UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning Reliability Standards	Docket No. RM11-18-000

COMMENTS OF TRANSMISSION ACCESS POLICY STUDY GROUP

On October 20, 2011, the Commission issued a Notice of Proposed Rulemaking ("NOPR")[1] proposing to remand Table 1, footnote b to four planning standards (TPL-001-1, TPL-002-1b, TPL-003-1a, and TPL-004-1), which was submitted for approval on March 31, 2011 by the North American Electric Reliability Corporation ("NERC"). The Transmission Access Policy Study Group ("TAPS") submits these Comments in support of Commission acceptance of footnote b as submitted by NERC. To better ensure the adequacy of footnote b's "open and transparent stakeholder process that includes addressing stakeholder comments," NOPR P 7, the Commission should grant TAPS' request for rehearing of Order 1000[2] on the issue of decision-making within the Order 890[3] and Order 1000 planning processes and take steps to foster joint transmission arrangements. As described below, footnote b could be implemented in a manner that

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[1] Transmission Planning Reliability Standards, 76 Fed. Reg. 66,229 (proposed Oct. 20, 2011), FERC Stats. & Regs. ¶ 32,683 (proposed 2011).

[2] Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011) ("Order 1000").

[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 890-A"), *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).

addresses the Commission's concerns regarding the stakeholder process. If, however, the Commission determines that more robust action in this proceeding is required, the Commission should accept NERC's proposal and direct NERC to submit a further modified footnote b to address the parameters of the "open and transparent stakeholder process that includes addressing stakeholder comments."

INTEREST OF TAPS

TAPS is an association of transmission-dependent utilities ("TDUs") in more than 30 states, promoting open and non-discriminatory transmission access.[4] As transmission-dependent utilities, TAPS members have long recognized the importance of grid reliability. As TDUs, TAPS members are users of the Bulk- Power System, highly reliant on the reliability of facilities owned and operated by others for the transmission service required to meet TAPS members' loads. In addition, many TAPS members participate in the development of and are subject to compliance with NERC Reliability Standards. Thus, TAPS is sensitive to both the need for standards to support grid reliability, as well as the need to make the standards clear and cost-effective.

In particular, the participation of TAPS members that serve what is clearly the fringe of the electric system, as well as those not on the fringe but who have borne the economic and reliability brunt of interruptions of firm transmission service due to inadequacies in the surrounding grid, makes TAPS uniquely qualified to submit comments that fairly address the issues posed by this NOPR. Specifically, TAPS includes among its members the Florida Municipal Power Agency, which serves Key

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[4] Tom Heller, Missouri River Energy Services, chairs the TAPS Board. Cindy Holman, Oklahoma Municipal Power Authority, is TAPS' Vice Chair. John Twitty is TAPS' Executive Director.

West, a city at the extreme fringe of the electric grid and for which planning to avoid loss of non-consequential load would be prohibitively expensive. On the other hand, TAPS includes Lafayette Utilities System, which has long suffered from uncompensated curtailment of its firm transmission service.[5]

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I. COMMENTS

As detailed in the NOPR (PP 5-6), NERC's footnote b filing stems from an Order 693 directive[6] regarding planning for loss of non-consequential load in the event of a single contingency. That directive was followed by a further Commission directive as part of the March 18, 2010 series of reliability orders,[7] as clarified by order of June 11, 2010.[8] The Commission's footnote b directives recognize the potential need for regional

[5] *See, e.g.*, Written Statement of Terry Huval on Behalf of the Lafayette Utilities System and the Transmission Access Policy Study Group, Docket No. RM04-7-000 (Jan. 31, 2005), eLibrary No. 20050131-5059 (prepared for the January 28, 2005 Technical Conference on Market Based Rates for Public Utilities).

[6] Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, 72 Fed. Reg. 16,416, 16,583 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, P 1794 (2007), *effective date stayed*, 72 Fed. Reg. 31,452 (June 7, 2007), *aff'd*, Order No. 693-A, 72 Fed. Reg. 40,717 (July 25, 2007), 120 FERC ¶ 61,053 (2007).

[7] Mandatory Reliability Standards for the Bulk Power System, 130 FERC ¶ 61,200 (2010).

[8] Mandatory Reliability Standards for the Bulk Power System, 131 FERC ¶ 61,231 (2010) ("June 2010 Order").

or case-specific exceptions to plan for the loss of firm service "at the fringes of various systems." *See* NOPR P 6 (quoting the June 2010 Order P 21).

