

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

Preventing Undue Discrimination and            )                           Docket Nos. RM05-25-000  
Preference in Transmission Service            )                           RM05-17-000

**Technical Conference  
October 12, 2006**

**Addendum to the Testimony of  
James Yancey Kerr, II  
on Behalf of  
The National Association of Regulatory Utility Commissioners**

The following are answers to the specific questions posed to the members of the regional planning panel in the October 12, 2006 Technical Conference in the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Notice of Proposed Rulemaking (“NOPR”) in the *Preventing Undue Discrimination and Preference in Transmission Service* proceeding (Docket Nos. RM05-25-000 and RM05-17-000).

**1. What is the appropriate geographic scope for an effective planning region or subregion?**

The appropriate geographic scope for an effective planning region or subregion will depend on that particular region and subregion. The Commission should look to the current geographic boundaries of the many planning processes occurring in various regions of the country.<sup>1</sup> Certainly, a region should be defined as larger than a single transmission provider’s service area. However, the implementation of the NOPR’s

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<sup>1</sup> See e.g., North Carolina Planning Collaborative, SERC planning activities, CCPG, WECC planning, CapX 2020, Georgia ITS, FRCC regional transmission planning, planning efforts administered by RTOs/ISOs, etc.

planning proposal should be careful to avoid disrupting successful voluntary regional planning processes that are meeting the spirit of the Eight Guidelines.

Instead of unduly focusing on the proper geographic boundary of a region, the key question is whether proper coordination and regional participation is occurring. The NOPR's *Coordination* principle requires that a transmission provider meet with all its transmission customers and interconnected neighbors to develop a transmission plan on a nondiscriminatory basis. The NOPR's *Regional Participation* principle strongly encourages that such coordination encompass as broad a region as possible in light of the interconnected nature of the transmission grid and the efficiency of addressing these issues in a single forum.

The Commission should not be overly prescriptive listing the specific elements that can meet the principles of coordination and regional participation. A "one size fits all" model is unnecessary and undesirable in terms of what qualifies as proper coordination and regional participation. Instead, there are existing planning institutions that are well suited to coordinate these functions.<sup>2</sup>

**2. Are there specific criteria that can be developed to define the scope and frequency of the congestion studies proposed in the NOPR?**

The NOPR's *Congestion Studies* principle says that the transmission provider is required to prepare annual studies identifying "significant and recurring" congestion and to post such studies on its OASIS.

The Department of Energy ("DOE") has the statutory obligation to conduct Congestion Studies every three years under Section 1221(a) of the Energy Policy Act of

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<sup>2</sup> *Id.*

2005 (“EPAAct”). The DOE published its first Congestion Study on August 7, 2006, and is now authorized to make National Interest Electric Transmission Corridors (“NIETC”) designations on congestion areas. Subject to certain restrictions, FERC backstop siting authority under Federal Power Act (“FPA”) Section 216(b) may be exercised for projects within NIETCs. For these reasons, the FERC, DOE, and the States should coordinate on the process for conducting congestion studies in ways that support the regional planning process.

NARUC supports the requirement to post congestion areas regularly. However, the FERC should not mandate how the regions prepare congestion studies because of the complexity of the evaluation process specific to a region. Instead, the FERC should adopt principles that foster greater comparability between the DOE’s and the regions’ congestion studies.<sup>3</sup> A coordinated, open, and transparent transmission planning process could identify congestion areas, receive input from State regulators, and recommend workable solutions.

### **3. Is an independent consultant necessary to facilitate planning?**

The NOPR encourages the use of an *Independent Third Party* to oversee the planning process. While the Commission is not proposing to require an independent third party to control the process, it does believe that independence can provide greater confidence in the planning process.

NARUC agrees that an *independent consultant* can facilitate the planning process, but that such additional assistance is not always necessary. A regional planning process

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<sup>3</sup> A guiding principle could be that a congestion study should be prepared in consultation with market participants in a regional planning region, not by an individual transmission provider or transmission owner.

that incorporates the NOPR's Guidelines of *coordination, openness, and transparency* will mitigate the need for an independent consultant. Participants in each regional planning process should decide, based on particular circumstances and needs, whether an independent consultant is needed. The NOPR recognizes that independence can take many forms. The type of independent entity helpful to a planning process will depend on the particular region. Because the regional planning process will be a long-term venture, the hiring of a long-term independent consultant could well result in substantial costs. Each region should be allowed to make this cost-benefit analysis for itself.

The NOPR's *Dispute Resolution* principle says that the transmission provider must propose a dispute resolution process. Here too, the regions should decide the best dispute resolution process that works for their circumstances. The FERC should permit parties to transmission planning disputes to use the regional dispute resolution process in the first instance. If a satisfactory solution cannot be reached, an option could be the use of the FERC's Dispute Resolution Service or taking the dispute to a State Commission for resolution.

**4. What are some effective mechanisms for safeguarding confidentiality while permitting meaningful access to transmission information?**

The NOPR's *Transparency* principle requires the transmission provider to disclose to all customers and stakeholders the basic criteria, assumptions, and data that underlie its transmission system plans. The format for disclosure should include protections to address legitimate confidentiality concerns and Critical Energy Infrastructure Information ("CEII") protections.

