

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Building for the Future Through Electric
Regional Transmission Planning and
Cost Allocation and Generator
Interconnection

Docket No. RM21-17-000

**REQUEST FOR CLARIFICATION OR
LIMITED REHEARING OF
TRANSMISSION ACCESS POLICY STUDY GROUP**

On May 13, 2024, the Commission issued Order 1920,¹ its Final Rule in this important proceeding. As an association of transmission-dependent utilities (“TDUs”) in thirty-five states promoting open and non-discriminatory transmission access,² the Transmission Access Policy Study Group (“TAPS”) recognizes the importance of a robust transmission grid that is able to reliably deliver existing and new resources to load-serving entities (“LSEs”); and it has long been outspoken on the need for improved transmission and ways to get needed transmission built at reasonable cost.³ We recognize that regional transmission planning and cost allocation are necessary to achieve these important objectives, while keeping jurisdictional rates affordable and consistent with the

¹ *Bldg. for the Future Through Elec. Reg’l Transmission Plan. & Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068 (2024) (“Order 1920” or “Final Rule”).

² See TAPS, <https://www.tapsgroup.org> (last visited May 21, 2024). Jane Cirrincione, Northern California Power Agency, is the TAPS Chair; Kevin Gaden, Illinois Municipal Electric Agency, is the Vice Chair. Thomas Heller is TAPS’s Executive Director.

³ See TAPS, *Effective Solutions for Getting Needed Transmission Built at Reasonable Cost* (June 2004), <https://www.tapsgroup.org/wp-content/uploads/2013/01/effectivesolutions.pdf> (“TAPS 2004 White Paper”); TAPS, *Inclusive Joint Transmission Ownership Arrangements: An Effective Means to Site and Build Transmission Need to Support Our Changing Resource Mix* (June 25, 2021), <https://www.tapsgroup.org/wp-content/uploads/2021/09/TAPS-Inclusive-Joint-Ownership-White-Paper.pdf> (“TAPS 2021 White Paper”). See also Initial Comments of Transmission Access Policy Study Group (Aug. 17, 2022), eLibrary No. 20220817-5183 (“TAPS Initial NOPR Comments”); Reply Comments of Transmission Access Policy Study Group (Sept. 19, 2022), eLibrary No. 20220919-5104 (“TAPS Reply NOPR Comments”) (collectively, “TAPS NOPR Comments”); and Comments of Transmission Access Policy Study Group (Oct. 12, 2021), eLibrary No. 20211012-5388 (“TAPS ANOPR Comments”).

Commission's statutory mandate to meet the reasonable needs of LSEs as mandated by sections 205,⁴ 206,⁵ and 217(b)(4)⁶ of the Federal Power Act ("FPA"). TAPS vigorously supported Order 1000's⁷ objective of ensuring selection of more efficient and cost-effective alternatives in transmission plans. And TAPS supports Order 1920's effort to further Order 1000's objectives by accommodating the transition in our resource mix in a manner that "maximizes benefits accounting for costs over time without over-building transmission facilities,"⁸ thereby benefiting consumers and producing just and reasonable rates.⁹

Nevertheless, pursuant to section 313(a) of the FPA, 16 U.S.C. § 825l(a), and Rules 212 and 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.713, TAPS requests clarification or limited rehearing of Order 1920, as described below.

TAPS also urges the Commission to make the cost management proceeding¹⁰—to which the Final Rule defers many issues crucial to minimizing the burden on consumers of the intended transmission build-out—a high priority, and to make mechanisms to foster and induce joint ownership arrangements with public power and non-profit cooperatives a focus of that proceeding.

⁴ 16 U.S.C. § 824d.

⁵ 16 U.S.C. § 824e.

⁶ 16 U.S.C. § 824q(b)(4).

⁷ *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011) ("Order 1000"), *reh'g denied*, Order No. 1000-A, 139 FERC ¶ 61,132 ("Order 1000-A"), *on reh'g*, Order No. 1000-B, 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).

⁸ Order 1920, P 231.

⁹ *Id.* P 964.

¹⁰ *Transmission Plan. & Cost Mgmt.*, Docket No. AD22-8-000 ("cost management proceeding").

TAPS agrees with Order 1920's determination *not* to include in the Final Rule the NOPR's¹¹ proposed conditional federal Right of First Refusal ("ROFR") for certain jointly-owned transmission facilities.¹² While premised on TAPS's demonstration of the many benefits of "inclusive joint ownership" with public power and non-profit cooperatives,¹³ the NOPR's conditional ROFR proposal too broadly defined qualifying joint ownership partners to include any unaffiliated entity.¹⁴ As TAPS explained, that expansive definition would enable arrangements (including "back-scratching" arrangements among Transmission Owners ("TOs")) that evade Order 1000's competitive transmission development reforms without providing compensating benefits to consumers.¹⁵

To address that serious deficiency, TAPS strongly urged the Commission to limit eligibility for the conditional joint ownership ROFR to "inclusive joint ownership arrangements"—i.e., only where incumbent TOs offer a meaningful opportunity for joint ownership on reasonable terms on a load-ratio basis to all LSEs (as defined in FPA section 217(b)(4)) in the TO's footprint. LSEs in the incumbent TO's footprint are likely to be public power or non-profit cooperatives that produce the cost reduction and other benefits demonstrated by TAPS.¹⁶ TAPS's narrowed ROFR furthers the planning, siting, and consumer-savings objectives identified in the NOPR, while leaving room for

¹¹ *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, 179 FERC ¶ 61,028 (2022) ("NOPR").

