

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

ITC Grid Development, LLC

Docket No. EL15-86-000

**LIMITED RESPONSE OF THE  
TRANSMISSION ACCESS POLICY STUDY GROUP**

This proceeding concerns a petition for declaratory order made by ITC Grid Development, LLC (“ITC”), which seeks to have “binding” bids with open-ended exemptions that it makes in Order 1000<sup>1</sup> processes enshrined by *Mobile-Sierra*’s public interest standard. On September 25, 2015, ITC filed an answer to the many comments and protests made in response to its petition.<sup>2</sup> The Transmission Access Policy Study Group (“TAPS”) filed one of those protests, as well as a timely intervention, and now files a limited response to ITC.<sup>3</sup>

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<sup>1</sup> *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 1000”), *reh’g denied*, Order No. 1000-A, 77 Fed. Reg. 32,184 (May 31, 2012), 139 FERC ¶ 61,132 (2012), *on reh’g*, Order No. 1000-B, 77 Fed. Reg. 64,890 (Oct. 24, 2012), 141 FERC ¶ 61,044 (2012), *review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (per curiam), *reh’g en banc denied*, No. 12-1232 (D.C. Cir. Oct. 17, 2014).

<sup>2</sup> ITC Grid Development, LLC, Motion for Leave to Answer and Answer to Comments and Protest (Sept. 25, 2015), eLibrary no. 20150925-5206 (“ITC Answer”).

<sup>3</sup> While the Commission does not normally accept answers to answers, it will grant leave to do so when a reply will ensure a complete record in the proceeding, provide information helpful to the disposition of an issue, or aid the Commission in understanding and resolving issues. *See, e.g., Pac. Interstate Transmission Co.*, 85 FERC ¶ 61,378, at 62,444 (1998), *reh’g denied*, 89 FERC ¶ 61,246 (1999), *review dismissed sub nom. DEK Energy Co. v. FERC*, 248 F.3d 1192 (D.C. Cir. 2001); *Commonwealth Atl. Ltd. P’ship*, 97 FERC ¶ 61,375, at 62,717 (2001); *Cal. Indep. Sys. Operator Corp.*, 105 FERC ¶ 61,284, at 62,400 (2003), *reh’g denied*, 106 FERC ¶ 61,201 (2004); *City of Riverside*, 128 FERC ¶ 61,207, at 61,962 (2009). TAPS submits this reply for the limited purpose of clarifying the record on certain issues which have been obscured in ITC’s pleading, and therefore requests that the Commission accept it. TAPS does not seek to reiterate arguments it made in its initial protest and rests on the record on matters not addressed herein.

In its answer, ITC now claims that it “is not seeking a rule of general applicability.” ITC Answer at 2. Instead, it states, it “seeks guidance for the 40-year full revenue requirement bids being utilized in MISO and SPP,”<sup>4</sup> and asks, “[i]f ITC chooses to bind its bid to the required projected revenue requirement (but for necessary exemptions identified as part of the bid selected by MISO or SPP), what rights under Sections 205 and 206 of the Federal Power Act (‘FPA’) remain for . . . third parties?” ITC Answer at 2.

Despite this effort to downplay its petition as only a modest request, the “guidance” ITC seeks remains breathtaking in scope. ITC is still asking that the Commission establish a general presumption that will allow ITC and others to recover transmission rates that the Commission has not found to be just and reasonable, that the Commission strip ratepayers of their statutory rights by enshrining those rates under *Mobile-Sierra*’s public interest standard for the life of the project, and that it allow bids to include open-ended “exemptions” that appear to function as a one-way ratchet upwards. ITC Answer at 2-4 & n.6, 14. In short, ITC continues to ask for unwarranted and unprecedented discretion to charge potentially unjust and unreasonable rates.

