Energy Bill Priorities
109th Congress
January, 2005

Over the last 15 years, TAPS has consistently supported the development of vigorously competitive, broad wholesale electric markets that are designed to facilitate the ability of load-serving entities to meet their obligations to customers reliably and economically over the long term. TAPS remains steadfast in support of this objective. TAPS believes that the FERC, for the most part, has the power necessary to achieve this objective. For this reason and also because passage of a comprehensive energy bill has proven so difficult, TAPS believes that the only issue that it is essential that Congress address at this time is reliability, and urges Congress not to allow another year to go by without addressing this crucial issue.

TAPS is very concerned that FERC's current focus on short-term locational marginal cost markets will not result in construction of generation and transmission needed for long-term electric price stability and reliability. In addition, we are in serious danger of ending up with increasingly complex and imperfect regulatory structures, including large market monitoring bureaucracies, in order to make wholesale markets only slightly more efficient and competitive. To avoid this problem and allow markets to function well with minimal bureaucratic intervention, the following elements are essential:

- A robust regional grid that (1) minimizes congestion, thereby reducing opportunities for gaming and manipulation and (2) forces vigorous generation competition that yields prices that are just and reasonable;

- Full price and terms transparency that maximizes competition by putting all market participants on an equal information footing and makes it difficult to hide misdeeds;

- A strong prohibition on any form of market manipulation, coupled with meaningful penalties that will deter misconduct, instead of struggling with the impossible task of trying to retroactively undo the rippling effects of manipulation after-the-fact; and

- Advance oversight of major transactions like utility mergers and generation acquisitions that threaten to undermine competitive wholesale markets.

In addition, if RTOs and the markets they administer are to provide net benefits to customers, RTOs must become much more cost conscious and cost effective, and must become directly accountable to customers, with a system of checks and balances put in place for new initiatives. Key assumptions, such as the use of "locational marginal pricing," need to be tested, with a focus on whether consumers are in fact benefiting from RTO initiatives.

Finally, both Congress and FERC need to recognize that many utilities, including consumer-owned utility systems, retain long-term obligations to serve customers on a cost-of-service basis and must plan and make long-term investment decisions and commitments to do so. Wholesale markets should facilitate the ability of these entities to meet their legal obligations to serve, not undermine them. To do so, market structures must result in transmission planning and transmission construction that meet the needs of load-serving utilities and provide utilities with the ability to secure long-term transmission rights that provide delivered price certainty for new resources like base load coal plants and wind generation that often cannot be built close to load.

A. What Congress Should Do

The only matter that demands immediate federal legislation is reliability. Particularly in light of the August 14, 2003 blackout, it is essential that Congress act promptly to enact the proposed industry consensus reliability legislation that would establish a system of mandatory, enforceable reliability rules that include meaningful penalties and apply to all market participants. (See Tab 1.)

If, however, Congress decides to legislate more comprehensively regarding electricity, the issues set forth below must be addressed, particularly if Congress proposes to repeal the consumer protections now included in the Public Utility Holding Company Act.

- **Native Load/Service Obligations**. Protect the ability of all load-serving entities, whether transmission owners or transmission-dependent utilities, to continue to use their existing transmission rights and to secure new, long-term transmission rights to meet their "obligation to serve" reliably and at reasonable cost. (See Tab 2, Item A.)

- **RTO Accountability.** Direct FERC to ensure that regional transmission organizations and independent transmission operators are accountable to customers and rigorously control costs in ways that provide clearly identifiable net benefits for customers, and to study and report to Congress on the short- and long-term impacts on consumers of locational marginal pricing. (See Tab 2, Item B.)

- **Transparency.** Enhance FERC's ability to require meaningful wholesale market transparency. (See Tab 2, Item C.)

- **Market Manipulation/Damages.** Provide FERC with express authority to prohibit all forms of market manipulation, and eliminate barriers to civil remedies for manipulation. (See Tab 2, Item D.)

- **Penalties/Refund Effective Date.** Authorize FERC to impose meaningful penalties for violations of the Federal Power Act, tariffs and FERC rules or orders, and eliminate current waiting periods and timing restrictions on refunds. (See Tab 2, Item E.)

- **Generation Transfers.** Clarify FERC's authority to review sales or transfers of generation-only assets to protect competitive markets. (See Tab 2, Item F.)

