

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Improvements to Generator  
Interconnection Procedures and  
Agreements

Docket No. RM22-14-000

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

The Transmission Access Policy Study Group (“TAPS”) appreciates the opportunity to comment on this Notice of Proposed Rulemaking.<sup>1</sup> TAPS is generally supportive of reforms that will speed up generator interconnection queue processing and clear queue backlogs. TAPS provides these limited comments, however, to express concerns with the Commission’s monetary penalties proposal for Regional Transmission Organizations and Independent System Operators (collectively referred to as “RTOs”). Specifically, the NOPR proposes to impose penalties on non-profit RTOs<sup>2</sup> without explaining how they would recover that cost. It states that such penalties should *not* be recovered through transmission rates,<sup>3</sup> but then suggests use of the mechanism currently used by RTOs to recover penalties for violating North American Electric Reliability Corporation (“NERC”) reliability standards, under which the Commission *has* allowed recovery from ratepayers.<sup>4</sup> If the Commission’s proposed reforms are to result in just and reasonable rates, this confusion should be resolved in a manner that does not permit

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<sup>1</sup> *Improvements to Generator Interconnection Proc. & Agreements*, 179 FERC ¶ 61,194, P 1 (2022) (“NOPR”).

<sup>2</sup> NOPR P 171.

<sup>3</sup> NOPR P 169.

<sup>4</sup> NOPR P 172.

RTOs to recover penalties from load-serving entities (“LSEs”) that have no control over, and bear no responsibility for, delays in processing interconnection requests. Penalties that can be passed through to RTO ratepayers will raise consumer costs without providing the incentive the Commission is seeking to promote prompt processing of interconnection requests.

### **INTERESTS OF TAPS**

TAPS is an association of transmission-dependent utilities (“TDUs”) in thirty-five states promoting open and non-discriminatory transmission access.<sup>5</sup> As entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS has long supported Commission initiatives to provide non-discriminatory access and foster the robust generation competition needed to enable TDUs to meet their load-serving obligations reliably and affordably. We therefore appreciate the Commission’s issuance of this NOPR, which recognizes the need for faster and more efficient generator interconnection queue processing.

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<sup>5</sup> See TAPS, <https://www.tapsgroup.org> (last accessed Oct. 6, 2022). Jane Cirrincione, Northern California Power Agency, is TAPS Chair. Dave Osburn, Oklahoma Municipal Power Authority, is Vice Chair. Terry Huval is TAPS Executive Director.

## COMMENTS

### **I. TAPS SUPPORTS ENFORCEABLE STUDY DEADLINES IN NON-RTO REGIONS.**

The NOPR proposes to shift from requiring that transmission providers (“TPs”) use “reasonable efforts” to complete interconnection studies in a timely manner, to a system of firm study deadlines accompanied by penalties if the TP fails to meet the deadlines. NOPR P 168. TAPS supports the use of firm study deadlines. And it anticipates that the combination of firm study deadlines and penalties, along with other proposed reforms, would be effective at speeding the study process and reducing the queue in non-RTO regions. Because the NOPR would bar them from recovering the cost of those penalties through their transmission rates,<sup>6</sup> TPs in non-RTO regions would pay the penalties from shareholder profits, thereby incentivizing the TP to take the steps necessary to perform queue studies in a timely manner.

### **II. THE COMMISSION SHOULD NOT ALLOW MONETARY PENALTIES IMPOSED ON RTOS TO BE PASSED THROUGH TO THE RTO’S RATEPAYERS.**

The NOPR proposes to impose study delay penalties on RTOs.<sup>7</sup> While it does not fully explain how those penalties would be paid, the NOPR does not clearly rule out pass-through to RTO ratepayers.<sup>8</sup> On one hand, it says that delay penalties should “not be recoverable in transmission rates,” which would seem to foreclose pass-through to ratepayers. NOPR P 169. But, on the other hand, the NOPR also suggests that

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<sup>6</sup> NOPR P 169 (“Consistent with other penalties, we propose that such penalties would not be recoverable in transmission rates.”).

<sup>7</sup> NOPR P 171.

