UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Available Transfer Capability Standards for Wholesale Electric Transmission Services	Docket No. AD15-5-000

POST-WORKSHOP COMMENTS OF THE TRANSMISSION ACCESS POLICY STUDY GROUP

The Transmission Access Policy Study Group ("TAPS") appreciates the opportunity to submit these comments on the April 21, 2015 Staff-led workshop on available transfer capability ("ATC") standards. The workshop was prompted by the proposal by the North American Electric Reliability Corporation ("NERC") to move the commercial elements of NERC's ATC-related standards into North American Energy Standards Board ("NAESB") business practice standards.[1] The workshop raised very important questions about how to ensure that the Commission's open-access protections related to ATC will be maintained when the commercial elements of the ATC standards are moved from NERC to NAESB.

Transparent, consistent, and accurate ATC calculations are critical to assuring the non-discriminatory transmission access guaranteed by the Federal Power Act ("FPA"). NERC's existing ATC-related standards have been helpful in preventing discrimination

[1] The Commission has proposed, in Docket No. RM14-7, to accept NERC's plan to retire its ATC-related standards and to replace them with a single standard that exclusively addresses the reliability aspects of ATC calculations. Modeling, Data, and Analysis Reliability Standards, 79 Fed. Reg. 36,269 (proposed June 26, 2014), 147 FERC ¶ 61,208 (proposed June 19, 2014) ("Modeling, Data, and Analysis Reliability Standards NOPR"), *corrected*, 79 Fed. Reg. 47,603 (Aug. 14, 2014), 148 FERC ¶ 61,106 (2014). NAESB is currently developing a new suite of business practice standards that will likely include some, but not all, of the commercial elements that NERC has proposed removing from its standards. NAESB anticipates submitting its revised standards to the Commission in the third quarter of 2015. NAESB Status Report on the Development of Modeling, Data, and Analysis Business Practice Standards, Dec. 18, 2014, Docket No. RM14-7-000, eLibrary No. 20141218-5062.

against transmission dependent utilities ("TDUs"), but the commercial practices related to ATC calculations do not belong in NERC standards. TAPS therefore supports moving the commercial elements of NERC's ATC-related standards into NAESB business practice standards. Once NAESB completes its business practice standards, the Commission should determine whether the standards will ensure transparent, consistent, and accurate ATC calculations, and if not, initiate additional actions required to protect against use of improper ATC calculations to impede non-discriminatory open access.

INTEREST OF TAPS

TAPS is an association of transmission-dependent utilities in more than 35 states, promoting open and non-discriminatory transmission access.[2] As TDUs, TAPS members are dependent in whole or part on transmission service provided by public utility transmission providers under open access transmission tariffs. TAPS members are also 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. And many TAPS members participate in the development of and are subject to compliance with NERC Reliability Standards. Thus, TAPS is sensitive to the need to preserve and strengthen protections for open-access transmission, and the need for reliability standards that support grid reliability, but are limited to the reliability purposes set forth in Section 215 of the Federal Power Act.

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[2] Duncan Kincheloe, Missouri Joint Municipal Electric Utility Commission, chairs the TAPS Board. Jane Cirrincione, Northern California Power Agency, is TAPS' Vice Chair. John Twitty is TAPS' Executive Director.

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COMMENTS

I. TRANSPARENT, CONSISTENT, AND ACCURATE ATC CALCULATIONS ARE CRITICAL TO OPEN-ACCESS TRANSMISSION SERVICE

TAPS has long been a strong supporter of open-access transmission service, and recognizes that transparent, consistent, and accurate ATC calculations are essential to ensuring that access and protecting against discrimination by transmission providers ("TP"). TAPS appreciates the Commission's continued interest in ensuring non-discrimination in this fundamental building block of open-access transmission, and therefore the foundation for competitive wholesale markets.

It took many years to put in place effective standards for calculating ATC. As early as 1996, in Order No. 889,[3] the Commission recognized the importance of ATC to its open-access policy. It "encourage[d] industry efforts to develop consistent methods for calculating ATC . . . ." and directed transmission providers to base their calculations

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[3] Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), *clarified*, 76 FERC ¶ 61,009 (1996), *modified*, Order No. 889-A, 62 Fed. Reg. 12,484 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997), *reh'g denied*, Order No. 889-B, 62 Fed. Reg. 64,715 (Dec. 9, 1997), 81 FERC ¶ 61,253 (1997), *aff'd in part and remanded in part sub nom. Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

on "current industry practices, standards and criteria."[4] But, because the Commission neither specified a methodology for calculating ATC nor imposed an obligation for TPs to disclose the details of their methodologies, TPs had broad discretion in calculating ATCs. By 2005, the Commission had identified how TPs used this discretion to discriminate:[5]

> Transmission providers have incentives to understate ATC on those paths valuable to power sellers that are competitors to a transmission provider's own (or its affiliate's) power sales. The lack of clear and consistent methodologies for calculating ATC can allow transmission providers the discretion to control the transmission system to favor their own power sales or those of their affiliates. ATC can vary considerably depending on the criteria they use to calculate it and the order in which the calculations are made. Although the Commission has required transmission providers to post the formula for calculating ATC, the transmission provider has sole responsibility for, and a great deal of discretion in, its calculation. More rigorous and consistent standards and procedures for ATC calculations would help ensure that transmission providers' exercise of discretion in their calculation of ATC does not result in undue discrimination with respect to interstate transmission.