¹² Order 1920, P 1093.

¹³ NOPR PP 361-364 (2022).

¹⁴ *Id.* P 365.

¹⁵ See TAPS Initial NOPR Comments at 48-49; TAPS Reply NOPR Comments at 5-6, 10-13.

¹⁶ TAPS Initial NOPR Comments at 47. See also *id.* at 33-46 and Appendix A; TAPS Reply NOPR Comments at 4-7.

competitive projects where incumbent TOs choose not to share ownership in a manner that would achieve those goals. Finding this “sweet spot” is important to TAPS. We have long advocated for inclusive joint ownership arrangements to get needed transmission built at reasonable cost *and* supported competitive transmission development, which has saved consumers money where effectively implemented (recognizing those occasions have been limited).¹⁷

TAPS was disappointed the Commission did not adopt TAPS’s narrowed joint ownership ROFR.¹⁸ However, we recognize the value of the Final Rule’s commitment to continue to consider potential ROFR reforms along with other transmission reforms in the future, noting the cost management proceeding.¹⁹ We appreciate the Joint Concurrence’s reiteration of the Commission’s commitment to continue to evaluate potential actions to incentivize TO joint ownership with public power and cooperatives in their footprint, including in the cost management proceeding.²⁰ We welcome the Joint Concurrence’s explicit encouragement of such inclusive joint ownership, and its recognition of the many benefits of joint ownership structures that partner TOs with other LSEs in their footprint, such as public power or non-profit cooperatives.²¹ We particularly value the Joint Concurrence’s encouraging Transmission Providers (“TPs”) to find ways to encourage such participation through their Order 1920 compliance filings, including by using such joint ownership as a factor to be considered in evaluating and

¹⁷ See TAPS Initial NOPR Comments at 29-30 & nn.77-78; TAPS Reply NOPR Comments at 4 & nn. 16-17.

¹⁸ Order 1920, P 1563.

¹⁹ *Id.*

²⁰ *Id.* PP 29-33 (Phillips, Chairman, and Clements, Comm’r concurring) (“Joint Concurrence”).

²¹ *Id.* PP 30-32.

selecting the more efficient and cost-effective solutions to meet a long-term transmission need.²²

TAPS hopes to see Order 1920 compliance filings that use inclusive joint ownership with public power and cooperatives as a factor in evaluating and selecting Long-Term Regional Transmission (“LTRT”) Facilities. We also look forward to working with the Commission in the cost management proceeding to induce joint ownership with public power and cooperatives through TAPS’s narrowly tailored ROFR or other mechanism.

I. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

STATEMENT OF ISSUES

1. Did Order 1920 err by failing to clarify the interaction between Long-Term Regional Transmission Planning (“LTRTP”) and Order 1000 reliability and economic project planning processes? Order 1920, PP 244, 1065-1066, 1071, 1073.
2. Did Order 1920 err by failing to impose adequate requirements on TPs that propose additions to the seven benefits required by Order 1920? NOPR PP 183-185, 187; Order 1920, PP 440, 711, 714, 724, 735, 737, 755, 811, 822, 837.
3. Did Order 1920 err by failing to make clear the general obligation of transmission providers to consult with stakeholders, including LSEs, in developing their compliance filings? Order 1000, PP 151, 157, 160, 164, 206, 211, 277, 482, 686; Order 1000-A, PP 266, 289; Order 1920, PP 194, 560, 562, 707-708, 764, 766, 768, 771, 903, 916, 924, 929, 955, 996, 1000, 1001, 1071, 1364, 1768; *Wholesale Competition in Regions with Organized Elec. Mkts.*, Order No. 719, 125 FERC ¶ 61,071, P 503 (2008), *on reh’g*, Order No. 719-A, 128 FERC ¶ 61,059, *reh’g denied and providing clarification*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).
4. Did Order 1920 err in failing to include an affordability metric in the Final Rule, as proposed by TAPS? NOPR P 251; Order 1920, PP 952, 964, 971, 1632, 1564, 1648; *Cal. Pub. Utils. Comm’n v. FERC*, 20 F.4th 795, 804 (D.C. Cir. 2021) (quoting *New Eng. Power Generators Ass’n, Inc. v. FERC*, 881 F.3d 202, 211 (D.C. Cir. 2018)).

²² *Id.* P 33. We also note the Joint Concurrence’s reference to the role such joint ownership arrangements can play in the incentives context as a risk-reducing measure, diversifying financial risk and minimizing siting risk, as the Commission has long recognized and encouraged. *Id.* P 33 & n.22.

