UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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| Priority Rights to New Participant-Funded Transmission | Docket No. AD11-11-000 |

**STATEMENT OF TERRY WOLF**
**ON BEHALF OF**
**MISSOURI RIVER ENERGY SERVICES**
**AND THE**
**TRANSMISSION ACCESS POLICY STUDY GROUP**

**MARCH 15 TECHNICAL CONFERENCE**

I appreciate the invitation to speak today on issues related to priority rights to use transmission infrastructure developed under new business models, particularly merchant transmission.

My name is Terry Wolf, and I am the Manager of Transmission Services for Missouri River Energy Services ("MRES") located in Sioux Falls, South Dakota. I am speaking on behalf of MRES and the Transmission Access Policy Study Group ("TAPS"), an association of transmission-dependent electric utilities in more than 30 states.

MRES is a municipal joint action agency serving 60 member communities in Iowa, Minnesota, North Dakota, and South Dakota. My job is to ensure that these communities have reliable, cost-effective transmission service from MRES and member generation resources. MRES serves load, and owns transmission facilities, both inside and outside the Midwest ISO ("MISO"). I have been an active participant in the CapX 2020 effort, in which 11 utilities are working together to plan and jointly own some

$1.7 billion in new transmission projects. I am on the Management Committees for the Fargo and Brookings Projects, two CapX projects in which MRES is participating.

In looking at the issues this conference is focused on, it seemed important to step back and identify the objectives we are seeking to accomplish. MRES and TAPS strongly support open access and mechanisms to create the robust regional grid required for competitive generation markets. We have been outspoken advocates of getting needed transmission built at reasonable cost, and making sure that we are building the right transmission to meet regional needs—not under- or over-building. We see a tension between these objectives and merchant models that grant priority access rights to those who sponsor, or participant-fund, the facility.

I want to first set aside what I am *not* addressing today. I recognize that some merchant transmission developers have a business model that does not depend on participant funding. For example, transmission upgrades can be proposed by third parties; planned through a regional planning process; and once constructed, incorporated into the relevant adjacent or surrounding Transmission Provider's OATT for service and cost recovery. Those types of merchant projects, which can play a valuable role in getting needed transmission built at reasonable cost (assuming the Commission holds the line on return on equity incentives), do not involve creating "priority rights" to transmission service and do not seem to be the subject of this Technical Conference, so I do not comment on them here.

This conference addresses a different merchant transmission model, which does not involve including transmission facilities in the ratebase of an existing Transmission Provider ("TP"). Rather, the focus today is stand-alone, single-purpose merchant

transmission projects that are funded by subscribers that secure priority rights of access in that project.

Especially where the stand-alone merchant line is an AC line that is more than a radial generator tie (or that may become a network facility in the future), we have concerns about the impact of such projects, and associated concentration of priority rights in their capacity, on regional transmission development and generation markets. So from that vantage point, I urge the Commission to consider the following objectives in developing policies on merchant transmission.

**1. We need to maximize open access at non-pancaked rates.** In other words, as much available capacity as possible, as early as possible, should be placed under an OATT and preferably an existing TP's OATT, rather than a stand-alone OATT for the new merchant facilities.

Order 888 was on the right track where it directed each public utility participant in a jointly-owned transmission project to include its share of the project capacity under its OATT.[1] By doing so, the Commission made access to the project available, on a cost-based, non-pancaked basis, to all transmission customers of all of the multiple participating TPs, in accordance with their respective OATTs.

Order 888 also rightly restricted a TP's firm transmission rights to those supported by generation commitments. It rejected load-ratio-share allocation of

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[1] *See* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,539, 21,573 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,692 (1996) ("Order 888"), *clarified*, 76 FERC ¶ 61,009 (1996), *modified*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 62 Fed. Reg. 64,688 (Dec. 9, 1997), 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and remanded in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

interfaces, and required the TP and network customers to designate network resources on the same basis to secure firm access through the interface,[2] with point-to-point reservations made available to third parties on a first-come, first-served basis. Thus, Order 888 made it difficult for a few entities to tie up valuable interface capacity.[3]

The Commission has long recognized that pancaking creates barriers to competition. This is especially true with regard to location-constrained renewable resources, which are often remote from load and must cross several transmission providers to reach customers, incurring multiples of the transmission service charges that would be necessary to deliver conventional fossil-fueled resources. While there may be benefits to merchant transmission that is not rolled into ratebase, the Commission should be aware that stand-alone merchant projects create barriers to competitive markets by increasing pancaking and complicating transactions.

