

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Grid Reliability and Resilience Pricing

Docket No. RM18-1-000

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

In accordance with the Commission's October 2, 2017 Notice Inviting Comments,<sup>1</sup> the Transmission Access Policy Study Group ("TAPS") submits this limited reply to certain initial comments filed regarding the Secretary of Energy's Notice of Proposed Rulemaking, as revised by the Commission's Federal Register Notice.<sup>2</sup>

**A. *The Majority of Industry Commenters Oppose Adoption of the NOPR***

In our Initial Comments, TAPS explained that issuing a Final Rule on the basis of this inadequately specified and insufficiently justified NOPR is the wrong approach, and urged the Commission to terminate this docket. Many commenters agree. Indeed, the great majority of commenters across a diverse cross-section of industry stakeholders oppose adoption of the NOPR,<sup>3</sup> including a bipartisan group of former Commissioners.<sup>4</sup>

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<sup>1</sup> Notice Inviting Comments (Oct. 2, 2017), eLibrary No. 20171002-3039, *corrected*, Errata Notice (Oct. 11, 2017), eLibrary No. 20171011-3067.

<sup>2</sup> U.S. Dep't of Energy, Letter from the Secretary of Energy and Proposal for a NOPR (Sept. 29, 2017), eLibrary No. 20170929-5055 ("Original NOPR"), as revised in version published in the Federal Register, Grid Resiliency Pricing Rule, 82 Fed. Reg. 46,940 (Proposed Oct. 10, 2017) ("NOPR" or "Proposed Rule"). See FERC, Notice of Federal Register Publication, (Oct. 11, 2017), eLibrary No. 20171011-3068.

<sup>3</sup> See, e.g., Comments of Joint Industry; Comments of the ISO/RTO Council; Comments of the Joint Consumer Advocates of the PJM Region; Comments of American Manufacturers and Large Institutional Customers; Comments of American Manufacturers and Large Institutional; Comments of American Iron and Steel Institute; Comments of the Attorneys General of Massachusetts, et al.; Comments of Connecticut Public Utilities Regulatory Authority and the Connecticut Department of Energy and Environmental Protection's Bureau of Energy and Technology Policy.

In contrast, those that submitted supporting comments are largely limited to a subset<sup>5</sup> of the major beneficiaries of the additional compensation proposed by the NOPR.

With respect to any legitimate concerns about resiliency, many comments confirm that there is no immediate or near-term emergency requiring a rush to action.<sup>6</sup> Indeed, the North American Electric Reliability Corporation (“NERC”) makes clear that while it continues to study the reliability implications of coal and nuclear retirements, “NERC has not identified an immediate or near-term emergency related to such retirements.”<sup>7</sup> Thus, as observed in our Initial Comments,<sup>8</sup> the Commission has the time, and the obligation, to do this right—to fully define and examine potential concerns, and if shown to be warranted, develop targeted remedies, rather than swiftly implementing a Final Rule based on an insufficient NOPR.

***B. There is Significant Consensus That Any Further Action on the NOPR Should Be Limited to the Eastern RTOs***

A substantial number of commenters echo TAPS’ position that any action taken in response to the NOPR should exclude the California Independent System Operator

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<sup>4</sup> Comments of the Bipartisan Former FERC Commissioners (Oct. 19, 2017).

<sup>5</sup> Significantly, some entities, after noting that they (or their members) stand to benefit from the NOPR, oppose its adoption. Comments of Dynegy Inc. at 3, 5 (stating that while “Dynegy could potentially reap substantial benefits from the NOPR’s proposal . . . it remains opposed to the proposed rule.”); *see also* Comments of NRG Energy Inc. (“NRG”) at 5.

<sup>6</sup> *See, e.g.*, Comments of ISO New England Inc. at 1 (“New England has no urgent need to rush to a solution, given that the three-year Forward Capacity Market has ensured resource adequacy until at least 2021, and the region has already taken steps to improve operating procedures and generator incentives to secure firm fuel supplies.”); Comments of PJM Interconnection at 14-15 (“[C]ontrary to suggestions that the DOE NOPR changes are needed to ‘keep[] the lights on,’ PJM’s capacity market has consistently secured Capacity Resources above and beyond the level needed to meet the NERC standard of no more than one expected loss-of-load event every ten years.”); Comments of the Attorneys General of Massachusetts, et al. at 20 (“[T]here is no evidence that electric system reliability is in any present danger.”).