SPECIFICATION OF ERRORS

1. Order 1920 errs by failing to clarify the interaction between LTRTP and Order 1000 reliability and economic project planning processes.
2. Order 1920 errs by failing to impose adequate requirements on TPs that propose additions to the seven benefits required by Order 1920.
3. Order 1920 errs by failing to make clear the general obligation of transmission providers to consult with stakeholders, including LSEs, in developing their compliance filings.
4. Order 1920 errs in failing to include an affordability metric in the Final Rule, as proposed by TAPS.

II. ARGUMENT

A. The Commission should clarify the interaction between LTRTP and Order 1000 reliability and economic project planning processes, or grant rehearing to make that interaction clear

Order 1920 requires an every-five-year LTRTP process, but allows regions²³ to retain their existing region-specific Order 1000 reliability and economic regional planning processes,²⁴ which occur more frequently.²⁵ In connection with the initial timing sequence for LTRTP, the Final Rule recognizes that there may be overlap in the time horizons for LTRTP and Order 1000 planning processes, and that those planning processes will likely inform each other.²⁶ Order 1920 therefore requires TPs' compliance

²³ The term "region" includes regional transmission organizations ("RTOs") and independent system operators ("ISOs") (collectively referred to as "RTO") and non-RTO planning regions.

²⁴ We recognize that the Commission leaves room for TPs to propose a combined process in their compliance filings. Order 1920, P 244.

²⁵ The California Independent System Operator Corporation and Southwest Power Pool, Inc., for example, conduct their transmission planning processes annually, while ISO-New England Inc. conducts planning cycles at least once every 3 years (typically, biennially). See, respectively *Transmission Planning*, CAISO, <https://www.caiso.com/generation-transmission/transmission/transmission-planning> (last visited June 5, 2024); *Integrated Transmission Planning*, SPP, <https://spp.org/engineering/transmission-planning/integrated-transmission-planning/> (last visited June 5, 2024); *Regional System Plan and Related Analyses*, ISO New England, [https://www.iso-ne.com/system-planning/system-plans-studies/rsp#:~:text=The%20Regional%20System%20Plan%20\(RSP,II%20of%20the%20ISO%20Tariff\)](https://www.iso-ne.com/system-planning/system-plans-studies/rsp#:~:text=The%20Regional%20System%20Plan%20(RSP,II%20of%20the%20ISO%20Tariff)) (last visited June 5, 2024).

²⁶ Order 1920, P 1071.

filings to explain “how the initial timing sequence for Long-Term Regional Transmission Planning interacts with existing regional transmission planning processes.”²⁷ It specifies that TPs “must address the possible interaction between the transmission planning cycle for Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes.”²⁸ And it requires TPs to address the possible elimination of regional transmission facilities from the existing regional transmission planning processes, observing that “it is possible that, in some cases, Long-Term Regional Transmission Facilities selected to address Long-Term Transmission Needs may provide near-term reliability or economic benefits, and thus could displace regional transmission facilities that are under consideration as part of existing regional transmission planning processes.”²⁹

The Final Rule’s treatment of the *continuing* interaction between LTRTP and Order 1000 reliability/economic processes, beyond initial implementation, is much less clear. While Order 1920 appropriately recognizes NOPR comments about that ongoing interaction,³⁰ it confusingly includes them under the “Initial Timing Sequence Implementation” heading. And rather than requiring TPs to address the issue head-on, it merely “encourage[s]” TPs to “address in their explanation how their proposed Long-Term Regional Transmission Planning would facilitate moving beyond piecemeal

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* P 1073, referring to comments summarized at *id.* PP 1065-66.

transmission expansion to address relatively near-term transmission needs and toward a more robust, well-planned transmission system.”³¹

Given the continuing overlap and interaction between the parallel Order 1000 and LTRTP processes, more is needed. For example, beyond the initial timing sequence implementation, Order 1920 does not address whether, or the circumstances under which, projects may be moved from an Order 1000 reliability/economic planning process to the LTRTP process. Nor does it address whether or when projects may move from the LTRTP process into the Order 1000 reliability/economic planning process. Specifically, what should happen if a project identified and selected in an LTRT Plan is identified in a subsequent Order 1000 regional planning process as needed for reliability or economics *earlier* than contemplated in the LTRT Plan? While it could be helpful in limited circumstances, Order 1920’s existing reevaluation provision is unlikely to effectively address such a scenario.³²

TAPS shares the Commission’s concerns that ratepayer dollars are wisely spent on the more efficient and cost-effective upgrades. And we recognize that, particularly given the different cost allocation methodologies used by the two different regional processes that operate on different timelines, there may be various incentives at work in determining which regional process is used to identify and select a needed project. But that is all the more reason to make sure that the continued interaction between the Order 1000 and LTRTP processes is governed by guidelines that provide for the ability of LSEs

³¹ *Id.*

³² *Id.* P 1049 (a previously selected LTRT Facility may be reevaluated to avoid jeopardizing a TP’s ability to meet its reliability needs or reliability-related service obligations *only* if development of that LTRT Facility is delayed).

to reliably serve their customers at reasonable cost and prevent gaming. TPs should not be permitted to simply play it by ear.