In the Upper Midwest, we've experienced the significant hurdles created by fragmented ownership. If you look back to the 1990s, our region was a patchwork of transmission owners, with different entities owning scattered segments of the grid. Transactions required coordinating complex contract path arrangements with multiple entities, and payment of multiple pancakes. Even after the issuance of Order 888, this situation made transactions and access to competitive generation both complicated and expensive. MAPP Schedule F, which provided relatively short-term access at

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[2] *See*, *e.g.*, *pro forma* OATT §§ 28.2, 30.1, and 30.8.

[3] The Order 888 approach seems consistent with the Commission's policy on generator lead lines, which requires the filing of an OATT upon receipt of a third-party service request, and restricts the generator lead line owner's priority rights to the capacity for which it has achieved material progress towards specific pre-existing expansion plans. *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, P 22 (2009); *Aero Energy, LLC*, 115 FERC ¶ 61,128 (2006), *order granting modification*, 116 FERC ¶ 61,149, P 28 (2006), *final order directing interconnection and transmission service*, 118 FERC ¶ 61,204 (2007), *order denying*

non-pancaked rates, provided a partial fix. However, it was the formation of MISO that addressed much of this problem by enabling access to many transmission owners' facilities through a single OATT at a non-pancaked rate (although pancaking remains a problem outside, specifically to the west, of MISO).

The Commission should not sacrifice or erode this fundamental objective—open access to broader competitive markets at non-pancaked rates—through decisions designed to spur individual participant-funded merchant projects. We are concerned that the proliferation of single-purpose merchant transmission facilities will turn back the clock, reducing effective access to markets and re-creating structures that produce problems that will be hard to solve in the future. Merchant transmission funded by participants that are then granted priority rights could pose barriers to competitive markets that are even higher than those we experienced in the "bad old days."

Allowing priority rights to stand-alone merchant projects to be concentrated among a few sponsors, enables those entities to extract a heavy toll from transactions that need to use the facility, distorting the market. Given the difficulty and cost of expanding transmission capacity, transmission cannot be readily duplicated. So we need to be concerned about putting in place structures that create exclusive or near-exclusive access, resulting in market power over a transmission path facility that may become an essential means to accessing the market.

Affiliation enhances the incentive and opportunity to stifle competition and restrict access. Where the number of holders of priority transmission rights in a congested, fully-subscribed project is limited, it is easy to imagine how those priority

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*reh'g*, 120 FERC ¶ 61,188 (2007).

rights holders could enhance their generation interests at the expense of would-be competitors—especially when assignments of transmission rights by transmission customers can be made at market-based rates.

Placing the fully subscribed, stand-alone merchant line under the merchant TP's OATT ensures that unused capacity will be available on a non-firm basis, thus preventing hoarding of non-firm capacity. However, such short-term access is not the kind of transmission rights that support development of competitive generation, or designation of a generator as a network resource by a load-serving entity. And where short-term transmission access is subject to negotiated rates, even short-term economy transactions may be stifled.

**2. We need to maximize the ability to get transmission projects sited, and ensure we build the projects that provide the most bang for our siting buck**. We have long advocated the need to foster a robust grid; but the challenge moving forward isn't just how to get lines built—it's how to get the *right* lines built. The transmission projects built should be right-sized and integrated into regional plans. We are concerned that sponsor-funded merchant projects won't be, but instead will be sized simply to meet the needs of their priority rights holders.

TAPS has long been skeptical of participant-funding by incumbent Transmission Providers. And while participant-funded merchant development avoids some of the problems of that approach, it suffers from many of the same defects. The basic problem is that a merchant transmission developer has a financial incentive to ensure its line is fully subscribed—or even over-subscribed—at the time it is built. Priority rights in a merchant line are more valuable if the flowgates affected by the line are still congested

after the upgrade is constructed. That congestion translates into higher revenues for the merchant developer. In other words, a participant-funded merchant transmission developer receives a financial reward for artificially maintaining scarcity by building an undersized line, and one that does not have adequate room for future growth.