<sup>8</sup> See NOPR P 3 (Christie, Comm’r, concurring)(noting that there are “unanswered questions regarding the NOPR’s monetary penalty proposal, such as how it will work (or not work) in RTO/ISO regions . . . Who will pay these penalties in an RTO or ISO which has no stockholders?”).

interconnection study delay penalties imposed on RTOs could be handled similarly to NERC reliability penalties, which RTOs recover “from entities that are responsible for, or contributed to, such violations, or *from a broader set of entities.*” NOPR P 172 (emphasis added). In practice, RTOs have adopted tariff provisions that in some circumstances allow them to recover from ratepayers NERC reliability penalties that have been imposed on the RTO;<sup>9</sup> and when RTOs have asked to recover such penalties from tariff customers, the Commission has granted them permission to do so.<sup>10</sup> The final rule in this proceeding should resolve this ambiguity in a manner that clearly protects RTO ratepayers from bearing any penalty costs.

***A. Penalties imposed on RTOs and passed through to ratepayers will not incentivize RTOs to meet queue processing deadlines.***

The NOPR asks whether penalties will “effectively incent more timely completion of interconnection studies in RTOs/ISOs.” NOPR P 172. To the extent study delay penalties can be passed through to RTO ratepayers, the answer is no. If the RTO passes all or part of the penalty through to its ratepayers, the entities that can affect the

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<sup>9</sup> For example, Schedule 34 of the MISO Tariff says “the Transmission Provider may recover Compliance Penalties assessed to it through two (2) mechanisms: (1) allocation of the Compliance Penalties among all Tariff Customers/Members . . . that cannot be directly assigned to one or more Tariff Customers or Members; or (2) direct assignment of the Compliance Penalties to one or more Tariff Customers or Members where the direct assignment of the Compliance Penalty is appropriate.” Southwest Power Pool (“SPP”) has a similar recovery regime; its Attachment AP says “Market Participants, Members and Terminated Members . . . may potentially be responsible for reliability penalty costs assessed to the Transmission Provider that cannot be directly assigned . . .”.

<sup>10</sup> See, e.g. *Midwest Independent Transmission System Operator, Inc.* 139 FERC ¶ 61,038, P 2 (2012) (“[W]e accept MISO’s proposal . . . to recover the penalty costs . . . from Tariff Customers.”) and *Midwest Independent Transmission System Operator, Inc.* 135 FERC ¶ 61,118 (2011) (allowing MISO to recover a reliability penalty from network and point-to-point customers). See also *Southwest Power Pool, Inc.*, Request for Recovery of Charges in Accordance with Attachment AP of the Open Access Transmission Tariff at 6, No. ER14-1126-000 (Jan. 22, 2014), eLibrary No. 20140122-5090 (requesting Commission approval “to recover the penalty assessed against SPP . . . by allocating the cost amongst all Transmission Customers . . .”), accepted by letter order on March 13, 2014, eLibrary No. 20140313-3054.

timeliness—the RTO and relevant TOs and interconnection customers—will not bear those costs. Instead, ratepayers, who have no responsibility for performing or timely completing interconnection studies, will pay for the RTO’s delay.

***B. The Commission should expressly bar pass-through to ratepayers of interconnection study delay penalties imposed on RTOs.***

For the rates charged RTO ratepayers to be just and reasonable, the Commission should explicitly prohibit RTOs from “passing the buck” to LSEs that have no responsibility for the RTO’s delays or ability to reduce them. That the Commission has previously allowed the pass-through of NERC reliability penalties to RTO ratepayers does not justify doing so here. NERC penalties, reviewed by the Commission, are an express and integral part of the regimen established by Congress in Federal Power Act (“FPA”) section 215.<sup>11</sup> No similar Congressional penalty directive applies to queue management penalties. Moreover, for NERC penalties, the money collected from RTO ratepayers is used to offset the costs of operation of NERC or the relevant Regional Entity, which in turn benefits ratepayers by reducing the NERC/Regional Entity costs that they must pay.<sup>12</sup> In contrast, the NOPR’s proposed study delay penalties will be remitted to specific interconnection customers,<sup>13</sup> which may have no commitment to use these payment to offset costs to any consumers, much less ratepayers bearing those costs.

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<sup>11</sup> See FPA section 215(c)(2)(C), 16 U.S.C. § 824o.