TAPS therefore urges the Commission to clarify, and to the extent necessary grant rehearing of, the Final Rule: (1) to recognize that the interaction between LTRTP and any retained Order 1000 reliability and economic processes will not end with the initial implementation of LTRTP; and (2) to require TPs in their compliance filings to demonstrate how the operation of those two types of processes, on different time frames, will interact and operate on an ongoing basis to ensure just and reasonable rates. For example, a TP that proposes to add an LTRTP process, while retaining its existing Order 1000 process for reliability and economic projects, should be required to explain when and how projects may be moved between the two types of planning processes in a manner that maintains reliability and promptly addresses near-term economic needs, while not undermining the LTRTP process's achievement of its important objectives.

B. Additions to required benefits must be further constrained to be just and reasonable

Avoidance of double-counting has been a key driver of the Commission's effort to determine whether and how particular benefits should be considered in the evaluation and selection process for LTRT Facilities. The NOPR proposed allowing TPs flexibility to select the benefits they will use to evaluate LTRT Facilities,³³ but requiring them to identify those benefits, and to explain how they will be calculated, how they will reflect the benefits of regional transmission facilities to meet transmission needs driven by changes in resource mix and demand, and the rationale for the benefits identified.³⁴ The

³³ NOPR PP 183-184.

³⁴ *Id.* P 183.

NOPR also identified a set of twelve “Long-Term Regional Transmission Benefits” that “may be useful in evaluating transmission facilities for selection in the regional transmission plan for purposes of cost allocation”;³⁵ and it specifically sought comments on “how to ensure that each type of benefit is distinct such that the list [] does not ‘double count’ benefits.”³⁶

Avoidance of double-counting also plays an important role in how Order 1920 selects and structures the seven benefits all regions must measure and consider. The Final Rule omits several of the benefits originally identified in the NOPR. It explains that, “cognizant of concerns about duplication of benefits and difficulty of measuring certain benefits,” the Commission limited the required benefits to those “that have a proven track record, can be discretely measured, and are unlikely to cause duplication.”³⁷ In describing those benefits, the Commission repeatedly highlights its efforts to avoid double-counting and overlap.³⁸ And it invites TPs to use their flexibility in measurement of benefits to address any remaining concerns they may have about the “possibility of double-counting.”³⁹ The need to prevent double-counting in LTRTP permeates other aspects of Order 1920, as well.⁴⁰

³⁵ *Id.* P 185.

³⁶ *Id.* P 187.

³⁷ Order 1920, P 724.

³⁸ *See, e.g., id.* P 755 (structuring Benefit 2a and 2b to avoid overlap). *See also*, with regard to Benefit 6, *id.* P 804 (“To avoid double-counting of similar circumstances, transmission providers must account for extreme weather events and unexpected system conditions that are separate and distinct such that the benefits of mitigating each system condition can be combined into a single benefit measure”); *id.* P 811 (combining benefits to be calculated as part of Benefit 6 to avoid overlap).

³⁹ *Id.* P 735.

⁴⁰ *See, e.g., id.* P 440 (“We acknowledge that there could be overlap between Factor Categories One and Two because a certain law or regulation could reasonably be considered to fit into both categories. In such a circumstance, transmission providers must account for the law or regulation in one of the two categories, not both, to avoid double-counting of that factor’s anticipated effect on Long-Term Transmission Needs”).

However, the Commission seems to abandon concerns about overlap and double-counting when it invites TPs to supplement Order 1920's required benefits with additional benefits (including and beyond the illustrative benefits listed in the NOPR), "so long as they do so in a manner that is consistent with [their] obligations under Order No. 890⁴¹ and Order No. 1000 transmission planning principles to be open and transparent as to their transmission planning processes."⁴² The Final Rule also allows TPs flexibility "to measure and use" such additional benefits on a "transmission facility or plan-specific basis."⁴³

While TAPS has generally favored regional flexibility, we are concerned that this invitation—subject only to a requirement to be "open and transparent"—could lead to double-counting. First, as discussed more generally in Part II.C, below, it is unclear whether Order 1920's TP obligation to be "open and transparent" applies to: (1) the process of deciding whether to propose using, and how to measure, additional benefits on top of the required seven benefits; or (2) the implementation of the additional benefits measures for specifically proposed projects.⁴⁴ It should apply to both.

Second, conspicuously absent from Order 1920's prerequisites for adding benefits are the requirements the NOPR had proposed in the context of allowing TPs flexibility in

⁴¹ *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, P 593 ("Order 890"), *order on reh'g and clarification*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

⁴² Order 1920, P 822; *see also id.* P 737.

⁴³ *Id.* P 822.