NERC's proposed revision to footnote b includes the following language to address the directive regarding interruption of non-consequential load (NOPR P 7):

> Furthermore, in limited circumstances Firm Demand may need to be interrupted to address BES performance requirements. When interruption of Firm Demand is utilized within the planning process to address [Bulk Electric System] performance requirements, such interruption is limited to circumstances where the use of Demand interruption are documented, including alternatives evaluated; and where the Demand interruption is subject to review in an open and transparent stakeholder process that includes addressing stakeholder comments.

As summarized in the NOPR (PP 8-10), in response to the Commission's deficiency letter, NERC defended its proposal as an equally efficient and effective approach developed through the NERC standards development process. NERC explained that a one-size-fits-all approach is not workable because of the wide variety of system configurations and jurisdictional compacts. It stressed that reliance on existing stakeholder processes as implemented under Order 890 and state regulatory jurisdictions is likely to engage the appropriate local level decision-makers, while avoiding jurisdictional issues that are likely to produce conflicts and inconsistent results.

The NOPR proposes remand, based on concerns that (P 11):

> the procedural and substantive parameters of NERC's proposed stakeholder process are too undefined to provide assurances that the process will be effective in determining when it is appropriate to plan for interrupting Firm Demand, does not contain NERC-defined criteria on circumstances to determine when an exception for planned interruption of Firm Demand is permissible, and could result in inconsistent results in implementation.

The NOPR goes on to identify specific concerns about the quality of the stakeholder process and the lack of required technical rigor. *See, e.g.*, *id.* P 23 (noting the potential for transmission planner reliance on "a process that provides for minimal stakeholder involvement, providing scant reasons to reject any stakeholder input").

While TAPS supports Commission acceptance of footnote b as proposed by NERC, TAPS shares the NOPR's concerns about the adequacy of the "open and transparent" stakeholder process and has argued for a decision-making role for transmission-dependent utilities in the Order 890 and Order 1000 planning processes to ensure that stakeholder processes, particularly in non-RTO areas, are not "coffee and donuts" events that present and rubber-stamp decisions made by the Transmission Provider.[9] Despite TAPS' arguments, the Commission has reaffirmed that decision-making is left with the FERC-jurisdictional Transmission Providers,[10] although TAPS has continued to raise the lack of balanced decision-making on rehearing of Order 1000.[11] Thus, the best way to address the NOPR's concerns about the quality of the stakeholder process would be to strengthen Order 1000's requirements for a compliant stakeholder process, as TAPS has urged. Such action would not require remand of NERC's proposed footnote b.

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[9] *See, e.g.*, Request for Rehearing of the Transmission Access Policy Study Group at 7-14, Docket No. RM10-23-000 (Aug. 22, 2011), eLibrary No. 20110822-5109 ("TAPS Order 1000 Rehearing Request").

[10] Under Order 1000, decisions on which transmission facilities will be included in the regional plan or actually constructed are left "to the judgment of public utility transmission providers." Order 1000 P 68 & n.57; *see also id.* P 331. TDUs are entitled only to the opportunity for "consultation" and to offer "input" (*e.g.*, *id.* PP 68 & n.57, 153, 203, 207-09, 211, 331, 705; *see also* Order 890, PP 438, 454), which the Transmission Provider is free to disregard.

[11] TAPS Order 1000 Rehearing Request at 7-14.

Another way to enhance the quality of the stakeholder process is through joint ownership. In numerous proceedings, TAPS has highlighted joint ownership with TDUs in the host Transmission Owner/Transmission Provider footprint as an effective means to get needed transmission built.[12] One of the many benefits of joint transmission ownership arrangements, and an important reason for their strong track record, is the enhanced effectiveness of the transmission planning process where all load-serving entities ("LSEs") in the region are at the table as joint owners.[13] The Commission has recognized the benefits of joint ownership and encouraged such arrangements,[14] but has thus far failed to take actions to make that encouragement meaningful. Commission steps to promote transmission joint ownership arrangements, such as those TAPS has urged in its Order 1000 Rehearing Request[15] and in its comments on the Notice of Inquiry regarding transmission incentives,[16] would ameliorate concerns about the effectiveness of the stakeholder processes relied on in NERC's proposed footnote b.

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[12] *E.g.*, TAPS Order 1000 Rehearing Request at 30-33; Comments of the Transmission Access Policy Study Group at 6-9, Docket No. RM11-26-000 (Sept. 12, 2011), eLibrary No. 20110912-5145 ("TAPS Incentives NOI Comments").

[13] *See* Comments of Roy Thilly at 7-10, Docket No. AD08-13-000 (Nov. 13, 2008), eLibrary No. 20081113-5048 (delivered at the October 14, 2008 Technical Conference on Transmission Barriers to Entry). *See also* TAPS, *Effective Solutions for Getting Needed Transmission Built at Reasonable Cost* 12-13 (June 2004), *available at* http://www.tapsgroup.org/sitebuildercontent/sitebuilderfiles/effectivesolutions.pdf.