- **Transmission Siting.** Require the Department of Energy (DOE) to regularly assess transmission adequacy and empower FERC, as a backstop, to authorize siting of transmission facilities needed to eliminate constraints or congestion that adversely affects consumers. (See Tab 2, Item G.)

- **Inclusive Transmission Investment.** Encourage FERC to adopt policies promoting a strong grid through facilitating transmission investment by all segments of the industry, including load-serving entities on a load ratio share basis. (See Tab 2, Item H)

B. What Congress Should Not Do

An electricity title should not address the following issues:

1. **Pricing.** Do not mandate any specific form of transmission pricing, including "participant funding" or "rolled-in" pricing. (See Tab 3, Item A.)

2. **Incentives.** Do not mandate above-market returns for new transmission investment. (See Tab 3, Item B.)

3. **Provisions that Undermine FERC**. Do not restrict FERC's existing authority to mandate non-discriminatory open access transmission or to deal with market power. (See Tab 3, Item C.)

TAB 1

Appendix

What Congress Should Do

TAPS believes that the only matter that demands immediate federal legislation is reliability. It is essential that Congress act promptly to enact the reliability legislation that has long had broad support throughout the industry and which provides for mandatory and enforceable reliability standards that include meaningful penalties and apply to all market participants.

There is almost universal agreement in the North American electric utility industry that mandatory reliability standards are essential to the future reliability of the electric system on which our nation's economy, and the health and safety of its citizens, depend. The August 14, 2003 blackout would have been much less likely to occur had mandatory standards been in place with clear enforcement responsibility and authority. The costs of grid failure are huge and unacceptable. Only Congress can effectively address this problem.

TAPS therefore supports enactment this year of Section 1211 of H.R. 6, the energy bill conference report.

What Congress Should Do *if* it Legislates Comprehensively on Electricity

Native Load Service Obligation: Energy legislation should protect the ability of all load-serving entities, whether transmission owners or transmission-dependent utilities, to continue to use their existing transmission rights and to secure new, long-term transmission rights to meet their "obligation to serve" reliably and at reasonable cost.

Reason: Electric utilities throughout the country have built transmission or contracted for firm transmission service in order to meet their legal obligations under state and local law to serve customers economically and reliably. Major generation investments have been made in reliance on the transmission rights secured through ownership or contracts.

These existing generation rights must be protected for both transmission owners and transmission-dependent utilities in whatever market design changes are approved now or in the future by FERC. Existing transmission rights that have been diminished by Regional Transmission Organization (RTOs) must be restored. If these transmission rights are not protected, restored and secured, consumers will be harmed.

No RTO today provides load-serving entities with the ability to secure new long-term transmission rights for new generation or purchased power agreements dedicated to serving load. This is a huge problem. Load-serving entities care about the cost of power delivered to the customer, not at the generator. Without a secure long-term transmission right that provides for reasonable delivered cost certainty, the construction of new high, fixed cost coal and wind generation becomes very risky and will be discouraged.

Language: TAPS supports the native load service obligation provisions in H.R. 6, as modified below:

SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.
Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SEC. 217. NATIVE LOAD SERVICE OBLIGATION.
''(a) MEETING SERVICE OBLIGATIONS.—(1) Any load-serving entity that, as of ~~the date of enactment of this section~~ January 1, 2005—

> ''(A) owns generation facilities, markets the output of Federal generation facilities, or holds rights under 1 or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation, and
>
> ''(B) by reason of ownership of transmission facilities, or 1 or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of

the output of such generation facilities or such purchased energy to meet such service obligation, is entitled to use such firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver such output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet its service obligation.

''(2) To the extent that all or a portion of the service obligation covered by such firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity (including but not limited to a transfer back to the electric utility whose service obligation had been met by contract with another load-serving entity), the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

''(3) The Commission shall exercise its authority under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations, and enables the assignment to a load-serving entity of new firm transmission rights, or equivalent tradable or financial rights, for the long term delivery of the output of generation facilities, or purchased energy, to which such entity has made a new long-term commitment to meet such needs.

''(b) ALLOCATION OF TRANSMISSION RIGHTS.—
Nothing in this section shall affect any methodology approved by the Commission prior to September 15, 2003, for the allocation of transmission rights by an RTO or ISO that has been authorized by the Commission to allocate transmission rights [note: if the September 15, 2003 date changes, add the following: ", provided, however, that commencing with the first annual allocation period after the date of enactment, the Commission shall require that any allocation of transmission rights fully restore and maintain any transmission rights eligible for protection under subsection (a)].