Two years later, in Order No. 890, the Commission directed public utilities, working through NERC and NAESB, to modify ATC-related standards to ensure industry-wide consistency and transparency of all components of ATC calculations, as well as certain definitions, data, and modeling assumptions.[6] The Commission also

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[4] *Id.* at 31,607.

[5] Information Requirements for Available Transfer Capability, Notice of Inquiry, 70 Fed. Reg. 34,417, 34,419 (June 14, 2005), FERC Stats. & Regs. ¶ 35,549, P10 (2005) (footnote omitted).

[6] Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 Fed. Reg. 12,266, 12,298 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, P 221 (2007) ("Order No. 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 ¶

directed NERC to prospectively modify its ATC-related standards to address the requirements of Order No. 890.[7] NERC and NAESB worked collaboratively to develop the current ATC reliability standards and related NAESB business practice standards.[8] In 2009, the Commission approved NERC's current ATC-related standards[9] as well as the related NAESB business practices.[10]

For the past six years, transmission customers have enjoyed improved transparency of ATC calculations and enhanced protections against the ability of TPs to use improper ATC calculations to restrict or deny transmission access. Those protections remain essential to meaningful open access, and should not be diluted as the commercial elements of the ATC standards are moved from NERC to NAESB. TAPS therefore appreciates the interest shown by Commission Staff in holding the April 21 Workshop, and urges continued vigilance in this critical area.

61,228 (2009), *order on clarification*, Order No. 890-D, 74 Fed. Reg. 61,511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

[7] Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, 72 Fed. Reg. 16,416, 16,515 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, P 1022 (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).

[8] Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System, Order No. 729, 74 Fed. Reg. 64,884, 64,888 (Dec. 8, 2009), 129 FERC ¶ 61,155, P 17 (2009) ("Order No. 729"), *clarified*, Order No. 729-A, 75 Fed. Reg. 26,057 (May 11, 2010), 131 FERC ¶ 61,109 (2010), *on reh'g*, Order No. 729-B, 75 Fed. Reg. 43,059 (July 23, 2010), 132 FERC ¶ 61,027 (2010).

[9] *Id.*

[10] Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676-E, 74 Fed. Reg. 63,288 (Dec. 3, 2009), FERC Stats. & Regs. ¶ 31,299 (2009), *clarified*, 130 FERC ¶ 61,116 (2010), *amended*, Order No. 676-F, 75 Fed. Reg. 20,901 (Apr. 22, 2010), FERC Stats. & Regs. ¶ 31,309 (2010), *amended*, Order No. 676-G, 78 Fed. Reg. 14,654 (Mar. 7, 2013), FERC Stats. & Regs. ¶ 31,343 (2013), *amended*, Order No. 676-H, 79 Fed. Reg. 56,939 (Sept. 24, 2014), FERC Stats. & Regs. ¶ 31,359 (2014), *corrected*, 79 Fed. Reg. 60,953 (Oct. 9, 2014), *on reh'g*, 151 FERC ¶ 61,046 (2015).

II. NERC STANDARDS SHOULD BE FOCUSED EXCLUSIVELY ON RELIABILITY

TAPS supports moving the commercial elements of the existing ATC standards to NAESB. Such movement is necessary and appropriate given the statutory focus of NERC standards. FPA Section 215(a)(3), 16 U.S.C. § 824*o*(a)(3), provides in pertinent part: "The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system."

The Commission has recognized that ATC calculations have both reliability and commercial impacts,[11] and that "NERC and NAESB worked together to create two, distinct sets of standards with overlapping interests."[12] When NERC and NAESB proposed the currently effective standards, the intention was for the NAESB standards to focus on the competitive aspects of ATC and for the NERC standards to "address only the reliability aspects of [ATC] … except to the extent that commercial system availability closely matche[d] actual remaining system capability."[13]

In 2013, when NERC initiated an informal process to develop modifications to the ATC-related standards, the team of industry experts, NERC staff, and Commission staff "concluded that a number of the requirements in those Reliability Standards provided little or no reliability benefit and may only serve a commercial function."[14] The team drafted a new ATC standard to focus exclusively on reliability issues,

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[11] Order No. 890, P 1022.

[12] Order No. 729, P 136.

[13] *Id.* P 17.

