

NECESSARY COMPONENTS

of

Federal Electric Industry Restructuring Legislation

TAPS strongly supports federal action necessary to achieve vigorously competitive wholesale electric markets that will benefit all end users of electricity. The decision of whether or not to move to retail electric competition should be left to the individual states. A competitive wholesale market is essential for retail competition to succeed where authorized and also will benefit customers in states that remain regulated.

In enacting electricity legislation, TAPS urges Congress to grant FERC clear and explicit responsibility for ensuring robust electricity markets, including power to:

- 1. Regionalize the grid and completely eliminate any advantages in competitive markets arising from transmission ownership and control by requiring transmission owners to place their transmission facilities under the plenary control of regional independent organizations (RTOs) that will provide all users access on an equal basis.** Subject to existing contracts, all transmission service should be unbundled and taken under the RTO tariff. RTOs must have sufficient authority over generation to ensure reliability, and the ability to plan and construct, or cause construction of, needed new transmission, subject to required siting approvals. All facilities that perform a transmission function, as determined by FERC, should be under RTO control. If a for-profit transmission company (Transco) qualifies as an RTO or a subordinate structure within an RTO, (i) all load-serving entities should have the right to participate as passive owners based on load, if any passive ownership by market participants is permitted, and (ii) the Transco should be subject to reasonable sunshine and public information requirements consistent with its monopoly, common carrier status. RTOs must accommodate state law and tax code requirements of non-jurisdictional state, municipal and cooperative transmission owners.
- 2. Require that regional transmission systems be operated as a single system and priced on a cost-of-service basis without pancaking of transmission rates.** TAPS opposes monetary incentives to join RTOs and efforts to recover from ratepayers premiums paid for monopoly transmission facilities. Instead, market-based pricing authority for generation should be prohibited for any owner whose transmission is not in an RTO. FERC should be required to design transmission rates so that the RTO is rewarded for relieving constraints and minimizing curtailments, consistent with the just and reasonable standard, and penalized for failing to do so. Rather than providing incentive returns to existing owners to build improvements, RTOs should bid out transmission construction, including the return component, in order to put competitive pressure on the cost of new facilities.
- 3. If states fail to site needed regional transmission lines in a timely manner, provide backstop siting approval with federal eminent domain authority for projects needed for regional reliability and vigorous competition.**
- 4. Take all actions necessary to prevent the exercise of market power, including requiring temporary generation capacity auctions, and restricting concentration of generation ownership or control that threatens to impede vigorous competition; and mitigate and remedy any market power that is exercised.**

- 5. Approve market-based rates for any generator within a region only if (i) FERC finds that effective and sustainable competition in the region will result in just and reasonable rates, (ii) FERC makes provision to impose cost-based mitigation at any locations within the region where prices may exceed competitive levels due to constraints and/or concentration during significant periods of times, and (iii) FERC establishes a mechanism to actively monitor market performance in the region and to revoke market-based pricing authority, or otherwise restore just and reasonable prices, immediately when markets fail.**
- 6. Require the establishment of fully transparent, regional wholesale markets for electricity with real-time public disclosure of prices, quantities and enforceable market rules.**
- 7. Disapprove mergers (including convergence and holding company mergers or generation acquisitions) that conflict with the objective of achieving truly competitive markets unless (i) the adverse effect on competition is remedied by conditions, and (ii) the benefits of the merger that are not achievable by other means outweigh the potential harm to competition.**
- 8. Provide effective and timely remedies, including damages and penalties, for violations of the Federal Power Act, including tariff and rule violations, exercise of market power, and unfair practices in electricity markets, such as market manipulation, affiliate abuses and predatory pricing.**

The legislation also should:

- 1. Require the establishment, and provide regulatory oversight, of a competitively neutral North American reliability organization with independent governance and authority to approve and enforce mandatory, non-discriminatory reliability standards and operating requirements on all market participants;**
- 2. Ensure the availability of judicial remedies (including remedies available under the federal antitrust laws) for actions of market participants participating in competitive electric markets.**
- 3. Modify the tax laws to facilitate municipal and cooperative participation in RTOs and competitive power markets.**
- 4. Ensure that ratepayers get the benefit of deferred tax reserves and investment tax credits associated with generation and transmission facilities transferred to third parties.**

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