

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Open Access and Priority Rights on  
Interconnection Facilities

Docket No. AD12-14-000

Priority Rights to New Participant-  
Funded Transmission

Docket No. AD11-11-000

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

Pursuant to the Commission’s April 19, 2012 Notice of Inquiry (“NOI”)<sup>1</sup> and June 1, 2012 Notice of Extension of Time,<sup>2</sup> the Transmission Access Policy Study Group (“TAPS”) submits its comments regarding potential revisions to the Commission’s current policies on open access and priority rights for capacity on interconnection-customer-owned interconnection facilities. The NOI seeks comment on whether existing Commission policy should be changed with respect to such generator lead lines—which in some cases could be hundreds of miles long (NOI P 18)—to limit open access obligations, and to relax the restrictions on granting interconnection customers priority rights to the capacity of the lines they own. *See, e.g.* NOI PP 12-13, 31-32.

TAPS is concerned that many of the possible policy changes identified, if adopted, would compromise the Commission’s regulatory objectives of ensuring just, reasonable, and not unduly discriminatory transmission service<sup>3</sup> and fostering efficient and cost-

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<sup>1</sup> Open Access and Priority Rights on Interconnection Facilities, 77 Fed. Reg. 24,646 (Apr. 25, 2012), FERC Stats. & Regs. ¶ 35,574 (2012).

<sup>2</sup> eLibrary No. 20120601-3002.

<sup>3</sup> *See* 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 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (“Order 888”),

effective generation and transmission development.<sup>4</sup> TAPS has long recognized the need to strengthen the nation's transmission infrastructure to achieve the robust grid required to support competitive wholesale generation markets. Eroding open access transmission to promote the construction of interconnection-customer-owned generator lead lines would be a step in the wrong direction, undermining those markets on which the Commission largely relies to discipline wholesale power rates to just and reasonable levels.

TAPS urges the Commission to adhere to its existing policy on interconnection-customer-owned generator lead lines, which strikes a reasonable balance between promoting needed development and ensuring such development is consistent with the principles of Orders 888 and 890. The Commission can maintain that balance, while lightening the regulatory burden on interconnection customers that own generator lead lines, by standardizing a Modified OATT applicable under specified conditions that would likely cover many, if not most, such lines. TAPS opposes, however, cutting back on open access obligations and further grants of priority rights over interconnection-customer-owned generator lead lines.

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*clarified* 76 FERC ¶ 61,009 (1996), *modified*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 62 Fed. Reg. 64,688 (Dec. 9, 1997), 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *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).

<sup>4</sup> See Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) ("Order 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 ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 Fed. Reg. 61,511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

## INTEREST OF TAPS

TAPS is an association of transmission-dependent utilities in more than 35 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 members recognize the importance of both open access and a robust transmission grid to competitive generation markets, and have long advocated policies to get needed transmission built. *See TAPS, Effective Solutions for Getting Needed Transmission Built at Reasonable Cost* (June 2004).<sup>6</sup> TAPS participated in the March 15, 2011 technical conference to which the NOI responds.<sup>7</sup>

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<sup>5</sup> Tom Heller, Missouri River Energy Services, chairs the TAPS Board. Cindy Holman, Oklahoma Municipal Power Authority, is TAPS' Vice Chair. John Twitty is TAPS' Executive Director.

<sup>6</sup> <http://www.tapsgroup.org/sitebuildercontent/sitebuilderfiles/effectivesolutions.pdf>.

<sup>7</sup> Statement of Terry Wolf on Behalf of Missouri River Energy Services and the Transmission Access Policy Study Group, *Priority Rights to New Participant-Funded Transmission*, (Mar. 15, 2011), eLibrary No. 20110316-4012; Comments of the Transmission Access Policy Study Group Following Up on March 15 Technical Conference (May 5, 2011), eLibrary No. 20110505-5101. TAPS also submitted comments in response to the January 31, 2012 workshop in Docket Nos. AD11-11-000 and AD12-9-000, regarding priority rights in merchant and participant-funded transmission projects. Comments of the Transmission Access Policy Study Group (March 29, 2012), eLibrary No. 20120329-5168 ("TAPS' Merchant/PF Transmission Comments").