⁴⁴ *See id.* P 737 (which heightens the ambiguity by stating, immediately after requiring openness and transparency, "[i]n particular, the evaluation process must result in a determination that is sufficiently detailed for stakeholders to understand why a particular Long-Term Regional Transmission Facility (or portfolio of such Facilities) was selected or not selected to address Long-Term Transmission Needs.") (omitting footnote referring to Evaluation and Selection of Long-Term Facilities section of the Final Rule).

determining which benefits to use. Unlike in the NOPR, the Final Rule does *not* require TPs adding benefits to explain how they will be calculated, how they will reflect the benefits of regional transmission facilities to meet long-term transmission needs, and the rationale for the benefits identified.⁴⁵ And no demonstration is required that the added benefits do not overlap with or double-count other benefits being used to evaluate LTRT Facilities.⁴⁶

Order 1920's failure to expressly require TPs to fully explain and justify additional benefits used to evaluate LTRT Facilities is an unexplained and unjustified departure from the NOPR.⁴⁷ It is also inconsistent with the Final Rule's directive that TPs describe how they will measure each of the seven required benefits as part of their Order 1920 compliance filings.⁴⁸ In addition, given the Commission's focus on avoiding overlap and double-counting of benefits in LTRTP throughout this proceeding, and comments recounted in the Final Rule as identifying overlap concerns with NOPR-identified benefits *omitted* from those required by Order 1920 (i.e., deferred generation capacity investments; access to lower-cost generation; increased competition; and increased market liquidity),⁴⁹ the Final Rule's failure to clearly guard against overlap and double-counting here is both surprising and concerning.

⁴⁵ NOPR P 183.

⁴⁶ Compare *id.* P 187.

⁴⁷ See *id.* P 183.

⁴⁸ See Order 1920, P 837.

⁴⁹ See, e.g., *id.* P 711 ("AEP and GridLab argue that many of the benefits listed in the NOPR measure or identify the same type of benefit and therefore argue that the Commission should group similar benefits together into categories to avoid double-counting." Among other things, AEP identifies, as overlapping, deferred generation); *id.* P 717 (NRECA identifies as accounting for increased competition and increased market liquidity as risking double counting benefits).

The Final Rule's determination to allow TPs flexibility to identify and calculate additional benefits on a "transmission facility or plan-specific basis"⁵⁰ is particularly problematic. Order 1920 provides no hint as to how that would work, especially in combination with the required benefits. Are TPs allowed full flexibility to determine whether the additional benefits are to be considered with respect to a particular facility? The opportunity to selectively apply additional benefits on a transmission facility- or plan-specific basis would seem to invite undue discrimination, undermining the Commission's stated objective to facilitate selection of more cost-effective and efficient projects.

TAPS therefore requests that the Commission clarify or rehear the Final Rule to permit TPs to include benefits in addition to the required seven benefits only if the following requirements are satisfied:

- 1) The TP may add a Long-Term Regional Benefit, beyond the seven required by Order 1920, only after consultation with stakeholders in an open and transparent stakeholder process that meets the requirements of Orders 890 and 1000.⁵¹
- 2) The TP must explain how any additional benefit will be calculated, how it will reflect the benefits of regional transmission facilities to meet long-term transmission needs, and the rationale for the benefit identified. The explanation should demonstrate that use of such additional benefit for evaluating a Facility identified to meet a Long-Term Regional Transmission Need is just, reasonable, and not unduly discriminatory.
- 3) The TP must demonstrate that any proposed additional benefit does not overlap with or double-count any other benefit being used to evaluate LTRT Facilities.
- 4) To the extent that a TP seeks to add a benefit on a "transmission facility or plan-specific basis," the TP's compliance filing must clearly explain the circumstances in which the transmission facility or plan-specific benefit would be used and demonstrate that the proposed selective use of the additional benefit is necessary to achieve the objectives of the Final Rule in a manner that is just, reasonable, and not unduly discriminatory. If this flexibility is retained, Commission guidance on the need for and scope of TPs' flexibility to selectively apply additional benefits would

⁵⁰ *Id.* P 822.

⁵¹ *See also* Part II.C below with regard to the need for the Commission to confirm the TPs' obligation to consult with stakeholder on development of their compliance filings.

be important to ensure such application does not undermine the LTRTP process and its objectives.

C. The obligation of TPs to consult with stakeholders, including LSEs, in developing their compliance filings, should be made clear

Throughout Order 1000, the Commission made clear its expectation that stakeholders were to have a role in developing TP compliance filings. For example, after explaining that Order 1000 expands on Order 890's transmission planning principles in requiring the production of regional plans, the Commission stated:⁵²

[W]e require public utility transmission providers to develop, *in consultation with stakeholders*, enhancements to their regional transmission planning processes, consistent with these transmission planning principles.

This obligation to consult with stakeholders in developing regional planning processes is reiterated throughout Order 1000, both in general⁵³ and in specific contexts.⁵⁴

Order 1920 expressly contemplates active stakeholder involvement in the process of developing compliance filings. For example, it extends the compliance filing period to “allow stakeholders, including Relevant State Entities, to meaningfully engage in the process of developing such proposals.”⁵⁵ However, the Final Rule does not clearly

⁵² Order 1000, P 151 (emphasis added and footnotes omitted). *See also* Order 1000-A, PP 266, 289.

