

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Appalachian Voices, et al.,
Petitioners,

v.

Case Nos. 24-1650 (LEAD)
(CONSOLIDATED WITH 24-
1748, 24-1751, 24-1756, 24-1758,
24-1760, 24-1765, 24-1770, 24-
1785, 24-1792, 24-1804, 24-1857,
24-1862, 24-1863, 24-1867, 24-
1876, 24-1885, 24-1887)

Federal Energy Regulatory Commission,
Respondent.

**MOTION TO INTERVENE OF
TRANSMISSION ACCESS POLICY STUDY GROUP**

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure and Local Rule 12(e), the Transmission Access Policy Study Group (“TAPS”) hereby moves to intervene in the above-captioned, consolidated review proceedings. In support of this motion, TAPS states:

I. ORDERS ON REVIEW

The petitioners in these consolidated cases seek review of the following orders of respondent Federal Energy Regulatory Commission (“FERC”) issued in FERC Docket No. RM21-17:

1. *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068 (2024) (“Order 1920”); and
2. *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, 188 FERC ¶ 62,025 (2024) (“Notice”) (together, “Orders”).

The identified Orders concern FERC’s issuance of a rule—Order 1920—directing substantial changes to the planning and cost allocation procedures for electric transmission facilities.

Multiple parties submitted petitions for review of the Orders in nine different courts of appeal within the statutory 10-day period under 28 U.S.C. § 2112(a). On August 8, 2024, the Judicial Panel on Multi-District Litigation designated this Court to hear all appeals related to these Orders, and all then-pending petitions for review of the Orders were transferred to this Court.¹ Additional petitions for review of the Orders have been filed with this Court since that date and consolidated with these proceedings.

The lead case in these consolidated appeals is *Appalachian Voices v. FERC*, No. 24-1650. The additional consolidated cases are: *Natural Resources Defense*

¹ *In Re: Federal Energy Regulatory Commission, Building for The Future Through Electric Regional Transmission Planning and Cost Allocation*, 187 FERC 61,068 Issued May 13, 2024, and *Denial of Rehearing By Operation of Law and Providing For Further Consideration*, 188 FERC 62,025 July 15, 2024, Consolidation Order, MCP No. 190 (J.P.M.L. Aug. 8, 2024).

Council, Inc. v. FERC, No. 24-1748; *Advanced Energy United v. FERC*, No. 24-1751; *Invenergy Solar Development North America LLC v. FERC*, No. 24-1756; *State of Texas v. FERC*, No. 24-1758; *State of Georgia v. FERC*, No. 24-1760; *Environmental Defense Fund v. FERC*, No. 24-1765; *Louisiana Public Service Commission v. FERC*, No. 24-1770; *Public Utilities Commission of Ohio’s Office of the Federal Energy Advocate v. FERC*, No. 24-1785; *ITC Midwest LLC v. FERC*, No. 24-1792; *National Rural Electric Cooperative Association v. FERC*, No. 24-1804; *Electricity Transmission Competition Coalition v. FERC*, No. 24-1857; *American Forest & Paper Association v. FERC*, No. 24-1862; *Pennsylvania Public Utility Commission v. FERC*, No. 24-1863; *New England States Committee on Electricity, Inc. v. FERC*, No. 24-1867; *Arizona Corporation Commission v. FERC*, No. 24-1876; *MISO Transmission Owners v. FERC*, No. 24-1885; and *Sierra Club v. FERC*, No. 24-1887.

II. INTEREST OF TAPS AND REQUEST FOR INTERVENTION

TAPS is an association of transmission-dependent utilities in thirty-five states.² TAPS members include municipal utilities, municipal joint action agencies, electric cooperatives, and an investor-owned utility that entirely or predominantly

² See TAPS, *About Us*, <https://www.tapsgroup.org> (last visited Sep. 18, 2024). Jane Cirrincione, Northern California Power Agency, is the TAPS Chair; Dave Osburn, Oklahoma Municipal Power Authority, is the Vice Chair. Tom Heller is TAPS’s Executive Director.

rely on transmission systems owned and controlled by others to gain access to wholesale power markets in which they are active participants. TAPS recognizes the importance of open and non-discriminatory access to a robust transmission grid and has long been outspoken on the need for improved transmission and ways to get needed transmission built at reasonable cost. As such, TAPS was an active participant in the rulemaking proceedings before FERC that resulted in the issuance of Order 1920. The outcome of these consolidated proceedings will affect how FERC satisfies its statutory mandate, pursuant to Federal Power Act sections 205,³ 206,⁴ and 217(b)(4),⁵ to meet the reasonable needs of load-serving entities such as TAPS's members. TAPS thus has a clear and substantial interest in these consolidated proceedings that no other party can adequately represent, and its participation will be in the public interest.⁶

³ 16 U.S.C. § 824d.

⁴ 16 U.S.C. § 824e.

⁵ 16 U.S.C. § 824q(b)(4).