## COMMENTS

### **I. OPEN ACCESS IS A CORNERSTONE OF COMMISSION POLICY, SUPPORTING COMPETITIVE MARKETS AND MARKET-BASED RATES FOR GENERATION**

The Commission's statutory obligation is to promote reliable and economically efficient transmission and generation of electricity and to facilitate the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities—not to promote transmission construction by any means possible. *See* 16 U.S.C. §§ 824d, 824o(b), 824q(b)(4), 824s. As discussed below and in more detail in TAPS' Merchant/PF Transmission Comments at 4-12, in crafting policies to promote the development of renewable energy resources, the Commission should not sacrifice open access, which is fundamental to supporting robust competitive markets and to assuring that rates for electricity are just and reasonable.

The interconnection customer that owns a generator lead line is likely to be the competitor of the third party seeking interconnection and transmission service over that line. Thus, that interconnection customer's incentive to discriminate in order to give its own generation resources an advantage is strong. Generation developers at the March 2011 conference admitted their interest in restricting transmission access over their generator lead lines in order to prevent competitors from bringing generation to the market and winning customers to which the line owner would prefer to have exclusive access:<sup>8</sup>

And here's the issue: That line ends some place, and that is the place where I'm doing my marketing effort. And it may

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<sup>8</sup> *See, e.g.*, Transcript of March 15, 2011 Technical Conference at 167, *Priority Rights to New Participant-Funded Transmission*, Docket No. AD11-11-000 (Mar. 15, 2011), <http://www.ferc.gov/EventCalendar/Files/20110328070902-AD11-11-3-15-11.pdf> ("Transcript") (Kris Zadlo, Vice President of Regulatory Affairs and Transmission for Invenergy (responding to comments regarding a potential exclusivity period for generator tie-line developers and the obligation to expand).

take some time. PPAs are very scarce, very difficult to come by, and it takes a lot of marketing effort to get into a PPA. So if I build this gen tie-line with multiple phases, I'm out there actively marketing. And what happens when, oh, you know, my friend Kurt here from First Wind submits a request on my line. He's there competing with me, and I have no period of exclusivity to market my power. You know, a project that I've gone out there, taken on considerable risk to build and construct. I've planned multiple phases. And I don't even have an opportunity to market the power for some period of time.

A small renewable energy developer that is excluded from access to the interconnection customer's line is unlikely to reach the market at all, much less at a reasonable cost.

In Order 888, the Commission concluded that open access was needed to prevent vertically integrated transmission providers, that owned both generation and transmission, from excluding potential competitors.<sup>9</sup> An interconnection customer that owns a generator lead line has the same incentive and ability to discriminate.

The Commission should reject across-the-board claims that open access principles should not apply to interconnection-customer-owned generator lead lines, because competitors can build their own.<sup>10</sup> The transmission network is a natural monopoly.<sup>11</sup> There may be limited cases where an interconnection-customer-owned generator lead line is very short and can be readily duplicated; but that will often not be true, especially with respect to the long radial lines being constructed to connect remote sources of renewable generation to markets—i.e., the lines to which third parties are most likely to request

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<sup>9</sup> Order 888 at 31,682-84.

<sup>10</sup> *See, e.g.*, Transcript at 119-120, 148-149.

<sup>11</sup> *See, e.g.*, Order 888 at 31,649. *See also* Order No. 1000-A, 77 Fed. Reg. 32,184, at 32,200 (May 31, 2012), 139 FERC ¶ 61,132, P 86 (2012), *review docketed sub nom. S.C. Pub. Serv. Auth. v. FERC*, No. 12-1232 (D.C. Cir. filed May 25, 2012).

transmission access. Such lines require extensive permitting, and regulatory siting fatigue is real. It is often harder to obtain the approvals to site a second line once the first line has been permitted; and it is often easier to get approval to expand an existing line, rather than site a brand new one. Moreover, even where it is possible to obtain necessary siting approvals for duplicative lines, inefficient build-out of the grid would make it more costly than necessary to access new generation resources, burdening those resources and consumers, as well as undermining competitive wholesale markets.

These issues are especially problematic in a dynamic AC grid. What may seem like a radial line to renewable resources at the fringe of the system now may be a more central part of the network in a decade or two. If usage and expansion are blocked by access limitations stemming from the line's origin as an interconnection-customer-owned generator lead line, it may be needlessly difficult and costly to address load-serving entity and reliability needs for these areas in the future, much less provide for an effective outlet for the area's renewable resource potential.

