can ill afford it. Examples of such proposals include new minimum credit rules for regional transmission organizations, payment of locational marginal clearing prices to providers of demand response, new rules for intermittent resources, and structuring of and bidding rules for capacity markets. Each such proposal may not by itself have an enormous impact, but cumulatively these Commission actions are placing additional cost burdens on consumers, without ensuring that they receive commensurate benefits. In this context, it is particularly important that any limitations on LEs be carefully crafted to preserve the ability of load-serving entities to engage in LEs where necessary to overcome obstacles to efficient utilization of their resources.

Thus, if the Commission concludes that some action is required, it should consider means of policing LEs that would be less onerous than restricting or requiring Commission approval of each transaction. In any event, any new rules emerging from the NOI must have prospective effect, as indicated in Paragraph 1 of the NOI, leaving intact existing LEs on which wholesale market participants already rely.

## I. INTERESTS OF TAPS

TAPS is an association of transmission-dependent utilities in more than 30 states, formed for the purpose of promoting open and non-discriminatory transmission access.[2] As entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS members recognize the need to ensure that all parties observe the rules of the road established in the open access transmission tariff. However, as

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[2] Tom Heller, Missouri River Energy Services, chairs the TAPS Board. Cindy Holman, Oklahoma Municipal Power Authority, is Vice Chair.

demonstrated by the examples discussed below, LEs can serve a legitimate role in enabling load-serving entities to make full use of valuable resources, in a manner that does not violate either the letter or the spirit of the OATT.

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## II. COMMENTS

TAPS does not believe that the wariness of LEs evident in the NOI is well grounded. LEs can and do serve the same purposes and goals the Commission sought to advance in Order 890,[3] such as making the most efficient and best possible uses of limited transmission capability and facilitating use of clean energy resources such as wind power.

### *A. Types of Locational Exchanges TAPS Members Engage In*

The Commission has asked market participants to describe how they use and benefit from LEs. NOI P 11. TAPS members do not approach LEs as a means for short-term profits or arbitrage. Rather, they resort to LEs as a creative means of addressing

[3] Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) ("Order 890"), *order on reh'g and clarification*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification*, Order No. 890-C, 74 Fed. Reg. 12,540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 Fed. Reg. 61,511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

problems that arise in connection with their ability to use long-term resources that will benefit their customers. While they may not frequently engage in LEs, it is important to TAPS members that they be able to enter into such transactions from time to time when necessary to overcome obstacles to planned use of their resources.

Generally speaking, the types of LEs in which TAPS members engage are of a fairly long-term duration, *i.e.*, a period of multiple years. They are memorialized in written agreements, freely negotiated by the LE parties. The quantities of power being exchanged depend on the size of the parties involved and the circumstances giving rise to the need for the LE, but the existing transactions of which we are aware are of fairly limited size.

The best way to provide the Commission with a sense of the types of transactions TAPS members engage in – and which deserve the Commission's protection – is to describe some examples of actual LEs that they currently have in effect. This is not a scientific sampling, and will necessarily fail to capture the broad range of obstacles that LEs may help load-serving entities work around. However, it should illustrate the valid purposes served by LEs in which TAPS members engage from time to time.

1. Iatan II Exchange

Our first example is an LE between TAPS member Missouri Joint Municipal Electric Utility Commission ("MJMEUC") and one of its member cities, Columbia, Missouri. MJMEUC has an undivided ownership interest of approximately 100 MW in the recently completed Iatan II coal-fired baseload unit located on the transmission system owned by Kansas City Power & Light ("KCPL"), which is part of the Southwest Power Pool ("SPP"). While the unit was still under construction, and more or less simultaneously with entering into the joint ownership agreement with KCPL and the

other co-owners of Iatan II, MJMEUC entered into a cost-based, life-of-unit agreement to sell a share (approximately 20 MW) of unit capacity and energy from its ownership interest to Columbia. This agreement commits Columbia to pay its share of MJMEUC's fixed costs – primarily principal and interest on bonds – related to its Iatan II ownership, whether or not Columbia can utilize the Iatan II energy. This take-or-pay aspect of the agreement was necessary to support MJMEUC's ability to finance its share of the Iatan II construction costs.

