

## **TAPS POSITIONS AND PRIORITIES FOR ELECTRICITY LEGISLATION IN 2003**

TAPS believes that Congress should not pass an electricity restructuring bill this session. The devastating experience in California and elsewhere in the west with restructuring, the industry shakeout that is occurring as a result of the collapse of Enron and related events, the major initiatives under consideration at FERC and the lack of industry consensus on change, all strongly suggest that Congress should proceed cautiously and let the waters calm before acting. If, however, Congress decides to adopt electricity legislation, TAPS believes the following positions are essential in the public interest:

### **1. Maintain and Strengthen FERC Merger Review Authority**

The primary goal of federal electricity legislation should be to support creation of vigorously competitive wholesale markets. Experience has demonstrated that the transition to competition from a monopoly system is very difficult. FERC review of mergers is an essential tool for ensuring that markets are workably competitive and is particularly important at this time of transition for the electric utility industry. TAPS supports clarifying and strengthening FERC's current merger authority by specifying that Commission approval is also required for acquisitions of generation assets, holding company mergers and "convergence" mergers of electric and gas utilities.

### **2. Oppose PUHCA Repeal**

The rationale for the Public Utility Holding Company Act is as relevant today as it was when the Act was passed in 1935: to protect consumers and shareholders from the financial risks of holding company diversification and from unfair subsidization of non-utility businesses. A December 26, 2002 Wall Street Journal article details several instances where holding companies are attempting to pass on losses incurred by failed "merchant" affiliates to customers of their regulated utilities. Rather than repeal PUHCA, Congress should encourage vigorous enforcement by the Securities and Exchange Commission (SEC) or transfer PUHCA responsibilities to FERC.

### **3. Improve Market Transparency**

Market transparency is an essential requirement for fully competitive markets. Today, many electricity markets are opaque and disparities in market knowledge are huge. The manipulation that has occurred in California and elsewhere would have been much more difficult, if not impossible, to conceal with full transparency. Transparency will dramatically increase competition for the benefit of consumers. "Sunshine" is also a powerful deterrent to market manipulation and would allow market participants to help FERC identify and prevent abuses. Transparency language should require public disclosure of real time bids and prices, along with key transaction terms. It also should create a presumption in favor of disclosure, as current FERC policy does.

### **4. Legislate Service Obligation Safeguards**

In the transition to competitive wholesale markets, it is essential that the ability of all utilities to meet their "obligation to serve" wholesale and retail customers under federal, state and local laws and contracts not be impaired. Federal electricity legislation should include a provision that requires FERC, in whatever market structure it adopts, to preserve such utilities' existing transmission rights — whether they arise from transmission ownership, service agreements under FERC's Open Access Transmission Tariffs, or other firm transmission contracts — to enable them to continue to meet their obligations to serve with existing resources at reasonable cost and

without any degradation of reliability. This protection must encompass both transmission-owning utilities and those that depend on transmission facilities owned by others to meet their service obligations, and must include municipal joint action agencies and generation and transmission cooperatives that serve member distribution systems at wholesale, as well as utilities that directly serve retail customers. The language should also require FERC to exercise its jurisdiction to facilitate the planning and expansion of transmission to meet the reasonable needs of load-serving entities to serve current and future loads.

#### **5. Direct FERC to Prevent and Remedy Market Manipulation and Market Power Abuse**

Federal electricity legislation should impose a duty on FERC to take all steps necessary to ensure that wholesale markets are vigorously competitive and free from manipulation, the exercise of market power and other wholesale market abuses. A clear directive in this area is important in light of the abuses that have occurred in the western electricity market, the gas industry and elsewhere. Otherwise, as experience has shown, consumers will suffer significant harm.

#### **6. Do Not Legislate Transmission Pricing Policy**

Transmission pricing is a complex subject currently in debate before FERC. FERC already has ample authority under the Federal Power Act to experiment with incentive pricing alternatives and modify pricing models over time as experience is gained. Congress should not “set in concrete” transmission pricing policy, but should leave the matter to the regulatory agency with expertise. Legislation is not needed or appropriate.

**a. Incentive Rates for Transmission is not Needed or Appropriate:** TAPS strongly opposes the inclusion of language that would require FERC to adopt “incentive transmission pricing” rules. Language on this issue in previous draft bills would have undermined the fundamental “just and reasonable” standard in the Federal Power Act, which has worked well for decades. This language also would have allowed the inclusion in transmission rates of wholly inappropriate costs, such as costs related to lost power sales and would have undermined expected benefits of wholesale competition. FERC already has an incentive rate policy and is currently addressing incentive rates for transmission.

**b. Do Not Mandate Participant Funding for Transmission:** TAPS strongly opposes efforts by Entergy and the Southern Company to have Congress mandate a nationwide “Participant Funding” model for pricing transmission expansion. Participant Funding is an untested concept and is likely to delay and limit transmission construction at a time when congestion and curtailments are increasing, to the detriment of consumers. Competitive markets will fail without construction of substantial new transmission in many areas. FERC is permitting experimentation with participant funding by RTOs. Congress should allow this experimentation to go forward and not mandate a funding mechanism that is opposed in many states outside the south.

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