[14] *See* Order 1000, P 776; Order 890, PP 593-94; Order 890-A, P 264; Promoting Transmission Investment through Pricing Reform, Order No. 679, 71 Fed. Reg. 43,294, 43,332 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222, PP 354-57 (2006) ("Order 679"), *on reh'g*, Order No. 679-A, 72 Fed. Reg. 1152, 1168-69 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236, P 102 (2006) ("Order 679-A"), *clarified*, 119 FERC ¶ 61,062 (2007).

[15] *See* TAPS Order 1000 Rehearing Request at 32-33 (e.g., identifying joint ownership by TDUs as a feature that should receive positive consideration in the selection of projects for inclusion in regional plans and the selection of projects for regional cost allocation).

[16] *See* TAPS Incentives NOI Comments at 32-34 (e.g., applicants who seek incentive rate treatments should be required to state whether they are open to joint investment on reasonable terms by technically and financially qualified TDUs located in the relevant footprint (e.g., the state or region)).

Another alternative would draw on concepts identified in Paragraph 28 of the NOPR:

> NERC has raised concerns about conflicts among federal, provincial, state and local governing bodies that have jurisdiction over various parts of the planning, siting and construction process. There also may be concerns about the costs of planning to avoid Firm Demand shedding. The Commission seeks comment on whether a feasible option would be to revise footnote 'b' to allow for the planned interruption of Firm Demand in circumstances where the transmission planner can show that it has customer or community consent and there is no adverse impact to the Bulk-Power System. This presumably would not require affirmative consent by every individual retail customer, but we recognize that either term, customer or community, would need to be adequately defined. The Commission therefore seeks comments on who might be able to represent the customer or community in this option and how customer or community consent might be demonstrated. Additionally, we seek comment on how it would be determined that firm demand shedding with customer consent would not adversely impact the Bulk-Power System. However, we also seek comment on whether a customer who would otherwise consent to having its planning authority or transmission planner plan to interrupt Firm Demand pursuant to this option could instead select interruptible or conditional firm service under the tariff to address cost concerns.

Specifically, footnote b's requirement for an open and transparent stakeholder process that addresses stakeholder comments can and should be implemented by NERC by requiring registered entities (i.e., Transmission Planners) to document the consent of the affected transmission customer (in the case of planning for interruption of non-consequential firm transmission service in the event of a single contingency) and affected community, represented by the appropriate retail regulatory authority (in the case of interruption of non-consequential firm load in the event of a single contingency), as discussed below:

1) Interruption of firm transmission service: A customer that has contracted for firm transmission service under the OATT, whether point-to-point or network service, is entitled to rely on the TP planning to provide the firm service for which the customer has contracted and paid; a TP providing firm transmission service generally should not be allowed to plan on interrupting or curtailing firm transmission service not directly served by the elements removed from service as a result of a contingency. A TP that seeks to plan for non-consequential interruption of firm transmission service in order to ensure reliable operation of other portions of the interconnected Bulk-Power System under certain contingencies should be required to obtain the transmission customer's consent. A requirement to secure the affected firm transmission customer's consent would be consistent with Order 890's concept of conditional firm point-to-point service which "allow[s] the customer to *elect* to have its long-term firm transmission service interrupted under certain defined circumstances … to maintain firm service to other customers."[17] However, it should be clear that it would not be unreasonable for the customer to decline to consent where the customer is an existing firm point-to-point customer, rather than one requesting new service (as is the case for conditional point-to-point service). Similarly, there should be no expectation that a network customer will consent given the customer's dependence on such firm service to meet its load and the TP's planning and expansion obligations under the OATT (*e.g.*, Section 28.2); indeed, the Commission has

[17] Order 890, P 928 (emphasis added).

determined that conditional firm service is not available to network customers of its host TP system.[18]

2) Interruption of firm load: TAPS agrees with NERC that outside of the domain of firm transmission service provided under the OATT, issues pertaining to whether it is permissible to plan to interrupt firm load involves conflicts among federal, provincial, state and local governing bodies that have jurisdiction over various parts of the planning, siting and construction process, particularly given the potential costs of planning to avoid Firm Demand shedding. An approach that required community consent for such interruption seems well-designed to permit the authorities with jurisdiction to balance competing considerations. The Commission, in other contexts, has already defined "relevant electric retail regulatory authority" ("RERRA") as an entity capable of speaking for the community on issues pertinent to service and rate issues.[19] The entity with authority both to represent the population impacted and to allow, as prudent, cost recovery of investments made to prevent load curtailment is the right entity to speak for the community in this regard. While there may be room for some variation in a particular region, the RERRA or its designated representative could be the entity presumptively

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[18] Order 890, P 1092; Order 890-A, P 559. Conditional firm point-to-point service may, however, be used to import resources from a remote system, and still allow for qualification of that resource as a network resource designated on the network customer's host transmission system. Order 890, P 1091.