Columbia is a transmission-owning member of the Midwest Independent Transmission System Operator ("MISO"), has its own transmission pricing zone, and takes network transmission service in MISO. In anticipation of Iatan II entering commercial operation, Columbia and MJMEUC worked together to obtain the transmission service that would be necessary for delivery to Columbia of its share of the Iatan II output. This included a request for point-to-point service on the SPP system to MISO and designating the Iatan purchase as a network resource for Columbia on the MISO system.

As completion of the unit approached, KCPL took the position that all off-takers from Iatan II must utilize automatic generation control for dispatch of their entitlements, and that Columbia would need to pseudo-tie its share of the unit's output into MISO. Pseudo-tying Columbia's Iatan II entitlement would mean that its 20 MW entitlement is a resource internal to MISO, and therefore subject to MISO's dispatch control.[4] However, the vast majority of Iatan II – which has a total capacity of approximately 850 MW –

[4] If Columbia's share of Iatan II were not pseudo-tied to MISO, it would be considered an external resource that could be scheduled into the market by Columbia, and would not be subject to MISO dispatch orders.

would be bid into the SPP market and subject to SPP's dispatch control. It is obviously problematic to have two different RTOs exercising dispatch control over portions of the capacity of unit.

The solution to this problem was an LE transaction between MJMEUC and Columbia. MJMEUC had available a firm purchased-power resource in MISO that could be used to serve Columbia's load in MISO, and MJMEUC serves load in SPP that could utilize additional energy from Iatan II. The parties entered into a two-year agreement under which, in each hour, MJMEUC schedules 20 MW of energy from its MISO-area firm purchase to be delivered to Columbia, and Columbia's 20 MW of unit-contingent power from Iatan II is scheduled for use by MJMEUC's load in SPP. Each party remains obligated to pay what it originally agreed to pay its counterparty under their original agreements.[5]

MJMEUC has arranged and pays for point-to-point transmission service on SPP for delivery of the 20 MW of Iatan II energy to MJMEUC's load. Columbia has designated the firm purchased power sourced in MISO as a network resource for the period covered by the LE agreement.[6] Thus, both ends of the LE are supported by the

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[5] The only times any money changes hands under the LE agreement are as follows: (a) during periods when MJMEUC receives less than the full 20 MW of energy from Iatan II (due to operating limitations or transmission curtailment or interruption), Columbia is required to pay for the energy received from MJMEUC that was not offset by MJMEUC's receipt of Iatan II energy, and (b) in the event that MJMEUC's supplier fails to deliver the firm energy scheduled for Columbia, MJMEUC passes on to Columbia its share of the damages MJMEUC receives from the supplier.

[6] Columbia's designation of Iatan II as a network resource has been postponed until the conclusion of the LE, and MJMEUC has worked with MISO, the seller, and Columbia to ensure that 20 MW of Planning Resource Credits from MJMEUC's firm purchase were transferred to Columbia.

necessary transmission arrangements and no transmission provider or owner is being deprived of revenues.[7]

This LE enables Columbia to effectively obtain the value of a long-term resource, despite the obstacles presented by its resource being located in another RTO. MJMEUC and Columbia hope that circumstances will eventually allow Columbia to utilize its Iatan II entitlement directly, but until the current issues with such use have been resolved, the LE transaction is the best means for Columbia to virtually obtain the Iatan II energy associated with the fixed costs it must pay.

2. Wessington Springs Wind Power Exchange

The Heartland Consumers Power District ("Heartland"), a public-power system in South Dakota,[8] recently entered into a long-term agreement to purchase the entire output of the 51 MW Wessington Springs wind farm. The Wessington Springs project is a low-cost resource with a relatively high capacity factor for wind generation (approximately 45%).

This 51 MW wind resource represents a fairly significant portion of Heartland's total portfolio, so Heartland entered into an agreement with the Municipal Energy Agency of Nebraska ("MEAN"), a TAPS member, to sell MEAN 10 MW of the power from this project. While the purchase of the energy itself was attractive to MEAN, and helped Heartland to "right-size" its own participation in the project, the transmission

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[7] Indeed, because the pseudo-tie wrinkle introduced by KCPL did not arise until fairly late in the game, Columbia had already committed to pay for point-to-point transmission service from SPP to MISO for delivery of its 20 MW of Iatan II entitlement, which it now has no need for during the period of the LE. Therefore, SPP is receiving revenues from Columbia that are in addition to those for service needed to accomplish the LE.