There are effective mechanisms for balancing confidentiality and meaningful access to transmission information. Many of the regional planning processes use non-

disclosure agreements to protect commercially sensitive information, although transmission providers may need to amend these agreements to comply with the FERC's rules. Other regions use an independent facilitator to act as a "gatekeeper" for this confidential information. As to critical infrastructure information, the FERC should develop CEII procedures to avoid inadvertent disclosure of this information to the public.

According to the NOPR's *Comparability* principle, "[a]fter considering the data and comments supplied by market participants, the transmission provider is to develop a transmission system plan that: (1) meets the specific service requests of its transmission customers; and (2) otherwise treats similarly situated customers (*e.g.*, network and retail native load) comparably in transmission system planning."

The Commission should recognize that parties that do not qualify as transmission customers *per se* nonetheless deserve non-discriminatory treatment in transmission planning. Transmission competes with generation, demand response, and energy efficiency programs to address identified system needs and requests for service. At the same time, efficient and cost-effective transmission expansion under the FERC's jurisdiction requires reasonable communication between transmission providers, transmission owners (which may not be transmission providers), and resource owners. Accordingly, to ensure non-discriminatory transmission access, just and reasonable transmission rates, and workable wholesale competition, the Commission must require transmission providers to provide transmission and non-transmission project sponsors comparable access to timely information.

The NOPR's *Openness* principle requires transmission planning meetings to be open to all affected parties. Both open and closed transmission planning meetings have

value for different reasons. As described earlier, there are circumstances where participation should be limited to ensure legitimate confidentiality and CEII protections. There are other meetings that must be public because of the FERC's Standard of Conduct rules and open access requirements.

In any case, the Commission should allow a "safe harbor" from its Standard of Conduct Rules to permit communications between resource and transmission planners for planning purposes at the State and regional level. We understand that the Standard of Conduct rules are needed to ensure the functional separation of transmission system operations and wholesale marketing functions.<sup>4</sup> However, the rationale behind the Standard of Conduct Rules is to prohibit *preferential* non-public information sharing between transmission providers and market affiliates, not all information disclosures *per se*.<sup>5</sup>

Strictly applying the Standard of Conduct Rules to the planning process is unnecessary and undesirable. For example, in States requiring long-term Integrated Resource Plans, there is potential for internal conflict, redundancy, and inefficiency when there are two sets of transmission planners (one on the resource side and another on the transmission side). Instead, a "safe harbor" for planning communications will facilitate the more effective coordination of State, subregional, and regional efforts. Any anti-competitive and discriminatory concerns about providing a "safe harbor" from the

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<sup>4</sup> Generally, for public utilities that keep transmission and generation assets in the same corporate entity, the Standards of Conduct Rules requires employees engaged in transmission functions to operate separately from employees of energy affiliates and marketing affiliates. A number of information sharing restrictions apply that prohibit transmission providers from allowing employees of their energy and marketing affiliates to obtain access to transmission or customer information, except via OASIS.

<sup>5</sup> The concerns including the potential for transmission providers: (1) to provide market affiliates with transmission information not available to other market participants and (2) to make use of private information to provide market affiliates with unduly superior service.

Standard of Conduct Rules will be mitigated by a coordinated, open, and transparent regional planning process.

**5. How should the planning obligation be coordinated with State processes?**

The NOPR strongly encourages the participation of State commission and other State agencies in a coordinated regional planning process. The NOPR recognizes that the participation and support of State commissions is important because States: (1) regulate the cost of transmission included in bundled retail rates, (2) perform transmission siting, and (3) have traditionally been involved in utility planning, among other reasons.

NARUC appreciates the Commission's recognition of the importance of heightened cooperation between federal and State regulators. We support this rulemaking's strong encouragement of active State participation in a coordinated regional planning process. Certainly, State regulators and agencies should be involved in the planning process at the earliest possible stage. However, the ability of a State commission to participate in any regional planning process can be limited by its enabling statutes, administrative procedure requirements, and the existence of pending administrative litigation. For this reason, the Commission should allow each State to determine its own level of active participation.

Close cooperation between State and federal regulators in the area of transmission planning can do much to alleviate jurisdictional concerns. If properly coordinated, the regional planning process will not replace planning done at the State level.<sup>6</sup> Instead, the broader regional planning process can inform and enhance the State planning process.

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<sup>6</sup> The FERC's backstop siting authority under FPA Section 216(b) is available, subject to certain statutory restrictions, for those instances that infrastructure is needed.

As recognized by the Commission and a number of commenters, the North Carolina Transmission Planning Collaborative (“NCTPC”) is an example of how the regional planning obligation can be coordinated with existing State planning processes.<sup>7</sup> Also, State regulators in the Southeastern Association of Regulatory Utility Commissioners (“SEARUC”) are investigating ways to implement this proceeding’s regional transmission planning provisions.