In addition to producing undersized projects, merchant transmission development will tend to result in single-purpose transmission facilities that miss crucial opportunities and fail to deliver synergies that can benefit consumers and the region and decrease the overall cost of electricity. A transmission project should serve multiple purposes where possible—*e.g.*, access to areas where renewable generation is being constructed, fixing existing reliability issues, and addressing localized transmission constraints. In general, however, a merchant transmission developer will lack the financial incentive to design its project to address all of those needs. Reliability and localized transmission constraints, for example, may be ignored or undervalued in the merchant project's design process because it may be impossible to identify specific customers who the developer can require to pay for those benefits. This problem is heightened if the merchant line is not fully integrated into the regional planning process.

Although sponsor-funded merchant transmission projects won't directly increase the ratebase of the transmission provider(s) to which the merchant project connects, that doesn't mean those projects impose no costs on consumers, or the public at large. On an AC grid, placement of merchant lines will permanently alter grid topology and future planning options, potentially increasing the cost of fixing existing problems and addressing future needs.

In addition, regulators and the public have limited appetites for approving and siting major new transmission lines. Expanding transmission capacity is both expensive and difficult. Participant-funded merchant projects—which seek to justify upgrades based on private benefits to specified market participants—make the difficult state transmission siting process even harder, because siting approvals typically require *public* benefits.

Once a merchant project has been approved and built, landowner and regulatory siting fatigue may prevent the construction of additional lines or expansions needed to serve regional needs. In fact, merchant development can create a new constituency that opposes new transmission development. Under the participant-funded merchant model, a few entities can tie up scarce, merchant-developed capacity; and the value of those priority transmission rights will change with each significant addition of generation, load, and transmission on the system. In those situations, existing rights holders would have a strong financial incentive to oppose construction of needed new transmission lines, if the result would be to erode the economic value of their existing rights.

These problems have real world implications for the grid expansion choices being made today. For example, as I indicated earlier, MRES is participating as a joint owner in the Brookings 345 kV Line, one of the CapX 2020 Phase I projects.[4] That project is

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[4] CapX consists of eleven investor-owned, municipal, and rural cooperative utilities in Minnesota, North and South Dakota, and Wisconsin that have jointly planned needed transmission upgrades and now all have opportunities to jointly own those facilities. *See* CapX 2020 frequently asked questions, http://www.capx2020.com/faq.html (last visited Mar. 14, 2010). CapX planners evaluated various generation scenarios, and started by focusing on the substantial transmission facilities that were always required, regardless of the generation scenario studied. In its first phase, CapX is seeking to build four backbone transmission lines—three 345 kV lines and one 230 kV line—to significantly strengthen the Minnesota transmission system. *Id.* These facilities are designed to meet the load-serving and reliability needs of all 11 participating utilities, and provide the common infrastructure to reach new sources of supply. The first phase is estimated to cost about $1.7 billion, and additional "partner project" related

currently moving forward; but in 2008, while the line was still being studied, Outland Renewable Energy, LLC proposed an alternative sponsor-funded line with endpoints almost identical to those of the Brookings Line. Both of the projects were designed to transmit significant wind generation from southwest Minnesota to Midwest load centers. The Brookings Project, however, also served other system-wide needs by including five substations supporting the underlying grid along its route.[5] In response to comments from wind generators who were concerned that the line be sufficiently robust to accommodate future generation, the decision was also made to build the entire Brookings Line double-circuit-capable, to assure adequate capacity into the future. In other words, the goal of the Brookings Project was to make the best use of the corridor for the benefit of the region and consumers.

The siting process is never easy, but we have learned from the CapX process the value of having a multi-use project, supported by all the area load-serving entities. CapX participants worked hard to inform the public of the need for the projects and collaborated with local government officials, regulators, and landowners to work out the most acceptable configuration and routes for the projects. In that process, it helped that the Brookings Line was included in MISO's Transmission Expansion Plan ("MTEP"), that it served multiple functions, and that ownership of the project was broadly shared

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upgrades are required on individual systems.

CapX is beginning to plan its later phase projects. They will be focused primarily on enabling area utilities to meet their renewable energy needs under state law. The cost estimates range between $4 and $7 billion.