⁵³ *See, e.g.*, Order 1000, P 157 (“We allow public utility transmission providers developing the regional transmission planning processes to craft, in consultation with stakeholders, requirements that work for their transmission planning region”); *id.* P 336 (“We also require that public utility transmission providers in a region establish, in consultation with stakeholders, procedures to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation”). Indeed, Order 1000's definition of transmission planning region expressly contemplates TP consultation with stakeholders and affected states. *Id.* P 160. *See also* Order 1000-A, PP 266, 289.

⁵⁴ *See, e.g.*, Order 1000, P 164 (requiring consultation with stakeholders in determining, in the first instance, what information merchant developers must provide); *id.* PP 206, 211 (requiring consultation with stakeholders on the procedures for identifying and evaluating needs driven by public policy requirements); *id.* P 277 (requiring consultation with stakeholders with regard to addressing participation by nonincumbents); *id.* PP 482, 686 (requiring consultation with stakeholders to develop appropriate cost allocation methods for regional and interregional facilities).

⁵⁵ Order 1920, P 1768.

reiterate Order 1000's comprehensive requirement to consult with stakeholders in the development of compliance filings. Rather, Order 1920 is spotty and ambiguous in that regard.

The Final Rule explicitly requires TPs to consult with stakeholders or otherwise consider their input in developing parts of the TPs' Order 1920 compliance filings. For example, in the context of the Long-Term Scenarios, Order 1920 "require[s] transmission providers, with the input of their customers and other stakeholders, to craft coordination requirements that work for those transmission providers and their customers and other stakeholders."⁵⁶ The Commission requires consultation with stakeholders regarding use of more than three Long-Term Scenarios,⁵⁷ and selection criteria.⁵⁸ And it recognizes that the LTRTP process "is more likely to be successful where transmission providers, Relevant State Entities, and other stakeholders collaborate to develop an evaluation process and selection criteria,"⁵⁹ and expressly "requires transmission providers . . . to propose, *after consultation with Relevant State Entities and other stakeholders*, evaluation processes, including selection criteria."⁶⁰

Unfortunately, the Final Rule lacks clarity on the obligation of TPs to consult with stakeholders on determining how the region will calculate the seven benefits required by Order 1920. This obligation may well be encompassed within the general requirement to consult with stakeholders on the selection and evaluation processes, noted above.

⁵⁶ *Id.* P 560.

⁵⁷ *Id.* P 562.

⁵⁸ *Id.* P 916.

⁵⁹ *Id.* P 996.

⁶⁰ *Id.* P 924 (emphasis added).

Paragraph 955 of Order 1920, for example, describes the “evaluation process” as including “estimat[ing] the costs and measur[ing] the benefits of the Long-Term Regional Transmission Facilities . . . identified or proposed for potential selection.”⁶¹

However, the Final Rule contains no separate statements specifically obligating TOs to invite stakeholder input on development of the TP’s compliance filing with regard to calculating the required Order 1920 benefits or supplementing them.⁶² Rather, after recognizing the flexibility afforded TPs on those benefits issues and acknowledging comments seeking engagement of all stakeholders (including states and LSEs), Order 1920 states:⁶³

Consistent with other reforms in this final rule incorporating an inclusive role for states in transmission planning, we encourage transmission providers to consult with states as they develop proposals to comply with the requirements of this final rule and consider whether, and if so, how, to use additional benefits in Long-Term Regional Transmission Planning.

And Order 1920 declines requests to extend to other stakeholders the TPs’ obligation to *both* consult with *and seek support of* Relevant State Entities with regard to the evaluation process, including selection criteria.⁶⁴ Given the Final Rule’s ambiguities on this point, the statement (made in the context of that denial) that “nothing in this final rule diminishes the role of stakeholders that are not Relevant State Entities, nor absolves

⁶¹ *Id.* P 955 (“transmission providers’ evaluation processes must estimate the costs and measure the benefits of the Long-Term Regional Transmission Facilities (or portfolio of such Facilities) that are identified or proposed for potential selection, in addition to evaluating the identified Long-Term Regional Transmission Facilities (or portfolio of such Facilities) using any qualitative or other quantitative selection criteria that the transmission providers in a transmission planning region propose to apply”).

⁶² *See* Part II.C above.

⁶³ *Id.* P 903.

⁶⁴ *Id.* P 1000.

transmission providers of any existing obligations that they may have to provide opportunities for stakeholder input,”⁶⁵ does not provide adequate assurance that stakeholders will be consulted regarding measurement and the addition of benefits.

Order 1920 recognizes that measurement of the seven benefits required to be considered in the evaluation and selection process is a challenging task on which the Final Rule accords flexibility to TPs.⁶⁶ Stakeholder consultation on the development of these metrics will be crucial, particularly in non-RTO areas, some of which have had no experience with measuring those benefits (e.g., Benefit 3, production cost savings);⁶⁷ opposed the use of those benefits in LTRTP;⁶⁸ and lack a strong tradition of active engagement with stakeholders.⁶⁹

As explained in Part II.B above, the Final Rule also fails to impose an explicit stakeholder consultation obligation on TPs with respect to their flexibility to identify and measure benefits in addition to the required seven benefits.

