

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Smart Grid Policy

| Docket No. PL09-4-000

**COMMENTS OF  
TRANSMISSION ACCESS POLICY STUDY GROUP**

Pursuant to the Commission's May 19, 2009 and May 21, 2009 notices, the Transmission Access Policy Study Group ("TAPS") hereby responds to the Commission's Notice Requesting Supplemental Comments ("Supplemental Comment Request").<sup>1</sup> The Commission seeks input on how it should address rate requests related to Department of Energy ("DoE") Smart Grid funding programs. TAPS recommends that if expedited rate reviews are conducted for Smart Grid projects, those reviews be kept narrowly focused on the determination that the subject Smart Grid project costs are appropriately counted as legitimate, prudent costs in determining the applicant's transmission revenue requirement. In order to enable those expedited reviews to be completed on time and without compromising the Commission's consumer protection responsibilities, broader rate issues (*e.g.*, whether such cost recognition necessitates a rate change, or whether existing rates already provide for a level of recovery that adequately covers it) should be expressly set aside for other proceedings.

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<sup>1</sup> 127 F.E.R.C. ¶ 61,139 (2009).

## I. INTEREST OF TAPS

TAPS is an informal association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.<sup>2</sup> As entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS members are generally supportive of Smart Grid initiatives, but want such initiatives to be harmonized with just and reasonable ratemaking, as the Federal Power Act (“FPA”) requires.

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## II. COMMENTS

In requesting supplemental comments, the Commission cited a Department of Energy (“DoE” or “Department”) Notice of Intent<sup>3</sup> to provide federal partial funding of Smart Grid projects. Therein, DoE calls on utility applicants to provide “An identification of decisions

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<sup>2</sup> TAPS is chaired by Roy Thilly, CEO of WPPI Energy (“WPPI”). Current members of the TAPS Executive Committee include, in addition to WPPI, representatives of: American Municipal Power of Ohio; Blue Ridge Power Agency; Clarksdale Public Utilities; Connecticut Municipal Electric Energy Cooperative; ElectriCities of North Carolina Inc.; Florida Municipal Power Agency; Illinois Municipal Electric Agency; Indiana Municipal Power Agency; Madison Gas & Electric; Missouri Public Utility Alliance; Missouri River Energy Services; NMPP Energy; Northern California Power Agency; Oklahoma Municipal Power Authority; and Southern Minnesota Municipal Power Agency.

<sup>3</sup> DoE Office of Electricity Delivery and Energy Reliability, Notice of Intent to Issue a Funding Opportunity Announcement, DE-FOA-0000058A (Apr. 16, 2009) (“DoE Notice of Intent”), available at [https://e-center2.doe.gov/iips/busopor.nsf/UNID/5CD6175C22F49D438525759A00698C81/\\$file/OE\\_SGIG\\_NOI\\_Final.pdf](https://e-center2.doe.gov/iips/busopor.nsf/UNID/5CD6175C22F49D438525759A00698C81/$file/OE_SGIG_NOI_Final.pdf).

requiring external approval, e.g., the allowance of investment expenditures by Public Utility Commissions or other authorities.”<sup>4</sup> In light of that DoE issuance, the Commission:

seeks comments on how it should address requests for rate recovery that may be necessary for public utilities to qualify for awards under these programs. We also seek comment on whether some form of conditional approval could be useful to public utility applicants with respect to jurisdictional Smart Grid facilities. The Commission invites comments on whether the Commission, consistent with its obligations to ensure just and reasonable rates under the Federal Power Act (FPA), should adopt processes for public utilities that may apply for funding for jurisdictional Smart Grid facilities through the Department’s Smart Grid funding opportunities.

Supplemental Comment Request at P 7.

TAPS supports the Smart Grid initiative, as a general proposition. Although we question whether DoE’s issuances require any change to the Commission’s existing procedures, we would not object to the Commission conducting a project-specific review of “the allowance of investment expenditures”<sup>5</sup> on an expedited basis where necessary to enable a particular project to qualify for DoE funding. However, such expedited review can and should be harmonized with the Commission’s ratepayer-protection responsibilities. As we show below, procedures are readily available under which the Commission can provide its jurisdictional share of the limited early determination called for by DoE’s Notice of Intent, and do so without getting entangled in broader questions, not asked by DoE, that may well take longer to answer properly. The Commission can invite requests for and grant declarations that the non-DoE funded portion of transmission-level Smart Grid investments will be an “allowable investment expenditure” as part of a public utility’s revenue requirement, but should defer all other rate recovery questions to the

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<sup>4</sup> *Id.* at 10.

<sup>5</sup> DoE Notice of Intent at 10.

appropriate rate filings — *e.g.*, a new Section 205 filing to modify stated rates; the next annual update for a formula rate or, if a modification of the formula is required, a new Section 205 filing to modify a formula rate. Neither the DoE nor this Commission has, or statutorily could have, any interest in ensuring *over-recovery* of Smart Grid expenditures.