ITC’s answer does not, for the most part, directly reply to the substantive points made by TAPS and the many other commenters and protestors in this proceeding. Instead, it changes tack and argues generally that objections to its proposal constitute a “collateral attack on Order No. 1000.” *Id.* at 6 (capitalization omitted). That assertion is

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<sup>4</sup> As to the question of which RTOs ITC intended its proposal to apply to, at least, it appears that ITC *has* narrowed its request (ITC Answer at 2, 11); ITC’s original petition also discussed the CAISO Transmission Planning Process at some length and nowhere stated that its request was limited to MISO and SPP. ITC Grid Development, LLC, Petition for Declaratory Order 6-7 (July 28, 2015), eLibrary No. 20150728-5102.

meritless. In crafting Order 1000's planning and cost allocation requirements, the Commission specifically refused to include the types of requirements that ITC now asks the Commission to impose by declaratory order. The Commission expressly "decline[d] to adopt commenter suggestions to mandate a competitive bidding process for selecting project developers." Order 1000, P 321 n.302. It also distinguished explicitly between cost allocation and cost recovery, stating that Order 1000 "sets forth the Commission's requirements regarding the development of regional and interregional cost allocation methods and does *not* address matters of cost recovery." *Id.* P 563 (emphasis added).<sup>5</sup> Order 1000 does not require or rely—directly or indirectly—on ITC's proposal that the Commission abdicate its ratemaking authority for Order 1000 projects.

In its answer, ITC does state that it is willing to condition its requested relief on a narrow Commission review. It suggests that "a winning bidder and the RTO should be required to show that the *process* followed was in accord with the approved tariff provisions, and that the solicitation itself attracted sufficient participation to produce a competitive, just and reasonable rate."<sup>6</sup> ITC Answer at 6. ITC offers no suggestions, evidence, or analysis as to how many bidders are necessary to meet this threshold, nor identifies the specific terms and conditions of the solicitation process needed to satisfy

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<sup>5</sup> In Order 1000 (P 771), the Commission also declined to revisit or modify its policy on rate incentives under Order 679 (*Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222 (2006), *on reh'g*, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236 (2006), *clarified*, 119 FERC ¶ 61,062 (2007)).

<sup>6</sup> It is unclear what, if anything, would be required to make this "show[ing]," as six pages later (ITC Answer at 12) ITC reiterates its original proposal that the rate resulting from the bids of developers selected in Order 1000 processes "should be presumed just and reasonable," thus placing the burden on ratepayers to rebut that presumption—an outcome directly at odds with Section 205(e) of the FPA, which provides that the burden of proof in such proceedings "shall be upon the public utility" (16 U.S.C. § 824b).

this requirement. In fact, as discussed in TAPS' protest,<sup>7</sup> it would be difficult, if not impossible, to make the necessary showing. This is not due to a flaw in those Order 1000 planning and cost allocation processes. Rather, those processes were created for a different purpose—i.e., to identify the best project—and therefore are not designed to funnel all potential developers toward submission of cost-only bids for the same clearly defined, fungible product.

Nor do Order 1000 processes substitute for Commission rate oversight. ITC's answer implies that Commission rate regulation under the "just and reasonable" standard is unnecessary because RTOs' examination of the costs included in the revenue requirement estimates submitted by developers is comparable to the cost-of-service review done by the Commission.<sup>8</sup> This is wrong. While RTOs may consider costs when evaluating project proposals, they do so in accordance with the provisions of their tariffs, which count costs as one of many factors used to evaluate and compare projects. RTO review of developer cost projections does not ensure that rates based on those projections would be "just and reasonable." The CAISO, for example, recently informed the Commission that its selection in its Transmission Planning Process of a project that contained a ROE cap does not mean that it has "determined or negotiated the just and reasonable return on equity."<sup>9</sup> Instead, "[s]uch rates are solely subject to Commission

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<sup>7</sup> Transmission Access Policy Study Group, Motion to Intervene and Protest 10-12 (Aug. 27, 2015), eLibrary No. 20150827-5247.

<sup>8</sup> ITC Answer at 8 ("[T]he argument that the Petition would relieve developers of their obligation to demonstrate that rates are just and reasonable is in direct conflict with the Commission's approval of compliance processes in MISO and SPP that provide for careful scrutiny of cost estimates. The revenue requirement bidding requirement in MISO belies the argument that RTOs do not fully investigate and consider costs." (footnote omitted)).