⁶⁵ *Id.*

⁶⁶ *See, e.g., id.* PP 768, 771 (acknowledging challenges associated with measuring Benefit 3, production cost savings, while allowing TPs flexibility to develop the method they use to measure production cost savings, which may differ among the regions).

⁶⁷ As Order 1920 notes (P 764), TAPS urged the Commission to mandate consideration of production cost savings in non-RTO regions, pointing to the failure of the Florida region to select any regional project since Order 1000 despite consistent congestion (e.g., in Central Florida). TAPS Initial NOPR Comments at 14-16. We strongly support the Final Rule’s determination to make such calculation of production cost savings mandatory, but recognize that the task of accurately doing so may be challenging in non-RTO regions, as highlighted by commenters opposing that requirement. Order 1920, P 766. It is therefore essential that TPs be required to consult with stakeholders when they exercise the flexibility allowed by the Final Rule (PP 768, 771) to determine how benefits are measured.

⁶⁸ *See, e.g., id.* PP 194, 707-708.

⁶⁹ RTO regions, in contrast, are required to “provide an avenue for customers and other stakeholders to present their views on RTO and ISO decision-making, and to have those views considered.” *Wholesale Competition in Regions with Organized Elec. Mkts.*, Order No. 719, 125 FERC ¶ 61,071, P 503 (2008), *on reh’g*, Order No. 719-A, 128 FERC ¶ 61,059, *reh’g denied and providing clarification*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

To address these problems, TAPS requests clarification or rehearing that Order 1000's general obligation to consult with stakeholders in developing the TPs' compliance filings applies to the development of all aspects of Order 1920 compliance filings. The success of the Commission's reforms is in the details of how TPs exercise the considerable flexibility they are granted by the Final Rule. Allowing TPs to exclude stakeholders, including LSEs, from any part of the compliance filing development process will necessarily result in less effective and more controversial LTRTP compliance proposals, which will complicate and elongate both the Commission's review of those filings and their implementation, undermining the Final Rule's objectives.⁷⁰ The consequences of such failure will be most severe in non-RTO regions, where existing regional transmission planning processes have proven themselves completely incapable of producing results.⁷¹

In asking the Commission not to deviate from its Order 1000 precedent in this important regard, TAPS is fully cognizant of the Commission's stated interest in providing Relevant State Entities an enhanced role in the LTRTP process.⁷² But that enhanced state role need not, and must not, come at the expense of meaningful input from other stakeholders. To the contrary, allowing TPs to entirely exclude certain stakeholders from aspects of the compliance filing development process is inconsistent with Order 1920's express expectation of meaningful stakeholder engagement.⁷³ And such exclusion

⁷⁰ See Order 1920, PP 1071-1072 (the first LTRTP process is to commence no later than one year from the date on which initial filings to comply with this final rule are due, absent demonstration that alignment of its planning processes necessitates a later date).

⁷¹ See TAPS Initial NOPR Comments at 15-16, 68-71, and Appendix C to those comments.

⁷² See, e.g., Order 1920, P 1364.

⁷³ See *id.* P 1768 (discussed above).

of stakeholders, particularly transmission dependent LSEs,⁷⁴ is hard to reconcile with FPA section 217(b)(4)'s directive to the Commission to “exercise the authority of the Commission under this chapter in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities,”⁷⁵ even recognizing that some of the Final Rule's other requirements are designed to take LSE needs into account.⁷⁶

At minimum, the Commission should confirm that Order 1920 requires TPs to consult with stakeholders in developing their compliance filings with regard to the entire evaluation process and selection criteria, including but not limited to calculating the required benefits and supplementing them with additional benefits. As discussed above, such confirmations would be consistent with Order 1920's express inclusion of benefits estimation in the evaluation process⁷⁷—with respect to which TPs are clearly required to consult with stakeholders in developing their compliance filings⁷⁸—as well as its stated expectation of meaningful stakeholder engagement in the process of developing compliance filings.⁷⁹

⁷⁴ As the rates of such TDUs may not be subject to state commission jurisdiction, their interests may not be encompassed within those of the customers such state commissions are charged with protecting.

⁷⁵ 16 U.S.C. § 824q(b)(4).

⁷⁶ *See* Order 1920, P 1001.

⁷⁷ *See id.* P 955.

⁷⁸ *See id.* P 924.

⁷⁹ *See id.* P 1768.

