UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Reform of Generator Interconnection Procedures and Agreements	Docket No. RM17-8-000

COMMENTS OF THE
TRANSMISSION ACCESS POLICY STUDY GROUP

On December 15, 2016, the Commission issued its Reform of Generator Interconnection Procedures and Agreements NOPR,[1] proposing to revise its regulations, *pro forma* Large Generator Interconnection Procedures ("LGIP"), and *pro forma* Large Generator Interconnection Agreement ("LGIA") to improve certainty, promote more informed interconnection, and enhance interconnection processes. Although the Transmission Access Policy Study Group ("TAPS") is not providing comments on each of the Commission's detailed proposals, we generally support the proposed reforms, which are drawn from lessons learned in Regional Transmission Organization ("RTO") areas and reasonably balance the needs of interconnection customers with the needs of load and transmission providers. TAPS also strongly supports the Commission's decision not to propose a cost cap on interconnection-related costs in the NOPR and urges the Commission not to adopt such a cap in any Final Rule.

[1] Reform of Generator Interconnection Procedures and Agreements, 82 Fed. Reg. 4464 (proposed Jan. 13, 2017), FERC Stats. & Regs. ¶ 32,719 (proposed 2016) ("NOPR"); Notice of Extension of Time (Feb. 23, 2017), eLibrary No. 20170223-3017.

I. INTEREST OF TAPS

TAPS is an association of transmission-dependent utilities ("TDUs") in more than 35 states, promoting open and non-discriminatory transmission access.[2] Representing load-serving entities ("LSEs") entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS has supported the Commission's initiatives to form truly independent RTOs; to provide non-discriminatory transmission access, including interconnection service for new generators; and to foster the robust wholesale generation competition needed to enable LSEs to meet their loads reliably and affordably.

As LSEs, TAPS members would also be directly affected by interconnection reforms that would shift the risks and costs of generation development to load generally, rather than the generator developers (and their specific customers) whose projects cause those costs.

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II. COMMENTS

As TDUs and LSEs, TAPS members rely on non-discriminatory interconnection and transmission to access the resources they need to meet their load-serving obligations reliably and cost-effectively. TAPS, therefore, generally supports the NOPR's proposed reforms, which are drawn from lessons learned in RTO areas and reasonably balance the needs of interconnection customers with the needs of LSEs and transmission providers.

The NOPR, however, also "seeks comment on whether [the Commission] should revise the *pro forma* LGIP and LGIA to provide for a cost cap that would limit an interconnection customer's network upgrade costs at the higher bound of a transmission provider's cost estimate plus a stated accuracy margin following a certain stage in the interconnection study process." NOPR, P 95. TAPS believes that imposing such a requirement on a generic basis, including in RTOs that have independent entity cost allocation policies that differ from the *pro forma* and have been approved by the Commission, would be inappropriate.

A. LGIP/LGIA Pro Forma *Treatment of Interconnection Facilities and Network Upgrades*

The *pro forma* LGIP/LGIA identify two types of facility upgrades that may be needed for new generator interconnections: (1) Interconnection Facilities;[3] and (2) Network Upgrades.[4] The *pro forma* provides for the costs of Interconnection

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[3] Section 1 of the *pro forma* LGIP defines "Interconnection Facilities" as:

> Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

[4] Section 1 of the *pro forma* LGIP defines "Network Upgrades" as:

Facilities to be directly assigned to the interconnection customer. However, while the interconnection customer is required to *advance* (i.e., finance) the costs of Network Upgrades required to accommodate the new interconnection, the default scheme of the LGIA *pro forma* requires transmission providers to repay the interconnection customer for those costs, with interest. Repayment must be completed within 20 years after commercial operation, so long as the interconnection agreement has not been terminated.[5]

In adopting this default repayment policy for interconnection-related Network Upgrades, the Commission noted that "a well-designed and independently administered participant funding policy for Network Upgrades offers the potential to provide more efficient price signals and a more equitable allocation of costs than the [repayment] approach."[6] Nevertheless, the Commission concluded that it would be unacceptable to allow such direct assignment of network upgrade costs in the absence of transmission provider independence (*id.* P 696):

> the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

[5] Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003-B, 70 Fed. Reg. 265, P 35 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004) ("Order 2003-B"), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 128 S. Ct. 1468 (2008).

