

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRANSMISSION ACCESS POLICY
STUDY GROUP, Petitioner

v.

FEDERAL ENERGY REGULATORY
COMMISSION, Respondent

CASE NO. 12-_____

RECEIVED
U.S. COURT OF APPEALS
FOR THE DC CIRCUIT
2012 JUL 11 PM 5:00
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**PROTECTIVE PETITION FOR REVIEW,
WITH ANTICIPATION OF
DISMISSAL AS PREMATURE**

Pursuant to Section 313(b) of the Federal Power Act, 16 U.S.C. § 825l(b), Rule 15(a) of the Federal Rules of Appellate Procedure, and Circuit Rule 15, the Transmission Access Policy Study Group (“TAPS” or “Petitioner”) hereby petitions this Court for review of the following Orders of the Federal Energy Regulatory Commission (“FERC” or “Commission”), copies of which are contained in Appendix A:

1. *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011) (“Order No. 1000”); and
2. *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000-A, 77 Fed. Reg. 32,184

(May 31, 2012), 139 FERC ¶ 61.132 (2012) (“Order No. 1000-A”, and collectively, “FERC Orders”).

TAPS is a trade association of transmission-dependent utilities in more than 35 states, promoting open and non-discriminatory transmission access. TAPS members include municipal utilities, municipal joint action agencies, electric cooperatives, and an investor-owned utility that entirely or predominantly rely on transmission systems owned and controlled by others to gain access to wholesale power markets in which they are active participants.

The FERC Orders for which TAPS seeks this Court’s review impose new regional and interregional transmission planning and cost allocation requirements on public utility transmission providers, as well as other changes to Commission-approved Open Access Transmission Tariffs. TAPS was actively involved in the Commission proceedings involving these orders, timely requested rehearing of Order No. 1000, and is aggrieved by certain of the Commission’s rulings in Order Nos. 1000 and 1000-A. Accordingly, this Court has jurisdiction pursuant to Section 313(b) of the Federal Power Act, 16 U.S.C. § 8251(b).

TAPS hastens to inform the Court that it has (on June 18, 2012) timely requested rehearing of Order No. 1000-A, and that that rehearing request remains pending before FERC. TAPS recognizes that under the law of this Circuit, the pendency of a request for rehearing, filed by the same party who files a petition for

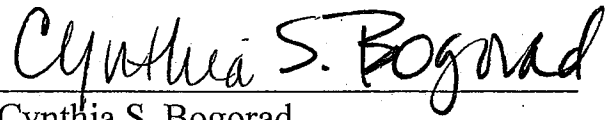
judicial review, renders the latter “incurably premature” and subject to dismissal without prejudice.¹ Accordingly, Petitioners anticipate, and in the present posture of this case will not oppose, dismissal on grounds of prematurity and without prejudice to a subsequent petition. This petition is filed out of an abundance of caution, because precedent followed in at least one other Circuit allows judicial review following final agency action on each “discrete issue,”² and because although the appeals filed thus far have been consolidated in this Circuit, there remains some possibility that review of the subject orders might ultimately occur in another Circuit. Guided by this Court’s cautions,³ Petitioners are loathe to determine themselves, at their own risk, that judicial review is premature. Because a final order finding that the current petition is premature would have controlling force in any future appeals, Petitioners would not oppose dismissal, so long as it is granted without prejudice to a subsequent petition.

¹ See, e.g., *Clifton Power Corp. v. FERC*, 294 F.3d 108, 110 (D.C. Cir. 2002); *Tennessee Gas Pipeline Co. v. FERC*, 9 F.3d 980, 980-81 (D.C. Cir. 1993) (per curiam).

² *Cal. Dep’t of Water Res. v. FERC*, 361 F.3d 517, 520 (9th Cir. 2004). See also *Steamboaters v. FERC*, 759 F.2d 1382, 1387-88 (9th Cir. 1985).

³ “[P]etitioners who delay filing requests for review on their own assessment of when an issue is ripe for review do so at the risk of finding their claims time-barred,” *Eagle-Picher Indus., Inc. v. EPA*, 759 F.2d 905, 909 (D.C. Cir. 1985). As the Court recognized in a prior case, where FERC reaches its decisions incrementally, the parties before it “face[] a terrible dilemma in having to decide when to seek review of the FERC orders,” making it “prudent” to file a petition even though it may be dismissed as unripe. *Miss. Valley Gas Co. v. FERC*, 68 F.3d 503, 510 (D.C. Cir. 1995).

Respectfully submitted,



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July 11, 2012

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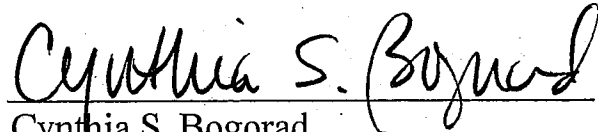
CASE NOS. 12-_____

**CORPORATE DISCLOSURE STATEMENT OF
TRANSMISSION ACCESS POLICY STUDY
GROUP**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Local Rule 26.1 of the United States Court of Appeals for the District of Columbia Circuit, Transmission Access Policy Study Group (“TAPS”) hereby submits the required Disclosure Statement. TAPS is a trade association of transmission-dependent utilities in more than 35 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 10% or greater ownership interest in TAPS.

TAPS is a trade association within the meaning of Circuit Rule 26.1(b) and thus is exempt from the requirement to list the names of its members that have issued shares or debt securities to the public.

Respectfully submitted,

A handwritten signature in black ink that reads "Cynthia S. Bogorad". The signature is written in a cursive style and is positioned above a horizontal line.

Cynthia S. Bogorad
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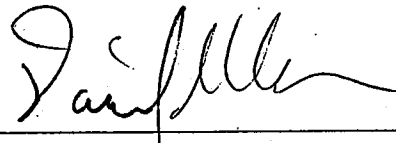
Appendix A

CERTIFICATE OF SERVICE

I hereby certify that I have on this 11th day of July, 2012, caused the foregoing documents to be served by delivery in the United States Mail, first class postage paid, upon each person listed below:

Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Robert H. Solomon, Solicitor
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