D. The Commission should rehear its failure to include an affordability metric in the Final Rule

As Order 1920 recognizes,⁸⁰ TAPS's NOPR comments urged the Commission to include an affordability metric as part of project selection. TAPS argued that the metric would provide a mechanism to achieve the NOPR's objectives to maximize benefits to consumers over time without over-building; enable stakeholders and policymakers to better understand the LTRTP process and the implications of the laws and regulations that must be considered as part of that process; and facilitate discussions among states re: funding upgrades. As proposed, TAPS's affordability metric includes the following:⁸¹

- For each proposed project/portfolio, the region should provide the projected impact on transmission rates/consumer costs if the project is selected in the Long-Term Regional Transmission Plan for regional cost allocation. Regions should provide both:
 - the total (incremental) transmission rate impact; and
 - the total transmission rate that customers will be expected to pay if all of the approved transmission projects from the current and prior planning cycles are completed and placed in service as anticipated.
- For purposes of this disclosure requirement, the region should use the default *ex ante* cost allocation method in the absence of any state agreement.
- The rate impact information described above should cover a period that extends to at least 20 years after the project is expected to be in commercial operation (or such other period consistent with the time horizon used to evaluate project benefits).
- Regions should be required to share their assumptions and calculations, and to provide a process for stakeholders to submit questions and verify information.

Order 1920's entire response to this proposal is as follows:⁸²

Finally, in response to TAPS, we decline to require transmission providers to develop affordability metrics to provide along with other information about a particular Long-Term Regional Transmission Facility. The Commission did not propose such a requirement in the

⁸⁰ *Id.* P 952.

⁸¹ TAPS Initial NOPR Comment at 18-19.

⁸² Order 1920, P 971 (footnote omitted).

NOPR, and we are not persuaded to adopt a requirement for such metrics in this final rule.

The only reason the Commission provides for rejecting TAPS's proposal is that the Commission itself did not propose the metric in the NOPR.

While TAPS's affordability metric was not proposed by the NOPR, the suggestion was well within the comments sought by the NOPR. Order 1920 does not purport to substantively alter⁸³ the NOPR's objective to maximize benefits to consumers over time without over-building, to which TAPS's metric was directed. And the NOPR sought comments on how to achieve that objective, for example, inviting commenters to address uncertainty and imperfect information that may lead to stranded assets.⁸⁴ TAPS's affordability metric does just that. It would inform states and help regions, states, and stakeholders work together to prioritize projects and contain costs in the project evaluation and selection process. In addition, it could be a valuable tool to communicate with policymakers as to the rate impact of their decisions. Thus, for the NOPR's commenting invitation to be real, it cannot be sufficient to reject a responsive suggestion simply on the basis that it was not proposed by the NOPR.

Nor does the Final Rule's conclusory announcement that it was "not persuaded" to include the TAPS affordability metric substitute for the reasoned decision-making required of the Commission. As the D.C. Circuit has repeatedly recognized, the "Commission cannot satisfy its mandate to engage with parties' comments by relying on

⁸³ The Final Rule removes the reference to consumers and substitutes "accounting for costs," stating that the omission of "to consumers" is only for brevity, explaining "we do not view this change as substantive." *Id.* P 964.

⁸⁴ NOPR P 251.

‘conclusory statements that dismissed [a party’s] concerns without providing reasoned analysis.’”⁸⁵

And Order 1920 does not expressly preserve the affordability metric for consideration in the ongoing cost management proceeding, as it does with a number of suggestions made to protect consumers from the potential for excessive costs as a result of this rule.⁸⁶ This omission is noteworthy as TAPS’s comments in that proceeding had expressly identified its proposed affordability metric, as proposed in response to the NOPR, as an important action the Commission can and should take to protect consumers.⁸⁷

TAPS therefore asks the Commission to rehear its arbitrary rejection of inclusion of an affordability metric as part of the selection criteria. At minimum, the Commission should clarify that it will consider the TAPS affordability metric, along with other potential mechanisms, in the cost management proceeding.

⁸⁵ *Cal. Pub. Utils. Comm’n v. FERC*, 20 F.4th 795, 804 (D.C. Cir. 2021) (quoting *New Eng. Power Generators Ass’n, Inc. v. FERC*, 881 F.3d 202, 211 (D.C. Cir. 2018)).

⁸⁶ *See, e.g.*, Order 1920, P 1632 (changes to local transmission planning processes beyond those adopted in the Final Rule); *id.* P 1648 (reforms to protect customers’ interests and additional process, more oversight, more monitoring (including establishing an independent transmission monitor), or prudence reviews; requiring RTOs/ISOs to assume a larger role in reviewing or approving identified local transmission projects; requiring a performance-based method of enhancing transparency in local transmission planning processes; and requiring transmission providers to make available additional transmission planning data, improve formatting of transmission planning inputs, or otherwise coordinate with LSEs to transfer data and information); *id.* P 1564 (Conditional Joint Ownership ROFR).

⁸⁷ Post-Technical Conference Comments of Transmission Access Policy Study Group, at 2, 9-10 (Mar. 23, 2023), *Transmission Plan. & Cost Mgmt.*, Docket Nos. AD22-8-000, eLibrary No. 20230323-5152.

CONCLUSION

As discussed above, the Commission should grant TAPS's requests for clarification or limited rehearing to ensure that Order 1920 achieves the Commission's objectives, consistent with the Federal Power Act's mandate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 12th day of June, 2024.

/s/ Lauren L. Springett

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