Compromising open access principles to provide a short-term spur to individual generation projects invites a balkanized grid of "gated communities" where access can be restricted, recreating the pre-Order 888 "national patchwork of open and closed transmission systems, with disparate terms and conditions of service." Order 888, at 31,673.<sup>12</sup> In Order 888, the Commission faced that problem head-on by requiring all

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<sup>12</sup> See also Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities; Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking, 60 Fed. Reg. 17,662 (proposed Apr. 7, 1995), FERC Stats. & Regs. ¶ 32,514 at 33,071 (proposed 1995) ("Order 888 NOPR") ("If utilities are allowed to discriminate in favor of their own generation resources at the expense of providing access to others' lower cost generation resources by not providing open access on fair terms, the transmission grid will be a patchwork of open access transmission systems, systems with bilaterally negotiated arrangements, and systems with transmission ordered under section 211. Under such a

jurisdictional transmission providers (“TPs”) to offer standardized terms of access, open to all. Many of the policy changes on which the NOI requests comment would roll back those reforms—which provide the foundation for the Commission’s ability to rely, to a large extent, on competitive wholesale generation markets to discipline wholesale power rates to just and reasonable levels—restricting access in a manner that the Commission has found constrains markets.<sup>13</sup> TAPS urges the Commission to avoid implementing policies that, though seemingly expedient in the short-run, will hamstring access to competitive generation and transmission development for years to come.

## **II. THE COMMISSION’S CURRENT POLICY STRIKES A REASONABLE BALANCE**

The Commission’s existing policy on interconnection-customer-owned generator lead lines strikes a reasonable balance, providing for open access and efficient use of those lines without unduly burdening their owners. Key elements of this policy include:

(1) requiring an interconnection customer that owns a generator lead line to demonstrate it has “specific, pre-existing [ ] expansion plans with milestones for construction . . . [and] has made material progress toward meeting those milestones” in order to secure priority rights over the line and (2) requiring such a line owner to file a *pro forma* OATT within 60 days after it has received a service request from an unaffiliated third-party generator.

NOI P 1; *see also id.* P 18.

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patchwork of transmission systems, sellers will not have access to transmission on an equal basis, and some sellers will benefit at the expense of others. The ultimate loser in such a regime is the consumer.”).

<sup>13</sup> Order 888, at 31,652 (“Non-discriminatory open access to transmission services is critical to the full development of competitive wholesale generation markets and the lower consumer prices achievable through such competition”); *see also*, Order 888 at 31,682-84; Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809, 810-11 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089, at 30,992 (1999) (“Order 2000”), *order on reh’g*, Order No. 2000–A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *appeal dismissed for want of standing sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

Allowing an interconnection customer to “reserve” capacity rights over the interconnection line it owns but only to the extent it can show “specific plans and milestones,” reasonably balances the short-term needs of the owner that is developing the line for its own projects with the nation’s long-term interests in eliminating duplicative transmission projects and ensuring just and reasonable rates. Furthermore, it has the effect of preventing developers from constructing an interconnection line in a resource rich region and then hoarding that capacity to the detriment of other developers and the public.<sup>14</sup> In addition, filing an OATT within 60 days of receipt of a third-party service request is essential for providing third parties with a transparent process by which they can access transmission service. While TAPS supports the Commission’s effort to consider whether improvements are possible, these substantial benefits of existing policy should be recognized and preserved.

### **III. ANY CHANGES SHOULD PRESERVE THE REASONABLE BALANCE OF EXISTING POLICY**

#### ***A. TAPS Supports Policy Changes that Would Increase Efficiency and Reduce Regulatory Burden Consistent with Commission Precedent***

If the Commission concludes that something should be done to reduce the regulatory burden on interconnection customers that own generator lead lines, it should, as described in the NOI (PP 28-29), standardize a “Modified OATT” that is consistent with existing precedent for use by eligible generator-lead-owning interconnection customers. Appropriate modifications to the “full” Order 888/890 OATT should be limited to those

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<sup>14</sup> See, e.g. Order 888 at 31,693 (recognizing “that situations could arise in which a customer unlawfully withholds capacity. That is, a transmission customer could retain capacity in a way that could have an anticompetitive effect. For example, a transmission customer may reserve certain capacity simply to prevent everyone else from using it and to make its own generation the only alternative available to the market.”).



previously approved by the Commission, and would include eliminating the full OATT provisions for network transmission service, since only point-to-point service is relevant for purposes of a standalone generator lead line. Full OATT provisions requiring that the transmission provider offer ancillary services could also be eliminated. NOI PP 13, 29. Tailoring a Modified OATT to interconnection-customer-owned generator lead lines in this manner will substantially reduce the regulatory burden on the owners of such lines, eliminating the need to apply for special waivers on a case-by-case basis, while maintaining the balance of the Commission's existing policy, including the obligation to file an OATT within 60 days of a third-party transmission request.

