

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of JEA

| Docket No. EL18-200-000

**MOTION TO INTERVENE OF THE
TRANSMISSION ACCESS POLICY STUDY GROUP**

Pursuant to the Commission’s September 18, 2018, notice in this docket, and Rules 212 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214, the Transmission Access Policy Study Group (“TAPS”) respectfully moves to intervene in the above-captioned proceeding with full rights as a party. JEA’s September 17, 2018, petition for declaratory order,¹ asks the Commission to exercise jurisdiction over a power purchase agreement that requires the Municipal Electric Authority of Georgia (“MEAG Power”), a Federal Power Act (“FPA”) § 201(f) entity, to sell wholesale capacity, energy and ancillary services to JEA.²

TAPS, together with the American Public Power Association, the Large Public Power Council, and the National Rural Electric Cooperative Association, are concurrently filing a joint protest in this docket. As fully described in the joint protest, TAPS opposes the relief sought in JEA’s Petition because it is contrary to the language of the statute, has been rejected by multiple federal circuits, and is contrary to long-standing Commission precedent.

¹ Petition for Declaratory Order of JEA Regarding the Jurisdictional Nature of a Power Purchase Agreement Under the Federal Power Act (Sept. 17, 2018), eLibrary No. 20180917-5182 (“Petition”).

² Petition at 1-2.

I. MOTION TO INTERVENE

TAPS is an association of transmission-dependent utilities in thirty-five states.³ All of TAPS's member electric utilities except one are FPA § 201(f) entities. TAPS advocates on behalf of its members' electric energy interests, including their interests as FPA § 201(f) entities before the Commission and other agencies. TAPS has long been concerned about structural and regulatory changes in the electric industries that could adversely affect its members and their ratepayers, including the rates, terms, and conditions of electric service, and their access to financial markets necessary for project financing. TAPS has commented on nearly all major Commission rulemakings and, as appropriate, actively litigated in connection with those proceedings, including those pertaining to the scope of the Commission's regulatory jurisdiction.⁴

This proceeding concerns JEA's request that the Commission determine whether the "Commission ha[s] jurisdiction over the [Amended and Restated Power Purchase Agreement] (and the transactions therein) under Section 201(b)(1) of the FPA, even though MEAG and JEA are each exempt from regulation by the Commission . . . under Section 201(f) of the FPA[.]"⁵ Notwithstanding JEA's contention that it seeks a narrow ruling specific to its agreement, the broad jurisdictional determination at issue is far more in the nature of a rule of general applicability than a fact-specific adjudication. TAPS has § 201(f) utility members who, like MEAG Power, sell wholesale electricity across state

³ David Geschwind, Southern Minnesota Municipal Power Agency, chairs the TAPS Board. Jane Cirrincione, Northern California Power Agency, is TAPS Vice Chair. John Twitty is TAPS Executive Director.

⁴ See, e.g., *Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

lines over the integrated continental grids.⁶ Were the Commission to accept JEA's erroneous argument, it could be extended potentially to many TAPS's members and their transactions, contrary to their interests, expectations, and financings.

It is unusual for TAPS to intervene in a declaratory petition docket. The fact that it has done so here underscores the fact that much more is at stake than a two-party dispute over the jurisdictional status of one particular power purchase agreement. At bottom, JEA seeks a ruling that could redraw fundamental jurisdiction boundaries over public utility wholesale power sales and, in doing so, defeat Congress's express determination that "[n]othing in [Part II of the FPA shall] appl[y] to [201(f) entities] unless the statute makes specific reference to any of these entities."⁷

TAPS and its members have a direct interest in the matters at issue in this proceeding and no other party can adequately represent their interests. TAPS's participation in this proceeding is in the public interest. TAPS should therefore be granted leave to intervene and made a full party to this proceeding.

Communications regarding these proceedings should be directed to:

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⁵ Petition at 2.

⁶ "[A]ny electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving in interstate commerce." *New York v. FERC*, 535 U.S. 1, 7 (2002).

⁷ *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 915 (9th Cir. 2005).

CONCLUSION

For the reasons set forth above, and in the related joint protest, the Commission should issue an order (1) granting TAPS's motion to intervene and (2) promptly denying JEA's Petition.

Respectfully submitted,

/s/ Cynthia S. Bogorad

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October 15, 2018

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 15th day of October, 2018.

/s/ Peter J. Hopkins

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