[6] Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,846, P 695 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) ("Order 2003"), *modified*, 68 Fed. Reg. 69,599 (Dec. 15, 2003), *clarified*, 69 Fed. Reg. 2,135 (Jan. 14, 2004), 106 FERC ¶ 61,009 (2004), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 128 S. Ct. 1468 (2008).

> [T]he Commission remains concerned that, when the Transmission Provider is not independent and has an interest in frustrating rival generators, the implementation of participant funding, including the "but for" pricing approach, creates opportunities for undue discrimination. As the Commission stated in the NOPR, a number of aspects of the "but for" approach are subjective, and a Transmission Provider that is not an independent entity has the ability and the incentive to exploit this subjectivity to its own advantage.

The Commission stated, however, that it would continue to allow flexibility regarding interconnection pricing policy for independent entities. *Id.* PP 697-703. As recognized by the NOPR (PP 90, 94), a number of RTOs have taken advantage of this flexibility to adopt cost allocation methodologies that differ from the pricing policy laid out in the *pro forma* LGIP/LGIA.

B. The Commission Should Not Require that Transmission Providers Cap Interconnection Customer Responsibility for the Network Upgrades Required to Accommodate that Customer's Interconnection

The Commission should not impose a generic rule requiring that transmission providers adopt a "cost cap that would limit an interconnection customer's network upgrade costs at the higher bound of a transmission provider's cost estimate plus a stated accuracy margin following a certain stage in the interconnection study process." NOPR, P 95. For transmission providers subject to the *pro forma* LGIP/LGIA, such a requirement would shift network upgrade financing obligations and risk to load,[7] even

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[7] For example, under the *pro forma* LGIP/LGIA, the interconnection customer must be repaid in full for network upgrade costs, including interest, within 20 years. However, if the interconnection agreement is terminated before the end of that 20-year period, repayment will cease before the full amount is reimbursed. In contrast, imposition of a cost cap could result in load immediately bearing some portion of the network upgrade costs associated with an interconnection, rather than the interconnection customer. In that situation, load would be required to pay for those costs, even if the generating facility is abandoned and the interconnection agreement terminated long before the end of the repayment period applicable to the

though load has no control over either: (1) the key factors driving the network upgrade costs (i.e., the location and type of generator being interconnected); or (2) the cost estimates provided by the transmission provider to the interconnection customer during the interconnection process. Shifting such costs and risk to load would be inconsistent with basic cost causation principles.

The cost shifts that would result from imposing such a cost cap would be even greater in RTOs that have been granted an independent entity variation enabling them to directly assign some or all interconnection-related network upgrade costs to specific interconnection customers. For example, in RTOs that directly assign 100% of interconnection-related network upgrade costs to the interconnection customer, a cost cap would shift all interconnection-related network upgrade costs in excess of the cap to load—which was responsible for neither the location of the interconnecting generator nor the transmission provider cost estimate that set the cost cap, and may receive no benefits. Not only would such cost shifts violate basic cost causation principles underlying Commission ratemaking, they would, as the NOPR correctly recognizes (P 94), disturb hard-won consensus on cost allocation issues that RTOs have struggled to reach.[8]

Provisions limiting the availability of such a cost cap to situations "where there is demonstrable proof that the cause of a cost increase is beyond the transmission provider's

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interconnection customer.

[8] *See, e.g.*, *Midwest Indep. Transmission Sys. Operator., Inc.*, 129 FERC ¶ 61,060, PP 7-8, 11, 49 (2009), *order denying reh'g and clarification*, 154 FERC ¶ 61,073, PP 3, 21-27 (2016) (describing reason for cost allocation changes proposed by MISO, and approving MISO-proposed Interim Cost Allocation methodology allowing assignment of 90% - 100% of interconnection-related network upgrade costs to the interconnection customer); *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (approving proposal to make Interim Cost Allocation methodology permanent), *order on reh'g and compliance*, 137 FERC ¶ 61,074 (2011), *aff'd in part and remanded in irrelevant part sub nom. Ill. Commerce Comm'n v. FERC*, 721 F.3d 764 (7th Cir. 2013).

control" (NOPR, P 95) would do nothing to address the basic cost causation problem inherent in such a cost cap. Indeed, in addition to inviting endless litigation over whether and to what extent a specific cost increase may be attributable to causes beyond the transmission provider's control, they would create counter-productive incentives for interconnection customers—encouraging them to remain silent and to unreasonably rely on any unrealistically low cost estimates that might be provided by the transmission provider during early stages of the interconnection process. In addition, contrary to the NOPR's expectation that its proposed reforms will decrease the incentive for an interconnection customer to submit multiple interconnection requests when they only intend to see one to commercial operation (NOPR, PP 4, 34), such a cost cap would encourage interconnection customers to submit multiple requests—each with slightly different specifications and a different interconnection queue position—so that the customer can pick and choose whichever of its pending interconnection requests may have received the most favorable estimates from the transmission provider, knowing that it may be able to avoid financing obligations or even full network upgrade costs above the cap, which would instead be shifted to load.