**6. If an open season requirement is added for large new transmission projects, what conditions or limitations should be associated with it?**

The NOPR asks whether there should be a requirement, at least for large new transmission projects, of an *open season* to allow market participants to participate in joint ownership of these projects. The NOPR states that the open season requirement could stimulate more investment in the grid and ensure that all customers, including smaller market participants that cannot support the construction of large new facilities on their own, have the ability to participate.

An open season requirement for joint transmission ownership is premature at this point.

There are some commenters proposing that the FERC mandate joint ownership.<sup>8</sup> Voluntary joint ownership projects can work. However, because the viability of joint ownership for a specific project depends on the particular circumstances, joint ownership of new transmission projects should not be mandatory.

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<sup>7</sup> The NCTPC includes input from stakeholders, such as independent power producers, IOUs, municipalities, cooperatives, LSEs, transmission customers, and the State regulator.

<sup>8</sup> See e.g., Reply Comments of TAPS.

**7. Can the proposed regional planning requirement achieve its goals if the participants in the regional planning process have not achieved agreement among themselves on appropriate cost-allocation issues? If not, what can be done to encourage the development of such cost allocation agreements among regional planning participants?**

While appropriate transmission cost allocation is important to the success of transmission planning efforts, cost allocation principles should be closely aligned with State and federal regulatory policies. This suggests that the Commission should not attempt to develop a nationwide transmission cost allocation methodology for funding regional planning requirements<sup>9</sup> or to address the sharing of the costs of new transmission projects in this proceeding.<sup>10</sup>

As a result, the FERC should focus on establishing proper regional transmission planning standards and let proper cost allocations for regional planning requirements, or for new transmission, follow. For example, as to cost allocation for new transmission, successful regional transmission planning will identify locally and regionally beneficial grid expansions. As stakeholders gain confidence in the effectiveness of regional transmission planning, such planning could foster the development of suitable cost allocation methods for new transmission.

**8. What is the appropriate role for demand response in planning?**

The Commission's *Demand Response Report*<sup>11</sup> described the role of demand response in regional transmission planning and operations:

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<sup>9</sup> The NOPR asks whether there should be a principle or guidelines to govern the recovery and allocation of costs associated with funding the regional planning requirements.

<sup>10</sup> The NOPR also asks whether the FERC should require public utilities to develop cost allocation principles to address the sharing of the costs of new transmission projects.

<sup>11</sup> *Assessment of Demand and Advanced Metering*, A Report to the United States Congress Pursuant to Section 1252 of the Energy Policy Act of 2005, U.S. Federal Energy Regulatory Commission, August 2006 (*Demand Response Report*). EPC Act Section 1252(e)(3) required the Commission to prepare a report

To a degree, generation, transmission, and demand response are substitutes, depending on the location of generation or demand response. As a substitute for generation, demand response can serve as a local peaking resource and thereby assist resource adequacy. As a substitute for transmission and distribution infrastructure, demand response can reduce the need for new transmission or distribution expansion to bring generation to a local area. At minimum, demand response can provide relief for an overloaded transmission system, and can defer the need for infrastructure.<sup>12</sup>

NARUC has long supported the efficient and effective expansion of the transmission grid to accommodate the potential impact of supply and demand response resource options, including conservation and energy efficiency. Over the years, NARUC has worked on various initiatives to promote reliable, efficient, and environmentally sound energy resources for the nation. During the 2006 NARUC Summer Committee Meetings, NARUC joined with the DOE, the Environmental Protection Agency, and many stakeholders to announce a National Action Plan for Energy Efficiency the purpose of which is “to create a sustainable, aggressive national commitment to energy efficiency.” Also, during the same meetings, NARUC passed the *Resolution Supporting the National Action Plan on Energy Efficiency*.

The appropriate role for demand response in regional planning is better addressed in the NARUC/FERC collaborative working group on demand response, which will convene at the NARUC Annual Convention in Miami, Florida on November 12, 2006

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by appropriate region, that assesses electric demand response resources, including those available from all consumer classes.

<sup>12</sup> *Demand Response Report*, Executive Summary, page 11.

## 9. Other issues

### **Whether there should be principles or requirements to support the construction of new infrastructure.**

The NOPR asks whether there are principles or requirements that should be adopted to support the construction of needed new infrastructure. The FERC's backstop authority under FPA Section 216(b) can be exercised, subject to certain conditions, in DOE-designated NIETCs. At this time, the FERC should ascertain the federal authority granted by FPA Section 216 before proceeding further in this area. Principles regarding the construction of facilities should be covered in the FERC backstop siting proceeding. The FERC should reject certain commenters' proposals that the FERC impose an additional obligation on transmission providers to expand transmission capacity.<sup>13</sup> We support Chairman Kelliher's statements at the time of NOPR's issuance that the FERC will not impose any new obligation to build in this proceeding.

### **Whether there should be a specific study process to identify opportunities to enhance the grid for purposes beyond maintaining reliability or reducing current congestion.**

The NOPR asks whether there should be a specific study process to identify opportunities to enhance the grid for purposes beyond maintaining reliability or reducing current congestion. Specificity about a study process in areas beyond reliability and congestion is not required because the appropriate studies will be prepared within a coordinated, open, and transparent regional planning process.

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<sup>13</sup> See e.g., Comments of TAPS and TDU.