[14] Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard MOD-001-2 and Retirement of Reliability Standards MOD-001-1a, MOD-004-1, MOD-008-1, MOD-028-2, MOD-029-1a and MOD-030-2, 12, Feb. 10, 2014, Docket No. RM14-7-000, eLibrary No. 20140210-5201.

consistent with the FPA and NERC's expertise and core mission. The proposed revised standard removes those elements of the existing "[s]tandards that were unnecessary from a reliability perspective, while retaining and improving upon those elements that address Bulk-Power System reliability concerns."[15] The proposed reliability standard brings a more refined assessment of which requirements pertain to reliability and which pertain to commercial practices. The Commission has correctly proposed to accept NERC's new standard.[16]

Realigning the NERC and NAESB standards so that all commercial practices are removed from the reliability standards is consistent with FPA Section 215 and with the Commission's guidance that NERC should remove or revise standards that have little effect on reliability.[17] Moreover, moving commercial practices to the NAESB standards will allow NERC to focus its resources on the area where it has most expertise: addressing reliability issues.

Finally, the proper realignment of NERC standards should not be impeded by concerns as to enforceability of NAESB standards against non-jurisdictional TPs. The Commission's jurisdiction under FPA Section 215 is broader than under Sections 205 and 206, but the difference in statutory jurisdiction does not justify inclusion of commercial ATC practices that are not a requirement necessary "to provide for reliable operation of the bulk-power system" in NERC standards approved and enforced under Section 215. While the reach of NAESB standards and tariff provisions is not coextensive with NERC

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[15] *Id.* at 13.

[16] *Modeling, Data, and Analysis Reliability Standards NOPR.*

[17] *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193, P 81, *on reh'g*, 139 FERC ¶ 61,168 (2012).

standards regarding non-jurisdictional TPs, the gap is less wide than was suggested at the Workshop[18] given reciprocity obligations.[19] Thus, concerns about enforceability should not prevent moving the commercial elements of the ATC standards to NAESB.

III. FURTHER ACTION BY THE COMMISSION MAY BE NECESSARY IF THE NAESB STANDARDS DO NOT PROTECT OPEN ACCESS

TAPS is hopeful that the new NAESB standards for ATC will ensure superior (or at least equivalent) protection for open access compared to the existing NERC standards. TAPS members participate in the NAESB processes and will endeavor to make the NAESB standards effective.

But the outcome and scope of the NAESB effort is not assured, creating the possibility that the resulting NAESB standards will be less robust than the NERC standards they replace. Further, even the existing NERC ATC standards have not been successful in ensuring consistent ATC calculations in all instances. As described in the Workshop, instances continue to occur in which different TPs post significantly different ATCs for the same interface.[20]

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[18] Robert Harshbarger, a panelist at the Workshop representing Puget Sound Energy, expressed concern about enforceability of NAESB standards against non-jurisdictional TPs, but even he did not argue that his concern should impede the realignment of the NERC standards.

[19] FERC-jurisdictional entities are directly subject to FERC enforcement authority with regard to tariff and NAESB rules, which are incorporated by reference into Commission regulations. *See, e.g.*, Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676, 71 Fed. Reg. 26,199 (May 4, 2006), FERC Stats. & Regs. ¶ 31,216 (2006) (subsequent history omitted). Entities that are not generally directly subject to Commission jurisdiction must abide by tariff and NAESB rules when they take service from a jurisdictional transmission provider, or these rules come into play through reciprocity. Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, 76 Fed. Reg. 49,842, 49,958, 49,960 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323, PP 799, 815 (2011), *reh'g denied*, Order No. 1000-A, 77 Fed. Reg. 32,184, 32,300 (May 31, 2012), 139 FERC ¶ 61,132, PP 771-773 (2012), *order 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).

[20] Charlie Bayless, a panelist at the Workshop representing North Carolina Electric Membership

Thus, after NAESB submits its proposed standards, the Commission should consider whether those standards will result in transparent, consistent, and accurate determinations of ATC. If the Commission concludes that they will not do so, it should determine what other steps are necessary to achieve this objective that is fundamental to the Commission's FPA responsibilities, taking account of the many tools available to the Commission to ensure that improper ATC calculations are not being used to restrict or deny access to the transmission system. The Commission could, for example, direct public utilities to work through NAESB to develop additional standards, initiate a rulemaking proceeding to further modify the open access transmission tariff, or take other appropriate actions.

Corporation, described several instances where neighboring transmission providers have vastly different ATC calculations for the same path.

CONCLUSION

The Commission should continue to be vigilant with regard to the transparency, consistency, and accuracy of ATC calculations. It should also consider TAPS' comments in acting on the rulemaking in Docket No. RM14-7 and the rulemaking that will be initiated when NAESB files its ATC business practice standards.

Respectfully submitted,

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May 20, 2015