⁶ See Fed. R. App. P. 15(d). See also *N.M. Dep't of Human Servs. v. Dep't of Health & Human Servs. Health Care Fin. Admin.*, 4 F.3d 882, 884 n.2 (10th Cir. 1993) (Rule 15(d) motion granted to intervenors with a “substantial and unique interest in the outcome”); *Bales v. Nat'l Lab. Rels. Bd.*, 914 F.2d 92, 94 (6th Cir. 1990) (Rule 15(d) motion granted to one with “substantial interest in the outcome”); see also *Yakima Valley Cablevision, Inc. v. Fed. Comm'n Comm'n*, 794 F.2d 737, 744-45 (D.C. Cir. 1986) (intervention granted to one “directly affected by” agency policy).

TAPS currently anticipates that it will support respondent FERC in response to the challenges raised in these consolidated proceedings. However, given the expected breadth of these proceedings and the substantial number of petitions for review that may be filed, TAPS reserves the right to support certain of the petitioners with respect to discrete issues that may be raised.

Pursuant to Fed. R. App. P. 15(d), intervention in a proceeding seeking review of an agency order is timely if filed within 30 days after the petition for review is filed. The petitions for review giving rise to each of the consolidated cases were filed on various dates in July, August, and September 2024, thus triggering a different 30-day deadline for intervention for each individual case, dependent upon the date on which the petition was submitted to and docketed by the Court.

This motion to intervene is timely in seven of the consolidated cases: Case No. 24-1804, which was originally filed by National Rural Electric Cooperative Association in the Fourth Circuit on August 21, 2024; Case No. 24-1857, which was originally filed by Electricity Transmission Competition Coalition in the Fourth Circuit on September 6, 2024; Case No. 24-1862, originally filed by American Forest & Paper Association in the Fourth Circuit on September 9, 2024; Case No. 24-1863, originally filed by Pennsylvania Public Utility Commission in the Fourth Circuit on September 10, 2024; Case No. 24-1867, originally filed by New England States Committee on Electricity, Inc. in the Fourth Circuit on

September 10, 2024; Case No. 24-1876, originally filed by Arizona Corporation Commission in the Fourth Circuit on September, 11, 2024; and Case No. 24-1885, originally filed by MISO Transmission Owners in the Fourth Circuit on September 13, 2024. The 30-day deadlines for intervention in the lead case (No. 24-1650) and the remaining consolidated cases have passed. Accordingly, TAPS is submitting its motion to intervene as timely in Case Nos. 24-1804, 24-1857, 24-1862, 24-1863, 24-1867, 24-1876, and 24-1885, but further requests that the Court grant TAPS's intervention as to all currently consolidated cases and any future petitions that may be filed and consolidated with these proceedings.

CONCLUSION

WHEREFORE, for the foregoing reasons, TAPS respectfully requests that it be granted leave to intervene in the above-captioned, consolidated proceedings.

Respectfully submitted,

/s/ Cynthia S. Bogorad

Cynthia S. Bogorad

William S. Huang

Lauren L. Springett

*Attorneys for Transmission Access Policy
Study Group*

Law Offices of:

SPIEGEL & MCDIARMID LLP

1818 N Street, NW

8th Floor

Washington, DC 20036

(202) 879-4000

September 19, 2024

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 27(d)(2), 32(c)(1), and 32(g)(1) of the Federal Rules of Appellate Procedure, the undersigned certifies that the foregoing motion complies with the applicable type-volume limitations requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). The motion was prepared using a proportionally spaced type (Times New Roman, 14 point) and contains 1,155 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f). This certificate was prepared in reliance on the word-count function of the word-processing system (Microsoft Word 2016) used to prepare the motion.

/s/ Cynthia S. Bogorad

Cynthia S. Bogorad

Law Offices of:

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Respondent.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Local Rule 26.1, Proposed Intervenor Transmission Access Policy Study Group (“TAPS”) hereby submits the required Disclosure Statement. TAPS is a trade association of transmission-dependent utilities in thirty-five states, promoting open and non-discriminatory transmission access. TAPS members include municipal utilities, municipal joint action agencies, electric cooperatives, and an investor-owned utility. TAPS does not have any parent companies, and no publicly-held company has a ten percent or greater ownership interest in TAPS.

TAPS has no publicly held members whose stock or equity value could be affected substantially by the outcome of the proceeding, or whose claims TAPS is pursuing in a representative capacity.

/s/ Cynthia S. Bogorad

Cynthia S. Bogorad
SPIEGEL & MCDIARMID LLP
1818 N Street, NW
8th Floor
Washington, DC 20036
Phone: (202) 879-4000
cynthia.bogorad@spiegelmc.com

*Attorney for Transmission Access
Policy Study Group*

CERTIFICATE OF SERVICE

I hereby certify that I have on this 19th day of September, 2024, caused the foregoing Motion to Intervene of Transmission Access Policy Study Group to be electronically served through the Court's CM/ECF system on all counsel of record.

/s/ Cynthia S. Bogorad

Cynthia S. Bogorad

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8th Floor

Washington, DC 20036

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