<sup>12</sup> See Rules of Procedure of NERC, Section 1102.1 (Aug. 25, 2022) (“the NERC funding mechanism for all statutory functions shall be based on Net Energy for Load”), [https://www.nerc.com/AboutNERC/RulesOfProcedure/NERC%20ROP%20effective%2020220825\\_no%20appendices.pdf](https://www.nerc.com/AboutNERC/RulesOfProcedure/NERC%20ROP%20effective%2020220825_no%20appendices.pdf); *id.* Section 1107.1 (“Where NERC or a Regional Entity initiates a compliance monitoring and enforcement process that leads to imposition of a Penalty, the entity that initiated the process shall receive any Penalty monies imposed and collected as a result of that process . . .”); *id.* Section 1107.2 (“All funds from financial Penalties assessed in the United States . . . shall be applied as a general offset to the entity’s budget requirements for the subsequent fiscal year . . .”).

<sup>13</sup> NOPR P 169.

In addition to being costly to administer,<sup>14</sup> a study delay penalty regimen patterned on the NERC approach—in which an RTO can submit a section 205 filing asking to directly assign a share of study delay penalties to responsible entities, and then allocate the remainder to RTO ratepayers—would strongly incentivize RTOs to pass through the entirety of the penalties to ratepayers. Because RTO membership is generally voluntary, RTOs have a natural incentive to avoid actions that could cause member TOs to question their continued membership in the RTO. Passing on penalties that the TO could not recover from its own ratepayers (presuming the NOPR’s prohibition (P 169) would apply to the TOs) is such an action that could encourage or hasten TO departure.

Adding to the RTOs’ disincentive to assign penalty costs to specific TOs is the Gordian knot of causation. Determining which entity caused a study delay may well be difficult, and the reasons for study delays are often multi-faceted. For example, in recent filings explaining why their queues are overheated and their studies delayed, the RTOs placed at least some blame for the delays on unnamed TOs.<sup>15</sup> If RTOs had to name the

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<sup>14</sup> Given the factual issues likely to be raised, evidentiary hearings, with an opportunity for discovery, may well be necessary in many cases. And if the Commission can decide to pass penalty costs through to ratepayers, then those ratepayers must have the opportunity to challenge that allocation. This will require that ratepayers have access to the information necessary to determine whether an entity *other* than the RTO caused the delay in whole or in part. Currently that information is available to the RTO and, to some extent, the relevant TO(s) and interconnection customer(s); it is *not* shared with ratepayers.

<sup>15</sup> PJM cites “customer modification requests or data changes” and “delays in receiving the information from the Transmission Owners” as factors in delays of its Facilities Studies. PJM Interconnection LLC, Informational Report on Interconnection Study Performance Metrics at 11, No. ER19-1958, eLibrary No. 20220214-5272 (Feb. 14, 2022). MISO attributes delays in part to “additional time needed for Transmission Owners to finalize studies based on the volume and complexity of the results.” Informational Report of Midcontinent Independent System Operator, Inc., Regarding Interconnection Study Delays – 2<sup>nd</sup> Quarter 2022 at 2, No. ER19-1960-004, eLibrary No. 20220815-5222 (Aug. 15, 2022). ISO New England, Inc. (“ISO-NE”) reports that its delays are “attributable partly to the need to iterate the data with the Interconnection Customer” and are also caused by “[I]ate stage withdrawal of Interconnection Requests.” Interconnection Study Metrics First Quarter, 2022 Processing Time Exceedance Report at 3-4, No. ER19-1951-000 (May 16, 2022), eLibrary No. 20220516-5281.

specific TOs to which a penalty would be assessed, their analyses of causation would have to be precise and well-supported to defend against likely opposition from those TOs. RTOs may well decide that the best course is to accept responsibility for any study delays and seek to pass the resulting penalties through to RTO ratepayers.

Finally, allowing study delay penalties to be passed through to RTO ratepayers conflicts with another main goal of the NOPR: cost containment.<sup>16</sup> As proposed, study delay penalties are to be disbursed to interconnection customers on a *pro rata* basis in order to offset their study costs. NOPR P 169. As noted, no mechanism assures that ratepayers will receive any benefit from those offsets. Ratepayers would therefore incur increased costs from the RTO's passed-through penalties. And since those passed-through penalties would not incent the RTO to speed its queue processing, customers would not receive the intended benefits of the NOPR's reforms. The unreasonableness of this approach is heightened to the extent the Commission were to adopt study delay penalties that are higher than those proposed in the NOPR. *See, e.g.*, NOPR P 173 (asking for comment on proposed penalty structure).