''(c) CERTAIN TRANSMISSION RIGHTS.—The Commission may exercise authority under this Act to make transmission rights not used to meet an obligation covered by subsection (a) available to other entities in a manner determined by the Commission to be just, reasonable, and not unduly discriminatory or preferential.

''(d) OBLIGATION TO BUILD.—Nothing in this Act shall relieve a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet its service obligations.

''(e) CONTRACTS.—Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of the date of the enactment of this subsection.

''(f) WATER PUMPING FACILITIES.—The Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water

pumping facilities shall have, with respect to such facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

‘‘(g) ERCOT.—This section shall not apply within the area referred to in section 212(k)(2)(A).

‘‘(h) JURISDICTION.—This section does not authorize the Commission to take any action not otherwise within its jurisdiction.

‘‘(i) EFFECT OF EXERCISING RIGHTS.—An entity that lawfully exercises rights granted under subsection (a) shall not be considered by such action as engaging in undue discrimination or preference under this Act.

‘‘(j) TVA AREA.—For purposes of subsection (a)(1)(B), a load-serving entity that is located within the service area of the Tennessee Valley Authority and that has a firm wholesale power supply contract with the Tennessee Valley Authority shall be deemed to hold firm transmission rights for the transmission of such power.

‘‘(k) DEFINITIONS.—For purposes of this section:

> ‘‘(1) The term ‘distribution utility’ means 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.
>
> ‘‘(2) The term ‘load-serving entity’ means a distribution utility or an electric utility that has a service obligation.
>
> ‘‘(3) The term ‘service obligation’ means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.
>
> ‘‘(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 which 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.”

What Congress Should Do *if* it Legislates Comprehensively on Electricity

RTO Accountability: Empower and direct FERC to adopt measures that assure that regional transmission organizations and independent transmission operators are accountable to customers, and control costs in ways that ensure that customers realize clearly identifiable net benefits, and to evaluate impartially the impacts of locational marginal pricing.

Reason: RTO administrative costs have spiraled out of control, especially where an RTO has implemented centralized energy markets with "LMP" pricing. TAPS and many RTO participants are concerned about the lack of cost and program accountability produced by the RTO structure. RTOs are governed by independent boards consisting of members who have little or no connection to those who must pay RTO costs. The unfortunate trade-off of the purely disinterested board model that FERC has mandated is that direct accountability to users is substantially diminished. Since RTOs are monopolies, customers cannot vote with their feet. RTOs end up being primarily accountable to regulators and their policy initiatives rather than to those who must pay the bills.

Congress should direct FERC to turn this situation around and institute measures needed to ensure that existing RTOs and ISOs are responsive, accountable and cost-effective. The measures available to FERC to make RTOs consumer-focused should include modifying RTO governance to provide greater accountability (such as transforming RTO boards from completely independent boards to hybrid boards, with a majority of independent directors and a minority of stakeholder directors balanced by sector), a system of checks and balances on major new initiatives, and performance-based compensation for senior RTO management.

Finally, FERC should be required to evaluate the short- and long-term impacts on consumers, and the load-serving entities with obligations to serve them, of the use of locational marginal pricing (LMP), the mechanism FERC is currently using in RTO energy markets to manage congestion and send "price signals" to spur investment in generation and transmission. The resulting market prices are not only very volatile, but also are causing industrial consumers and others to wonder, as prices go up and up, what happened to the expected benefits. Wall Street and others have voiced concerns that LMP, as currently implemented, is not sufficient to support the high capital cost investments required by the electric industry. Particularly given the limited protections afforded load-serving entities' existing long term rights, and the absence of provisions for new long-term transmission rights, the ability to finance and construct new baseload generation needed to provide fuel diversity and economic value to consumers is undermined. These concerns, together with the high cost of implementing LMP, calls for a serious evaluation to determine whether LMP benefits consumers, or whether its application should be modified or replaced.

Language: TAPS supports the inclusion of two new sections to accomplish these objectives:

SEC. ___. REGIONAL TRANSMISSION ORGANIZATION ACCOUNTABILITY.