[5] In fact, in *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,165, P 17 (2010), *clarified*, 133 FERC ¶ 61,011 (2010), the Commission rejected MISO's proposal to assign 100% of the costs of the Brookings Line to generator interconnection customers, because it concluded that the line was to serve multiple needs in addition to interconnection.

across the region. All four CapX 2020 Phase I projects have received a Minnesota Certificate of Need,[6] and are at various stages of the process for obtaining a Minnesota Route Permit.[7] One of the projects, a 230 kV line, had no interventions at all filed in the Minnesota Certification of Need proceeding.[8] For the others, the primary issues raised are that the use of the lines should be restricted to transmission of renewable energy (which represents an engineering impossibility) and that the proposed single-circuit 345 kV lines may not be large enough.[9] This experience shows the benefits of designing multi-use projects and of inclusive joint ownership arrangements that foster broad support for projects, and it is certainly very different from the usual.

The MISO Transmission Owners with joint ownership interests in the Brookings Line (including MRES, which is now a MISO Transmission Owner in large part due to joint ownership in the Brookings and Fargo Lines that are part of CapX) will turn over

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[6] Order Granting Certificates of Need with Conditions, *Great River Energy*, Docket No. CN-06-1115 (Minn. Pub. Utils. Comm'n May 22, 2009), Document ID No. 20095-37752-01, *modified*, Docket No. CN-06-1115 (Minn. Pub. Utils. Comm'n Aug. 10, 2009), Document ID No. 20098-40627-01 ("*Great River Energy*"), https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={54C51FAE-B774-4EED-A93C-CAF6ECC5EB52}&documentTitle=20095-37752-01; Order *Otter Tail Power Co.*, Docket No. CN-07-1222 (Minn. Pub. Utils. Comm'n July 14, 2009), Document ID No. 20097-39617-01, https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={EA1BC6A6-C854-48F1-9CEB-51568E6A6178}&documentTitle=20097-39617-01.

[7] Findings of Fact, Conclusions of Law, and Order, *N. States Power Co.*, Docket No. TL-09-246, (Minn. Pub Utils. Comm'n July 12, 2010), Document ID No. 20107-52483-01, https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=viewDocument&documentId={C13A6C8C-5AB3-420C-90D1-160125E7F21C}&documentTitle=20107-52483-01&userType=public; Order Granting Route Permit, *Great River Energy*, Docket No. TL-08-1474 (Minn. Pub. Utils. Comm'n Sept. 14, 2010), Document ID No. 20109-54429-01, https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={22E8FC0B-0F17-4E60-96D0-C02861982101}&documentTitle=20109-54429-01; *see Otter Tail Power Co.*, Docket No. TL-07-1327 (Minn. Pub. Utils Comm'n); *N. States Power Co.*, Docket No. TL-09-1056 (Minn. Pub. Utils. Comm'n), *N. States Power Co.*, Docket No. TL-09-1448 (Minn. Pub. Utils. Comm'n).

[8] *See Otter Tail Power Co.*, Docket No. CN-07-1222 (Minn. Pub. Utils. Comm'n).

[9] *Great River Energy* at 43 (Minnesota regulators ultimately required that those proposed facilities be "upsized" (*i.e.*, built to accommodate double-circuit 345 kV lines)).

their shares of the project's capacity to MISO for service under the MISO OATT and cost recovery under MISO's non-pancaked rates. This approach to the development of major regional transmission upgrades both fosters a robust regional grid and will not create the pancaking and complexity problems that result from sponsor-funded merchant development.

An RTO certainly makes it easier to integrate new transmission facilities owned by multiple entities under a single OATT with non-pancaked rates over a broad region. But even outside an RTO, there are opportunities to develop new facilities through joint ownership and to offer access over those facilities on a non-pancaked basis.

The bottom line is that the participant-funded merchant model, with its greater potential to miss opportunities for multi-purpose projects and network synergies, its creation of new rate pancakes, and potential for negotiated transmission rates far in excess of costs (effectively granting new forms of nontransparent transmission rate incentives), raises the societal cost of transmission. We urge the Commission to consider these issues before taking steps that may promote the proliferation of single-purpose merchant transmission facilities.

Again, I appreciate the opportunity to address these important issues and look forward to your questions.