<sup>7</sup> Comments of NERC at 5.

<sup>8</sup> Comments of TAPS at 5-6.

Corporation (“CAISO”), Southwest Power Pool, Inc. (“SPP”), and Midcontinent Independent System Operator, Inc. (“MISO”).<sup>9</sup> Commenters emphasize that these RTOs lack mandatory capacity markets and have limited or no resources that would qualify. As MISO notes, “less than 8% of installed generation capacity that [is] in the MISO would likely be eligible for treatment under the Proposal.”<sup>10</sup> Similarly, CAISO reports that “there are no baseload coal or nuclear resources physically located in the CAISO balancing authority area . . . that would be eligible for the compensation scheme in the proposed rule.”<sup>11</sup> And, as explained in our Initial Comments, states in those regions have largely retained the retail obligation to serve or implemented other resource adequacy mechanisms, and extending the NOPR’s applicability to CAISO, SPP, and MISO would serve only to undermine the predominant regulatory model of those regions.<sup>12</sup>

A number of commenters<sup>13</sup> also agreed with TAPS’ observation<sup>14</sup> that excluding CAISO, SPP, and MISO from any action taken in response to the NOPR would be consistent with the distinction between mandatory and voluntary capacity markets that the Commission has historically maintained, as well as the scope of prior Commission proceedings. Indeed, the Commission Staff has recently reaffirmed that distinction.<sup>15</sup>

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<sup>9</sup> See Comments of MISO; Comments of Organization of MISO States (“OMS”); Comments of American Public Power Association (“APPA”) at 19; Comments of CAISO at 1-2, Comments of the Edison Electric Institute at 3, Comments of Entergy Services, Inc. at 12, Comments of MISO Transmission Owners (“MISO TOs”) at 7-9. See also Comments of SPP at 7-8 (questioning applicability to SPP).

<sup>10</sup> Attachment A to Comments of MISO at 21.

<sup>11</sup> Comments of CAISO at 1-2.

<sup>12</sup> Comments of TAPS at 11.

<sup>13</sup> Comments of MISO TOs at 9; Comments of OMS at 8-10.

<sup>14</sup> Comments of TAPS at 9-10.

<sup>15</sup> See Final Report: Review of Federal Energy Regulatory Commission Agency Actions Pursuant to

***C. There is Agreement that the Proposed Rule Could Impose Duplicative Charges on LSEs with Resiliency Resources Subject to State or Local Cost-of-Service Recovery***

As stated in our Initial Comments, the NOPR’s proposal to exclude from compensation resilient resources subject to state or local cost-of-service recovery could subject load-serving entities (“LSEs”) with such excluded generation to double charges—once for the cost of their own resilient resources, and a second time for resources compensated under the NOPR. Various commenters also recognize this risk of double payment.<sup>16</sup> TAPS continues to believe that any final rule should avoid punishing LSEs that bear the cost of their own resilient resources by enabling those LSEs to self-supply their share of such resources or otherwise exempting those LSEs from shouldering any portion of the costs to support “competitive” resilient generators.<sup>17</sup> TAPS generally supports allowing all generators that are capable of providing a needed service to compete to do so, regardless of how that generation is financed and funded. However, particularly where the NOPR proposes full cost-of-service compensation (or more) for qualifying generators, expanding the qualifying generators could significantly increase the cost to consumers and businesses even beyond the potentially enormous burden that would result from the NOPR.

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Executive Order 13783, Promoting Energy Independence and Economic Growth at 12 (Oct. 25, 2017), eLibrary No. 20171025-3051. (“Three of the Regional Transmission Operator/Independent System Operator (RTO/ISO) markets in the eastern U.S. have adopted centralized capacity markets to help address resource adequacy concerns.”). The Report also notes that the Commission has not required RTOs to implement centralized capacity markets, leaving that as a voluntary decision by the stakeholders of each particular RTO. *Id.* at n.12.

<sup>16</sup> *See, e.g.*, Comments of American Municipal Power, Inc. (“AMP”) at 25-27; Comments of APPA at 35; Comments of the Large Public Power Council at 9; Comments of the National Rural Electric Cooperative Association at 11.

<sup>17</sup> Comments of TAPS at 17-18; *see also* Comments of AMP at 25-27.