A new Section ___ of the Federal Power Act is added, as follows:

"SEC. ___. REGIONAL TRANSMISSION ORGANIZATION ACCOUNTABILITY.
"The Commission shall take such actions with respect to a regional transmission organization or independent transmission system operator (collectively referred to as "RTO") as it finds, on its own motion or complaint, after opportunity for hearing, are necessary and appropriate to ensure that such RTO is cost-effectively performing its functions, while maximizing its value to customers eligible to take service under the RTO's tariff, as measured by the provision of reliable service and by maintaining the lowest reasonable delivered cost of electricity for all consumers in the region. The actions to be taken may include, but are not limited to:

(a) modifying the RTO's governance structure and adopting procedures or practices designed to ensure that the RTO is responsive to customer needs and accountable for costs imposed on its customers, while maintaining independence (provided, however, that balanced stakeholder representation on the board of directors shall not preclude a finding of independence so long as the majority of the directors are independent);

(b) requiring the RTO to conduct periodic independent audits, and to respond to the results of such audits;

(c) requiring the RTO, with input from stakeholders, to conduct an independent cost-benefit analysis before undertaking any major new initiative and, if such initiative is implemented, track and report the actual resulting costs and benefits;

(d) refining and standardizing the cost data that must be reported annually and filed in support of proposed RTO rates;

(e) adopting budgeting processes within the RTO and rate filing requirements to ensure, to the greatest extent possible, that unjust and unreasonable RTO rate increases either will not be collected or can be refunded without surcharging customers;

(f) requiring annual reporting of objective performance measurements, including congestion costs, interconnection and service queue status, reliability/outage statistics; and progress on meeting planning and expansion targets;

(g) requiring the RTO to cause cost-effective expansion of transmission facilities to eliminate constraints or congestion that adversely affect consumers; and

(h) requiring RTO senior management compensation to be tied to specific performance measurements, including independent measures of customer satisfaction; reduction in congestion costs; RTO cost containment; reduction in interconnection and transmission queues; meeting aggressive transmission planning and construction goals; and other objective measures of high quality RTO service."

SEC. __. STUDY OF LOCATIONAL MARGINAL PRICING

"Within twelve months of the date of enactment, the Commission shall report to Congress on the effects of locational marginal pricing as used within regional transmission organizations and independent system operators. Such study shall include consideration of the costs and benefits of such methodology, and its impact on consumers and on electric utilities with obligations to serve, transmission congestion, the delivered cost of electricity, market transparency, and the construction of needed generation and transmission. Such report shall include recommendations, as appropriate, for modifying or replacing the use of such methodology where it applies."

What Congress Should Do *if* it Legislates Comprehensively on Electricity

Transparency: Enhance FERC's ability to require meaningful wholesale market transparency.

Reason: For wholesale markets to work effectively for consumers, timely pricing and terms transparency is essential both for short- and long-term transactions. Market manipulation and the exercise of market power are facilitated by secrecy and opaque structures. Very large entities will always seek a market advantage by opposing transparency and consumers will always benefit from the vigorous competition that flows from full transparency. TAPS supports public disclosure of actual, real-time information (though not necessarily identifying players), similar to today's stock market.

Full transparency for electricity, like any other publicly-traded commodity, will dramatically increase competition for the benefit of consumers. "Sunshine" is a powerful deterrent to market manipulation, and an important tool for identifying and remedying abuses. Congress should enhance FERC's authority to require transparency and certainly should do nothing to limit FERC's current authority to mandate it.

Language: TAPS supports the language in new Sec. 220(a) and (b), as proposed in Sec. 1281 of H.R. 6, the energy bill conference report. However, Congress should not include proposed new Sec. 220(c) and (d), which create jurisdictional uncertainty and effectively undo the additional transparency intended.

What Congress Should Do *if* it Legislates Comprehensively on Electricity

Market Manipulation/Damages: Provide FERC with express authority to prohibit all forms of market manipulation, and eliminate barriers to civil remedies for manipulation.

Reason: Evidence of market manipulation has increasingly come to the attention of regulators and has played a prominent role in electric market dysfunction. Consumers have been seriously injured. To address this problem, FERC has had to act through indirect mechanisms – such as revoking the ability of a utility to sell electricity at market-based rates, determining that rates derived under a dysfunctional market are unjust, unreasonable, unduly discriminatory or preferential, or attaching behavioral rules to market-based rate tariffs. Each of these mechanisms is an imperfect tool and has been subject to legal challenge.

Securities and commodities law both provide precedent for broadly proscribing market manipulation. Statutory authority in these sectors gives regulators generic authority to prevent market manipulation and to prohibit specific manipulative practices by rulemaking, rather than trying to respond after the fact to yesterday's manipulative schemes. FERC requires similarly broad authority to prohibit market manipulation in electricity markets.