[8] Heartland also serves load in Iowa and Minnesota.

arrangements that would be necessary to deliver MEAN's share of the output of the Wessington Springs project in South Dakota to MEAN's load in Nebraska (in SPP) were daunting. MEAN would have to either take the risk of relying on non-firm transmission service stretching across an RTO market seam, or pay for a 10 MW firm point-to-point reservation at all times that would only be used to deliver energy from the wind project about 45% of the time, and in each case over two transmission systems.[9] MEAN therefore proposed an LE with Heartland as a means to avoid these inefficiencies.

Under the LE arrangement, Heartland utilizes MEAN's 10 MW of wind output to serve Heartland's network loads on the Integrated System in South Dakota, and schedules for delivery to MEAN's load in Nebraska an equivalent amount of energy (generally in the range of 4 MW, but it varies from time to time with the actual capacity factor of the wind project) from resources located in Nebraska (where Heartland does not have any load) to which Heartland is entitled. MEAN continues to pay Heartland the contract rate for the 10 MW of wind energy as though that energy were delivered directly to MEAN, and Heartland continues to bear the costs of the resources it schedules for delivery to MEAN in Nebraska. MEAN obtains transmission service from SPP to deliver the energy from these resources to MEAN's network loads within the Nebraska Public Power District.[10] Likewise, Heartland utilizes network service over the Integrated System to deliver the full output of the wind farm to its loads located nearer to the generation in South Dakota.

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[9] MEAN's load is located within SPP, and the wind project is located within the Integrated System co-owned by Western Area Power Administration, Basin Electric Power Cooperative, and Heartland.

[10] MEAN has designated as a network resource the generation that Heartland provides to MEAN under the LE arrangement. MEAN has not designated the Wessington Springs purchase as a network resource.

Two of the Commission's stated goals in its recent reform of the *pro forma* OATT were to "increase the efficient utilization of transmission" and "facilitate[] the use of clean energy resources such as wind power."[11] This LE transaction advances both of these policy goals. The LE reduces congestion and mitigates the need for curtailments as well as the difficulties, delays and hefty costs associated with planning, siting and constructing new transmission (which have recently resulted in very significant transmission rate increases in Nebraska), while ensuring the deployment of high-capacity-factor wind resources in remote locations in the upper Midwest. It thus enhances the nation's ability to integrate and beneficially use renewable resources, and allows load-serving entities to optimize use of resources, without increasing costs to consumers. LEs such as these therefore merit protection, if not encouragement, by the Commission.

3. Federal Power Marketing Agency Entitlement Exchanges

In addition, TAPS is aware that federal power marketing agencies ("PMA"), including the Western Area Power Administration , engage in LEs in order to ensure delivery of federal entitlement power to their customers. This may occur when, despite having firm transmission, a PMA encounters repeated curtailments due to regional congestion. TAPS is aware of LEs that have been entered into in which a PMA agrees to provide energy to a counterparty with load nearer to the PMA's hydroelectric resources in exchange for the counterparty providing equal quantities of energy – from resources the counterparty has that are located on the other side of the constraint – to the PMA's

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[11] *See, e.g.*, Order 890, PP 4-5. *See also id.* P 7, noting the Commission's goal of "increas[ing] the efficient use of existing capacity."

entitlement customers. In at least some cases, the PMAs' deliveries remain in the Western interconnection and are exchanged for resources delivered by the counterparty to the PMA's customers in the Eastern interconnection.

As a result of such LEs, the PMA's customers enjoy more reliable delivery of energy associated with their allocation entitlements, and thereby receive the full benefit of their federal entitlements. Furthermore, such LEs may produce counterflow to the normal regional flows, thus reducing regional congestion.

### *B. LEs Such As Those Described Herein Enhance Efficiency and Raise None of the Concerns the Commission Lists in the NOI*

The examples discussed herein should demonstrate that there is nothing inherently pernicious about LEs. The LEs we have described do not give rise to any of the potential problems with LEs posited in the NOI. They do not contribute to transmission system congestion (NOI Section II.B).[12] Indeed, the redispatch of generation provided for in an LE can actually ameliorate congestion. The LEs described herein are transparent and do not involve misuse of network service to avoid a constraint within a transmission system (*id.* Section II.D); the TAPS examples involve exchanges on two separate transmission systems, and in some cases two separate RTOs. These LEs likewise do not give rise to any concerns regarding merchant affiliate abuse (*id.* Section II.C), discrimination in the