Generator development risk—including the risk that RTO network upgrade cost estimates may increase during the interconnection process—should be borne by the interconnection customer and, indirectly, the specific entities that contract to purchase electricity from that interconnection customer. By *not* proposing a cost cap on interconnection-related network upgrade costs, the NOPR correctly requires those with control over generation siting and development to internalize the costs of their decisions. It also requires that those who actually benefit from the newly interconnected generation

in those situations—i.e., those who contract to purchase electricity from the particular generator—pay for those costs. This approach is just and reasonable, because it comports with fundamental cost causation/beneficiary pays principles. Thus, it ensures that costs allocated are "roughly commensurate" with estimated benefits, and that those who do not benefit from the new generation do not have to pay for it.[9]

While TAPS strongly opposes imposition of a generic rule establishing a default network upgrade cost cap requirement, it does not ask that the Commission change the *status quo* by adopting a generic rule barring all such cost caps. As they can today, RTOs would still be able to propose a network upgrade cost cap as an independent entity variation; and non-independent transmission providers would be free to propose a cost cap if they can demonstrate that adding such a cap would be superior to the *pro forma*. Such an approach would also preserve already approved independent entity variations that include a cost cap.[10] By *not* requiring amendment of the *pro forma* LGIP/LGIA to

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[9] *See, e.g.*, *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 476-77 (7th Cir. 2009); Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, 76 Fed. Reg. 49,842, P 10 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011) ("[A]ll regional and interregional cost allocation methods [must] allocate costs for new transmission facilities in a manner that is at least roughly commensurate with the benefits received by those who will pay those costs. Costs may not be involuntarily allocated to entities that do not receive benefits."), *reh'g denied*, Order No. 1000-A, 77 Fed. Reg. 32,184 (May 31, 2012), 139 FERC ¶ 61,132 (2012), *on reh'g*, Order No. 1000-B, 77 Fed. Reg. 64,890 (Oct. 24, 2012), 141 FERC ¶ 61,044 (2012), *review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (per curiam), *reh'g en banc denied*, No. 12-1232 (D.C. Cir. Oct. 17, 2014).

[10] As the NOPR notes (P 27), "CAISO has employed network upgrade cost caps and periodic, scheduled restudies in order to provide certainty to the interconnection customer." That region, however, has chosen to adopt a default crediting scheme in which the interconnection customer is responsible for financing the cost of network upgrades, but is repaid by the applicable Participating Transmission Owner(s) on a dollar-for-dollar basis, including interest, with the amount fully paid within five years of the generating facility's commercial operation date. CAISO Tariff, App. V – Standard Large Generator Interconnection Agreement (LGIA), Section 11.4.1. This scheme reflects CAISO's independent entity variation to accelerate repayment to the interconnection customer by using the five-year repayment period originally included in Order 2003, rather than the 20-year repayment period currently required by the Order 2003-B *pro forma*. *See Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292, P 131 n.85 (2008); *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,009, PP 26, 81, 90 (2005); *Cal. Indep. Sys. Operator Corp.*, 115 FERC ¶ 61,237

provide for a network upgrade cost cap, the proposed rule properly accommodates transmission providers that wish to add such a cap subject to appropriate Commission review, without mandating improper cost shifts to load.

CONCLUSION

The Commission should consider these comments and should reject arguments to expand the scope of the NOPR by mandating a generic cost cap on network upgrades, based on the cost estimates provided by the transmission provider during early stages of the interconnection process.

Respectfully submitted,

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(2006). Because CAISO both repays network upgrade costs financed by interconnection customers and accelerates that repayment, the cost shifts resulting from CAISO's network upgrade cost cap are relatively small, as compared to the cost shifts that would result from imposing such a cap on an RTO whose independent entity variation permits direct assignment of interconnection-related network upgrade costs.

Document Content(s)