In addition, those who manipulate the electricity markets for economic gain should be liable for damages to consumers. Currently, the judicial "filed rate" doctrine insulates those who sell power under FERC-approved market rate authority from civil liability, including under the antitrust laws, for market manipulation. This is unfair to consumers and unjustified, particularly in combination with FERC's lack of authority to award damages or make injured consumers whole. Congress should eliminate the "filed rate" doctrine bar to civil suits against those who manipulate the market to the detriment of consumers.

Language: TAPS supports S. 2015, as proposed in the 108th Congress (the Cantwell amendment). TAPS also supports the inclusion of the following new subsection as an addition to the language contained in S. 2015:

> (c) LIABILITY FOR DAMAGES.—
>
> (1) A new Section 316B of the Federal Power Act (16 U.S.C. 825o-2) is added, as follows:
>
> > "Any person who through market manipulation or other market-related abuses defined by the Commission, willfully or knowingly violates this Act or any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this Act, in a manner that causes damages to purchasers of electricity not compensated through a

refund order, shall in addition to any forfeiture, penalty or other remedy available under this Act, be liable for such damages."

(2) Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding the following subsection (j)

"(j) The filing with and acceptance or approval by the Commission of authorization to charge market-based rates shall not limit the availability of civil remedies, including those otherwise available under the antitrust laws as defined in section 212(e)(2), with regard to rates, charges or services subject to such authorization."

What Congress Should Do *if* it Legislates Comprehensively on Electricity

Penalties/Refund Effective Date: Authorize FERC to impose meaningful penalties for violations of the Federal Power Act, tariffs and FERC rules or orders, and eliminate current waiting periods and timing restrictions on refunds.

Reason: Under the Federal Power Act, FERC lacks authority today to impose penalties that will deter violations of the Act, tariffs, rules and orders. For example, a transmission provider may, with impunity, deny service to a competitor in clear violation of an approved tariff. By the time the violation is adjudicated by FERC, however, the competitor's transaction may be gone and FERC is unable to impose a meaningful monetary penalty on the violator, much less make the injured party whole.

FERC's refund authority is also currently restricted by waiting periods and time limits. These restrictions should be removed to better protect consumers.

Language: TAPS supports the penalty language in Section 1283 and the refund effective date changes in Section 1284 of H.R. 6, the energy bill conference report.

What Congress Should Do *if* it Legislates Comprehensively on Electricity

Generation Transfers: Clarify FERC's authority to review transfers of generation-only assets to protect competitive markets.

Reason: Under the Federal Power Act, FERC currently does not have jurisdiction over transfers of significant generating facilities that are sold or transferred as "stand-alone" assets. Due to changes in the structure of the electric utility industry, including utility divestiture of generation and the recent financial woes of the independent power producer (IPP) sector, a large number of stand-alone generators are for sale. Acquisition of significant generating facilities across a region by a single entity has the potential for undermining wholesale competition in the region in the same way a major merger can create unacceptable market power.

Concerns about generation acquisitions are heightened when combined with the proposed repeal of the Public Utility Holding Company Act's (PUHCA) restraints on mergers. For this reason, PUHCA should not be repealed unless FERC is expressly authorized to review transfers of generation-only assets to ensure that the public interest in adequately protected and that the proposed acquisition would not create market power problems.

Language: TAPS supports the language in Sec. 202 of S. 1766, from the 107th Congress.

What Congress Should Do *if* it Legislates Comprehensively on Electricity

Transmission Siting: Require the Department of Energy (DOE) to regularly assess transmission adequacy and empower the Federal Energy Regulatory Commission (FERC), as a backstop, to authorize siting of transmission facilities needed to eliminate constraints or congestion that adversely affect consumers.

Reason: A reliable electric system is essential to health, safety and economic prosperity and a robust grid is needed for competitive wholesale markets to bring real benefits to customers. A grid capable of providing access to reliable and reasonably-priced electricity is required to maintain economic vitality and promote growth, achieve fuel diversification, move toward energy independence, and enhance homeland security – in short, to provide benefits to consumers. DOE should regularly assess transmission adequacy and congestion, and report its findings to Congress and the states.

Siting transmission facilities can be very controversial. States have primary responsibility in this area and should retain that responsibility. However, if a logjam develops in a state or between states, FERC needs to have "backstop" authority to site new transmission lines that are needed to ensure that we have robust regional grids.