The Modified OATT should not remove core elements of open access. Included among the additional waivers discussed in Paragraphs 13 and 32-33 of the NOI, for example, are elimination of the obligation to expand, the Attachment K planning process, the calculation of Available Transfer Capacity, and the development of rates for point-to-point service. By making the terms and conditions of transmission service less transparent and enabling interconnection customers that own generator lead lines to unilaterally deny requests from competitors to expand existing capacity, those changes would eliminate key OATT mechanisms limiting the transmission owner's ability to discriminate—thereby creating barriers to entry, undermining competitive markets and future transmission development. They should not be included in the Modified OATT.

The Commission should limit eligibility to use the Modified OATT to interconnection customers that can demonstrate that they qualify for such specialized treatment. Standardized criteria—such as the length, capacity, or voltage of the generator lead line—could be established to determine whether an interconnection customer is

eligible to file the Modified OATT. If those standardized criteria are satisfied, there could be a rebuttable presumption that use of the Modified OATT is appropriate, but subject to a Commission determination, after review of any interventions, comments, or protests submitted in response to the filing of the Modified OATT. In this way, the Commission will retain the authority to evaluate whether the modifications are appropriate under the specific circumstances of the case. The Commission should also develop procedures to ensure that the facilities covered by a Modified OATT will be brought under a full OATT if conditions change in the future such that waivers included in the Modified OATT are no longer appropriate. Indeed, where a generator lead line resembles a major thoroughfare, it may be appropriate to consider whether that facility should be treated as an integrated portion of the networked transmission system to which it is connected.

In addition to creating a Modified OATT, the Commission should consider other changes that would reduce regulatory burden and streamline the processing of requests for service. TAPS supports developing a coordinated request method by which a third party can submit a single request (or single series of requests) to both the owner of the generator lead line and the TP that owns the adjoining networked transmission system to secure capacity rights over both. By simplifying the process for requesting, evaluating, and granting service requests, such changes would help both interconnection customers that own generator lead lines, as well as entities requesting service.

***B. TAPS Opposes Changes that Would Expand Priority Rights and Erode Open Access***

The Commission should resist the urge to expand the priority rights of interconnection customers who own generator lead lines. While TAPS supports efforts by the Commission to provide more guidance as to the type of evidence an interconnection

customer that owns a generator lead line would need to demonstrate that it meets the “specific plans and milestones” standard for obtaining priority rights,<sup>15</sup> we urge the Commission to reject proposals to loosen or eliminate this benchmark. *See, e.g.* NOI P 12. The Commission should likewise reject proposals to establish a “safe harbor” period during which an interconnection customer that owns a generator lead line has Commission approval to discriminate against and exclude competitors.<sup>16</sup>

Finally, the Commission should reject the proposal to eliminate the open access obligations of interconnection customers that own generator lead lines, by expanding Section 9.9.2 of the *pro forma* Large Generator Interconnection Agreement (“LGIA”), so that such lines are instead treated as if they were owned by the network TP to which the lead line is interconnected. This approach would have the effect of inappropriately expanding the priority rights of the interconnection customer (i.e., to the full scope of that entity’s original interconnection request), while making third party rights to access on nondiscriminatory terms much less clear. As the Commission itself recognizes (NOI P 41(i)), there is nothing in the TP’s LGIA that prevents the interconnection customer from evading negotiations, unjustly withholding capacity, or putting excessive cost responsibilities on a third party with respect to transmission facilities that the customer owns.

## CONCLUSION

The Commission’s existing policy on interconnection-customer-owned generator lead lines strikes a reasonable balance. TAPS supports taking concrete steps to reduce the

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<sup>15</sup> NOI P 23.

<sup>16</sup> NOI PP 35-36.

regulatory burden on the owners of such lines while maintaining that existing balance; but it opposes changes to existing policy that would further expand priority rights or erode open access, which is crucial to achieving competitive wholesale markets and the Commission's goals.

Respectfully submitted,

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