[12] The Commission expresses this concern in Paragraphs 12 and 16, illustrated by Figure 1. The example the Commission offers in support of this concern assumes that use of LEs by parties in situations where transmission for the primary transaction is unavailable due to constraints would exacerbate congestion where "[d]ispatch of Party B's generation remains physically unchanged after exchange, despite the sale of capacity from Party B to Party A" (*id.*, Figure 1). TAPS does not believe there is any basis to assume that such transactions occur frequently. None of the examples TAPS has presented would involve such a situation; in each instance, the parties on each side of the LE are providing equal quantities of energy.

provision of transmission service (*id.* Section II.E), price reporting (*id.* Section II.F), or system reliability (*id.* Section II.G).[13]

To the contrary, LEs can be enormously useful in allowing load-serving entities to make full use of their valuable resources, where transmission deficiencies or other obstacles such as ever-changing RTO seams would interfere with such full and efficient utilization. Just as, in pre-internet days, the FTD[14] "flowers by wire" concept made it practical and cost-effective for customers to "send" flowers to their far-off loved ones without the need for physically shipping actual flowers over long distances, LEs make transactions work that otherwise could be thwarted by logistical difficulties. The recipient of an FTD flower delivery would receive flowers provided by a local florist rather than the ones the sender viewed and paid another supplier for in another state, and likewise each recipient in an LE transaction receives electrons from a different source than its contractual supplier. But in each case the product is sufficiently fungible that it makes no difference, and the customers are better and more efficiently served.

Indeed, to draw an analogy more closely tied to the electric industry, LEs are very like planning redispatch that is self-arranged by the contracting parties, without the need to involve the transmission provider. In Order 890, the Commission recognized that planning redispatch was a valuable tool for maximizing the efficient use of existing

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[13] In the NOI, the Commission seems to be worried that transmission owners will lose out on transmission revenues that they would otherwise have received absent an LE, and at the same time the NOI suggests that it is concerned that LEs are being somehow improperly employed to avoid congestion. These positions are inconsistent to some degree. Certainly, where a wholesale market participant resorts to a "plan B" transaction such as an LE because its application for firm transmission service has been denied due to constraints, the transmission provider can hardly have any valid expectation of being paid for transmission service that it cannot provide.

[14] Florists' Transworld Delivery.

transmission capacity. Further, the Commission required transmission providers to inform a transmission customer of potential third-party sources of redispatch service identified in the course of studying the customer's service request, and otherwise facilitate the customer's ability to make bilateral arrangements for redispatch service.[15] The principal difference between such use of planning redispatch and LEs is that LEs are simpler because they change the source of the energy to be used by the transmission customer throughout the duration of the LE, rather than causing a shift in resources only sporadically when certain conditions arise.

## III. CONCLUSION AND RECOMMENDATIONS

It is difficult for TAPS to understand why the NOI views LEs with evident suspicion. TAPS is unaware of situations in which LEs have been abused by market participants in the manner postulated in the NOI, and therefore does not believe that any rulemaking is necessary to guard against such abuses.

However, in the event that comments submitted by other participants in this proceeding demonstrate abuse of LEs and specific harms that stem therefrom, TAPS urges the Commission to be careful in formulating any new rules limiting LEs, so as not to prevent TAPS members and other load-serving entities from engaging in the types of transactions described here, which are vital to enable wholesale market participants to overcome logistical hurdles to full use of their valuable resources.

In addition, if the Commission concludes that some LE rules need to be adopted, it should consider means of policing LEs that would be less onerous than requiring Commission approval of each transaction. For example, if comments showed that LE

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[15] Order 890, PP 1003-1007.

transactions across RTO borders are susceptible to abuse, the Commission could charge market monitors with the duty to watch for such abuse. Because TAPS believes most such LEs are likely legitimate transactions that serve to avoid difficult and costly inter-RTO barriers, they should be allowed to go forward subject to market monitoring rather than case-by-case approval.

In any event, any new rules emerging from the NOI must have prospective effect, as indicated in Paragraph 1 of the NOI, leaving intact existing LEs. As noted above, some LEs are of very long duration and the parties to them should be entitled to continue to rely on them in order to realize the value of their long-term resources.

Respectfully submitted,

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