***C. The NOPR's study delay penalty proposal should be clarified or revised with respect to RTO regions.***

TAPS suggests the following clarifications and revisions to the NOPR's proposal to protect consumers from bearing unjust and unreasonable costs, while holding RTOs accountable for their actions. First, consistent with Paragraph 169 of the NOPR, the Commission should make clear that RTOs cannot pass monetary penalties through to

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<sup>16</sup> NOPR P 3 ("These new challenges are creating large interconnection queue backlogs and uncertainty regarding the cost and timing of interconnecting to the transmission system, potentially increasing costs for consumers.").

transmission customers. To the extent the Commission allows study delay penalties to be imposed on RTOs and requires a section 205 proceeding for recovery of those penalties similar to those currently used for NERC penalties, that process should provide for automatic waiver of any monetary penalties that the RTO would otherwise pass through to its ratepayers.<sup>17</sup> As Commissioner Christie noted in his concurrence, “Consumers certainly should not pay, directly or indirectly.”<sup>18</sup>

Second, the Commission should consider alternate ways to incentivize RTOs to adhere to queue deadlines, including non-monetary options. For example, the Commission could strongly encourage RTOs to tie queue deadline violations to executive compensation, which it has done in the past.<sup>19</sup> RTOs have heeded such encouragement; both SPP and MISO tie their incentive compensation to reliability performance.<sup>20</sup>

Finally, the Commission should defer consideration of study delay penalties for RTOs, at least until RTOs have had experience implementing the rule’s other reforms. The NOPR asks whether periodic reports “should be in addition to or a substitute for the

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<sup>17</sup> The automatic waiver request would need close Commission scrutiny—the RTO will still be incented to accept responsibility rather than trying to determine if another entity caused or partially caused a delay.

<sup>18</sup> NOPR P 3 (Christie, Comm’r, concurring).

<sup>19</sup> While there is some question about whether the Commission could *require* tying performance to executive compensation (*see Wholesale Competition in Regions with Organized Electric Markets*, Order 719-A, P 182 (*citing Cal. Indep. Sys. Operator Corp v. FERC*, 372 F.3d 395 (2004))), the Commission has previously encouraged RTOs to do so *see id.* P 182 (“[W]e continue to encourage, but not require, that [RTO] executive compensation programs give appropriate weight to responsiveness [of the RTO to customers and other stakeholders].”), *on reh’g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

<sup>20</sup> *See Midcontinent Independent System Operator*, 135 FERC ¶ 61,118, P 5 (“[S]ince 2008, its incentive compensation has included a specific incentive target directly tying a component of incentive compensation to reliability and compliance performance.”). *See also Southwest Power Pool, Inc.*, Reliability Penalty Cost Recovery and Request for Confidential Treatment, No. ER19-2362-000 (July 3, 2019), eLibrary No. 20190703-5219 (“SPP’s Board of Directors determined that the best way to recover the penalty cost was to offset the cost with funds that were approved and allocated to the SPP employee compensation pool, rather than recovering the penalty cost from Market Participants and Members in the form of a new charge.”).

proposed monetary penalties discussed above.”<sup>21</sup> Periodic reports from the RTOs on study delays, which could include assignments of causation, should be required in lieu of monetary penalties. The Commission could also hold public technical conferences to better understand the cause of any continued queue processing delays in RTOs, and to identify and encourage process changes that could solve the problem. If, down the road, the Commission decides imposing monetary penalties on RTOs is appropriate, these reports will provide the fine-grained understanding of the causes of study delays to allow the Commission to more appropriately tailor penalties that will incentivize RTOs to efficiently process their interconnection queues. At minimum, if the Commission decides that study delay penalties are appropriate in RTO regions, implementation of those penalties should be delayed until at least five years from the effective date of the RTO’s compliance filing for the final rule.<sup>22</sup>

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<sup>21</sup> NOPR P 173 (seeking comment on the use of Commission staff-prepared periodic reports on both RTO and non-RTO regions).

<sup>22</sup> To the extent an RTO’s compliance filing demonstrates that its pre-existing tariff provisions meet its compliance obligation, the five years would start from the date of the Commission order accepting those provisions as compliant with the final rule.

**CONCLUSION**

The Commission should consider TAPS's comments as it formulates a final rule in this proceeding.

Respectfully submitted,

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