Language: TAPS supports the language in Section 1221 of H.R. 6, the energy bill conference report.

What Congress Should Do *if* it Legislates Comprehensively on Electricity

Inclusive Transmission Investment: Encourage the Commission to adopt policies promoting a strong grid through facilitating transmission investment by all segments of the industry on a load ratio share basis.

Reason: The interstate transmission grid needs billions of dollars of new investment to provide essential reliability, make competitive electricity markets work, and reduce the high costs to consumers and our economy of increasing congestion. Over the last 20 years, investment in transmission has fallen increasingly behind previous levels. We must reverse this trend and take steps that will get needed new transmission built promptly at reasonable cost. To achieve this end, the grid should be opened up to investment by a broad range of market participants. Enabling all segments of the industry to make grid investments, up to their load ratio share, will tap new sources of capital and foster an inclusive planning process to ensure that the most cost-effective upgrades.

An effective model for expanding grid investment is inclusive, stand-alone transmission companies that provide investment opportunities for all utilities dependent on a system. An alternative is the development of inclusive joint transmission systems through agreements that enable all utilities in an area to participate in owning their share of the combined transmission system. Both models are described in the TAPS White Paper, "Effective Solutions for Getting Needed Transmission Built at Reasonable Cost" (June 2004), available at http://www.tapsgroup.org/EffectiveSolutions.pdf. FERC policies should facilitate both.

Language: TAPS supports the inclusion of the following language:

SEC. __. INCLUSIVE TRANSMISSION INVESTMENT

> "It is the sense of Congress that the development of the robust transmission grid required to support competitive wholesale markets, maintain reliability, and eliminate constraints or congestion that adversely affect consumers will be promoted through the adoption and implementation by the Commission of policies that encourage and provide opportunities for transmission investment by all segments of the industry, including by electric utilities (as defined in Section 3(22) of the Federal Power Act, [as amended by Section 1295 of H.R.6,] on a comparable and proportionate (relative to load) basis, whether by direct ownership of a proportionate share of the transmission facilities included in a combined, multi-owner system or by proportionate investment (or contribution of facilities) to a company whose sole business is owning and operating transmission facilities."

What Congress Should Not Do

Pricing: Do not mandate any specific form of transmission pricing, including "participant funding" or "rolled-in" pricing.

Reason: Transmission pricing is a complex area that requires the application of detailed regulatory expertise and the ability to implement changes over time to address unintended consequences and changed circumstances. One size will not fit all needs or be reasonable in all regions. This is clearly an area where Congress should not legislate beyond the broad standards set forth in Sections 205 and 206 of the Federal Power Act.

FERC has the authority to approve participant funding in circumstances where this mechanism is just and reasonable and also to approve other pricing mechanisms such as "rolled-in" rates and distance-based pricing, where appropriate. The complex issues related to the fairness and efficiency of these approaches are best resolved in a regulatory forum.

If, nevertheless, Congress were to legislate in this complex area, it should adopt Section 1133 of the Domenici Substitute, from the 108th Congress.

What Congress Should Not Do

Incentives: Do not mandate above-market returns for new transmission investment.

Reason: While some existing transmission owners have asked for incentive, above-market returns and other similar inducements to build new transmission, it is increasingly apparent that transmission is an excellent, low-risk investment compared to generation and utility diversification and there is more than adequate capital available in the market to fund needed grid improvements. It makes no sense at all for Congress to mandate that consumers pay more than what the market requires for capital for this purpose.

TAPS members are willing and able to fund their share of grid improvements and are urging FERC to encourage and facilitate transmission ownership models that enable all load-serving entities to invest in the grid on a comparable basis.

If, nevertheless, Congress were to legislate in this area, it should adopt Section 1133 of the Domenici Substitute, from the 108th Congress.

What Congress Should Not Do

Provisions that Undermine FERC: Do not restrict FERC's existing authority to mandate non-discriminatory open access transmission or to deal with market power.

Reason: TAPS anticipates that parties that are dissatisfied with some current FERC initiatives will seek to limit FERC's authority to prohibit and remedy undue discrimination and anticompetitive practices in wholesale markets and the provision of transmission services. While TAPS agrees that FERC recently has gone down some undesirable roads, TAPS has confidence that these errors will be corrected over time and through the courts. It would be a grave mistake to undermine the agency's long- term effectiveness by curtailing its essential powers.