[19] Relevant electric retail regulatory authority is defined in Order 719, P 158(c), as the entity that establishes the retail electric prices and any retail competition policies for those customers, such as the city council for a municipal utility or the governing board of a cooperative utility. Wholesale Competition in Regions with Organized Electric Markets, Order No. 719, 73 Fed. Reg. 64,100, 64,119 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281, P 158 (2008), *on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (July 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

charged with providing the requisite consent. A TP that seeks to plan for non-consequential interruption of firm load in order to ensure reliable operation of other portions of the interconnected Bulk-Power System under certain contingencies should be required to obtain the consent of the applicable RERRA or its designated representative.

The NOPR (P 28) also seeks comments on "how it would be determined that firm demand shedding with customer consent would not adversely impact the Bulk-Power System." TAPS suggests that the planned interruption of firm transmission service or firm load at issue here is intended to *prevent* widespread adverse impacts on the Bulk-Power System. Further, the threshold for adverse impact on the BPS is likely to be larger than what would be acceptable to the affected transmission customer or community whose consent would be required.[20] If despite these arguments, the Commission sees the need to better ensure that adverse impacts are considered, we suggest inclusion of an analysis of the impact of the interruption on BPS reliability in the documentation.

Thus, the requirement in NERC's proposed footnote b for "an open and transparent stakeholder process that includes addressing stakeholder comments" could be implemented by NERC consistent with the objectives of NOPR Paragraph 28, taking account of the views of TAPS as set forth above. It would be consistent with the final sentence of proposed footnote b for NERC, when assessing compliance, to look for

[20] For example, the types of supply/demand mismatch that could impact the BES are often viewed as loss of the largest resource in a Reliability Coordinator area (typically in the 1000 MW range for a large nuclear unit), or the 1500 MW threshold identified in the CIP v4 standards that reflect typical Contingency Reserves of a region. *See* CIP-002-4, Att.1 § 1.1. The 300 MW uncontrolled loss threshold used for Department of Energy Electric Emergency Incident and Disturbance Reports (NOPR P 26) would similarly be unlikely to pass community muster. The 25 MW threshold for registration has no technical basis in terms of impact on BPS reliability.

evidence of consent by the affected transmission customer (in the case where the planning involved curtailment of firm transmission service, whether network or point-to-point, not on the element suffering the contingency) or the community (through the applicable RERRA or its designated representative, in cases where the planning involved interruption of non-consequential firm load).

If, however, the Commission determines that these objectives cannot be accomplished without more robust action from the Commission in this proceeding, TAPS urges the Commission not to remand the proposed footnote b (as the NOPR proposes), but instead to accept NERC's proposal and direct NERC to submit a further modified footnote b to address the parameters of the "open and transparent stakeholder process that includes addressing stakeholder comments." The Commission could identify the objectives described in NOPR Paragraph 28, taking account of the views of TAPS as set out above, as a reasonable approach to be considered in the standards development process. While TAPS is reluctant to support a Commission directive, it would be a better course than a remand, which would disregard the significant efforts of NERC and the industry that have gone into addressing this challenging issue, and would not advance the shared goal of enhancing reliability.

CONCLUSION

For the reasons set forth above, the Commission should approve NERC's proposed footnote b as filed. If the Commission sees the need for a more robust stakeholder process, it should grant TAPS' request for rehearing of Order 1000 on the issue of balanced decision-making within the planning process, rather than leaving decision-making to the Transmission Providers. In addition, the Commission should take steps to foster joint transmission arrangements with TDUs that not only have a track record of getting needed transmission built, but also significantly enhance the joint planning process by getting all LSEs in the region to the table as joint owners. Further, as described above, footnote b could be implemented in a manner that addresses the Commission's concerns regarding the stakeholder process.

If, however, the Commission determines that the objectives of NOPR Paragraph 28, as discussed in these TAPS Comments, cannot be accomplished without more robust action from the Commission, the Commission should not remand the proposed footnote b. Instead, the Commission should accept NERC's proposal and direct NERC to submit a further modified footnote b to address the parameters of the "open and transparent stakeholder process that includes addressing stakeholder comments."

Respectfully submitted,

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