***D. The Commission Should Refrain from Pursuing Proposed Alternatives to the NOPR that Raise Costs to Consumers and Undermine State and Local Policies***

As explained in our Initial Comments, Commission concerns that the markets may not be accurately pricing generation resources necessary to maintain the resiliency of the bulk power system could more appropriately be addressed by better defining potential issues and developing a clear picture of where gaps or deficiencies exist.<sup>18</sup> While there is a wide range of reasonable “next steps” that the Commission could take in conjunction with rejecting the NOPR, the Commission should refrain from pursuing alternatives to the NOPR that raise costs to consumers and undermine state and local policies as some propose. TAPS urges the Commission instead to continue its current price formation efforts, of which several remain pending,<sup>19</sup> and evaluate their impacts on pricing before expanding its efforts. MISO likewise urges the Commission “to work through its existing dockets, and to leverage its established processes to initiate a full, thorough, and public vetting of the issues raised by the Proposal.”<sup>20</sup>

In contrast, several commenters urge the Commission “to accelerate and expand its price formation efforts.”<sup>21</sup> For example, Electric Power Supply Association (“EPSA”), Exelon Corporation, PSEG, and NRG call on the Commission to direct

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<sup>18</sup> Comments of TAPS at 21. *See also* Comments of the ISO/RTO Council at 33 (“[T]he Commission should highlight . . . any issues identified by the Commission or public commenters that warrant further evaluation, and then leave it to each RTO and ISO to assess whether the issue is relevant to its market and, if so, propose a solution appropriate for its market.”).

<sup>19</sup> *See, e.g., Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Docket No. RM16-5-001; *Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Docket No. RM17-2-000; *Fast-Start Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Docket No. RM17-3-000.

<sup>20</sup> Comments of MISO at 2.

<sup>21</sup> Comments of EPSA at 6.

fundamental pricing reforms as an alternative to the NOPR, including revisions allowing energy market LMPs to be set not by the marginal offer, but by the cost of resources on minimum load.<sup>22</sup> PJM notes the need for similar reforms and asks FERC to establish a deadline by which PJM must file its reforms with the Commission. Such pricing changes would be a radical departure from basic economic principles reflected in the locational marginal pricing mechanism, would risk depriving businesses and consumers of the benefits of low-marginal-cost resources, and could expand opportunities to manipulate the market.<sup>23</sup> To the extent that PJM has identified specific shortcomings in its market design, those issues would be more appropriately dealt with through a separate PJM Section 205 proceeding. A generic directive to the eastern RTOs based on PJM-specific issues or, more broadly, ill-defined resiliency concerns would not be proper.

Other commenters suggest expanding minimum offer price rules, including to existing generation, in order to override state and local policies.<sup>24</sup> But, as explained in TAPS' post-technical conference comments regarding state policies and wholesale markets operated by the three eastern RTOs,<sup>25</sup> this is the wrong approach. Such an extreme measure is unworkable, increases economic uncertainty, and upsets the

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<sup>22</sup> Comments of Exelon Corporation at 16-20; Comments of PJM at 43-46; Comments of PSEG at 29-30; Comments of NRG at 15; Comments of EPSA at 53.

<sup>23</sup> See, e.g., Comments of the Independent Market Monitor for PJM at 38-40.

<sup>24</sup> See Comments of EPSA at 52 ("It is imperative that the Commission take decisive action to protect the organized markets from the impacts of out-of-market subsidies and, more specifically, from the impacts of out-of-market subsidies for existing resources.").

<sup>25</sup> Post-Technical Conference Comments of TAPS, *State Policies and Wholesale Markets Operated by ISO New England, Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.*, Docket No. AD17-11-000, at 3-5, 9-11 (June 22, 2017), eLibrary No. 20170622-5149. See also Post-Technical Conference Reply Comments of TAPS (July 14, 2017), in that same proceeding, eLibrary No. 20170714-5163.

reasonable investment-backed expectations of LSEs. It would be fundamentally inconsistent with the cooperative federalism at the core of the Federal Power Act, and would unduly burden the businesses and consumers that depend upon obligation-to-serve LSEs by forcing them to pay twice to meet the same capacity need.

### CONCLUSION

For the reasons explained above and in TAPS' Initial Comments, the Commission should not adopt the Proposed Rule and should terminate this docket. Potential risks to resiliency could instead be examined from the ground up, clearly identifying the problem to be studied and ensuring that any solution proposed is tailored to address the identified problem in the most cost-effective manner, consistent with the Commission's FPA obligations.

Respectfully submitted,

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