<sup>9</sup> Cal. Indep. Sys. Operator Corp., Motion for Leave to Submit Answer 3, *NextEra Energy Transmission West, LLC*, Docket No. ER15-2239-000 (Aug. 27, 2015), eLibrary No. 20150827-5212. On October 6,

approval. The CAISO in no way has sought to supersede the Commission’s ratemaking authority.” *Id.* MISO, likewise, has noted that it does not intend to enforce cost caps offered by potential developers. Instead, “accepted cost caps from a Selected Developer who has proposed them shall be public information, accessible by regulators in any rate case or other recovery proceeding.”<sup>10</sup>

In fact, neither MISO nor SPP—the two RTO regions where ITC now states its declaratory order was intended to apply—proposed in its Order 1000 compliance that the revenue requirement estimates submitted by potential developers could automatically set the floor on the wholesale rates charged for projects selected for inclusion in regional plans for regional cost allocation. Nor did either RTO claim that its Order 1000 planning process was structured to create a competitive market sufficient to discipline prices for a monopoly service—transmission—for recovery through an RTO transmission tariff without normal Commission ratemaking oversight. Nor did either MISO or SPP submit any evidence to support such a claim.<sup>11</sup>

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2015, the Commission’s Office of Energy Market Regulation issued a Deficiency Letter in Docket No. ER15-2239-000 (eLibrary No. 20151006-3042), that identified substantial additional cost information needed to evaluate NextEra Energy Transmission West’s (“NextEra”) request for a 10% base ROE. NextEra had submitted that ROE as a “cap” in the CAISO’s transmission planning process and requested that the Commission set it as a floor as well.

<sup>10</sup> Midcontinent Indep. Sys. Operator, Inc., Filing to Modify its Order No. 1000 Compliant Competitive Transmission Developer Selection Process 38, *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER15-2657-000 (Sept. 16, 2015), eLibrary No. 20150916-5137.

<sup>11</sup> Midwest Independent Transmission System Operator, Inc.’s and MISO Transmission Owners’ Compliance Filings for Order No. 1000, Regarding Regional Planning and Cost Allocation of Transmission Projects with Regional Benefits, *Midwest Independent Transmission System Operator, Inc.*, Docket Nos. ER13-187-000 *et al.* (Oct. 25, 2012), eLibrary Nos. 20121025-5070 and -5072; (July 22, 2013), eLibrary Nos. 20130722-5107 and -5109; (June 4, 2014), eLibrary No. 20140604-5125; (July 14, 2014), eLibrary Nos. 20140714-5235 and -5236; (Feb. 23, 2015), eLibrary No. 20150223-5231. Southwest Power Pool, Inc., Order No. 1000 Compliance Filings, *Southwest Power Pool, Inc.*, Docket Nos. ER13-366-000 *et al.* (Nov. 13, 2012), eLibrary No. 20121113-5472; (Nov. 15, 2013), eLibrary No. 20131115-5198; (Dec. 15, 2014), eLibrary No. 20141215-5245; (May 18, 2015), eLibrary No. 20150518-5222.

Of course, even if RTOs were to undertake the type of cost-of-service review performed by the Commission, ITC's request for *Mobile-Sierra* protection would *still* not be justified. As discussed in TAPS' Protest, the Commission does not routinely grant *Mobile-Sierra* protection, even when the Commission itself has performed its own cost-of-service review. TAPS Protest at 12-14. Granting *Mobile-Sierra* protection to transmission rates for 40 years as requested by ITC is inappropriate, even on the case-by-case basis ITC proffers in its answer (at 12-13) as a fallback.

Ultimately, the heart of ITC's request appears to be its contention in its answer that it is not reasonable for Order 1000 processes to be "only the first step in determining the rate to be charged for a project selected by an RTO." ITC Answer at 6. That is, ITC objects to the fact that project developers must participate both in the RTO project selection process and in a rate case at the Commission. ITC, however, has presented neither a valid legal justification for avoiding Commission scrutiny of its rates, nor any evidence showing that Commission oversight over those rates is superfluous; and it has failed to justify re-writing the Commission's existing transmission incentives rule. Nor has ITC demonstrated that Commission rate regulation has stifled Order 1000 processes—even in its September 25 Answer, ITC states that "competition for new projects is keen." *Id.* at 9.

What ITC's petition and answer do show is that ITC believes Order 1000 processes would be more profitable for ITC if it need not face a rate case over the life of its transmission assets—even if its actual costs are far lower than the revenue requirement it receives. However, the Federal Power Act requires that rates be just and reasonable. Ensuring that ITC can reap maximum profit from regional and interregional transmission

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planning processes is a goal set by neither the FPA nor Order 1000. ITC's petition should be rejected in its entirety.

Respectfully submitted,

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October 13, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 13th day of October, 2015.

*/s/ Katharine M. Mapes*

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