In framing the appropriate procedures, it is important to bear in mind the limits of this Commission’s jurisdiction related to potential Smart Grid projects, and the narrowness of the question raised by DoE. Under the Federal Power Act as it stands today, the Commission does not (outside DoE-designated “national interest” corridors for which FPA Section 216 provides “backstop” siting authority) site or certificate electric grid facilities.<sup>6</sup> Accordingly, Commission approval should not normally be identified as, in DoE’s phrase, an “external approval” that must be received before a utility can proceed to construct a Smart Grid project.

To be sure, a utility might condition its willingness to proceed with a Smart Grid project on receiving reasonable assurance that its investment will be allowed to count as an element of its cost of service. But this Commission’s authority to provide such assurance is limited: most public utility transmission owners are vertically integrated utilities that recover the lion’s share of their allowed costs through state-regulated rates, and may also be subject to state siting processes. Consequently, if they need regulatory approvals before they can proceed with a Smart Grid project, their primary need will be for state-level approvals. DoE appears to recognize as

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<sup>6</sup> See Federal Power Act § 216, 16 U.S.C. § 824p; Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,539, at 21,682-89 & n.1037 (May 10, 1996), [1991–1996 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,036, *clarified*, 76 F.E.R.C. ¶ 61,009 (1996), *modified*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), [1996–2000 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,048, *order on reh’g*, Order No. 888-B, 62 Fed. Reg. 64,688 (Dec. 9, 1997), 81 F.E.R.C. ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 F.E.R.C. ¶ 61,046 (1998), *aff’d in part and remanded in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002). As the Commission is aware, bills currently pending in Congress might expand federal certification of certain electric transmission facilities. However, such bills are not now law, and these Comments are directed to the FPA as currently enacted.

much; the DoE Notice of intent refers to identification of approvals needed from “Public Utility Commissions,” not from FERC in particular. Moreover, many “Smart Grid” expenditures are properly functionalized as related to distribution or to other non-transmission functions, and therefore not properly recoverable through FERC-jurisdictional transmission rates.

Fortunately, nothing in DoE’s issuances calls for this Commission to reach, in the expedited proceedings contemplated by its Supplemental Comment Request, rate issues outside (at most<sup>7</sup>) the narrow issue of “the allowance of investment expenditures” in transmission-function Smart Grid projects seeking DoE funding. In particular, the Commission should set aside for subsequent resolution

- for utilities with formulaic transmission rates, whether such allowance means that the rate formula should change, or through what formula rate inputs a particular project’s costs should flow; and
- for utilities with stated revenue requirements or stated rates, whether such allowance should lead to a rate change, *i.e.*, whether offsetting changes to other elements of the utility’s cost of service, or its loads, mean that the *status quo* rate already provides for recovery of the allowed investment expenditure.

Broadening the inquiry to reach such issues in expedited proceedings is neither necessary nor advisable. The likeliest consequence would be to lengthen the expedited proceeding to the point that it would not fit with DoE’s timetable, and therefore would not serve the intended purpose. Alternatively, it might lead to hasty decisions without due process, or to single-issue rate approvals that simply assume away offsetting changes, and therefore dispense with just,

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<sup>7</sup> The DoE Notice of Intent merely calls for applicants (at 9) to “identify[], if possible” the cost share that the Applicant will bear. It contains no requirement that applicants demonstrate they have funds on hand to cover their proposed share or regulatory approval to recover those funds from ratepayers.

reasonable, and non-discriminatory ratemaking.<sup>8</sup> For the reasons discussed extensively in the comments already filed in this docket by the American Public Power Association and National Rural Electric Cooperative Association,<sup>9</sup> Smart Grid investments do not justify disregarding the FPA's long-established ratepayer protections.

Instead of reaching those unnecessary further issues, the Commission should simply invite declaratory petition filings,<sup>10</sup> or their equivalent filed under Section 205, limited to seeking a determination that the public utility's share of transmission investments and expenses associated with a particular DoE-funded Smart Grid project are appropriately counted as legitimate, prudent costs in determining the applicant's transmission revenue requirement. What such recognition means for the applicant's filed rate formula or filed unit transmission rate can and should be deferred to a proceeding<sup>11</sup> in which the applicant's full cost of transmission service is examined, unconstrained by a DoE-related need for expedition on one narrow element of that rate study.

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<sup>8</sup> See *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) (a rate approval that yields an unreasonable "end result" is unreasonable); *Cities of Batavia v. FERC*, 672 F.2d 64, 76-77 (D.C. Cir. 1982) (Federal Power Act remedies apply "where the interaction between [the existing component] and new components of a revised rate will make the operation of the [existing component] itself unjust or unreasonable").

<sup>9</sup> See the May 11, 2009 Comments of the American Public Power Association at 15-18, *available at* eLibrary Accession No. 20090511-5076, and Comments of National Rural Electric Cooperative Association at 11-16, *available at* eLibrary Accession No. 20090511-5153.

<sup>10</sup> The Commission may wish to consider waiving the 18 C.F.R. § 381.302 petition fee, or may find that it is inapplicable on the 18 C.F.R. § 381.108 ground that where the application relates to a DoE-funded Smart Grid project, the applicant is "engaged in the official business of the Federal Government."

<sup>11</sup> *I.e.*, a Section 205 or 206 rate proceeding in the case of a utility with stated transmission rates, or the applicable annual review procedure in the case of a utility with formulaic transmission rates.

Respectfully submitted,

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