

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Preventing Undue Discrimination  
and Preference in Transmission Service

Docket Nos. RM05-25-000 & RM05-17-000

**COMMENTS OF  
ELECTRICITY CONSUMERS RESOURCE COUNCIL (“ELCON”),  
AMERICAN IRON AND STEEL INSTITUTE (“AISI”), AND  
AMERICAN FOREST & PAPER ASSOCIATION (“AF&PA”)**

The Electricity Consumers Resource Council (“ELCON”), the American Iron and Steel Institute (“AISI”), and the American Forest & Paper Association (“AF&PA”) (collectively “Industrial Consumers”) appreciate the opportunity to comment on the proposed amendments to regulations the Commission adopted in Order Nos. 888 and 889, and to the pro forma open access transmission tariff (“OATT”), to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential.

**A. Introduction**

Reforms to the pro forma OATT are long overdue given that Order Nos. 888 and 889 were issued a decade ago. By 1999 it was widely recognized that that the OATT was limited in its ability to remedy undue discrimination because transmission providers retained both the economic incentive and the ability to discriminate against

third-party transmission customers. This denied end-use customers, including the “native load” customer of the utilities engaging in the discriminatory practices, the benefits of the lowest cost supply. The Commission had hoped that widespread adoption of the proposals in Order No. 2000 would fix that problem.<sup>1</sup> Unfortunately, the results of Order No. 2000 have been somewhat mixed, if not outright disappointing from an end user perspective. The regional markets that did not adopt ISOs or RTOs have retained the competitive advantage in terms of retail rates and customer service. It is these regions that rely most on the pro forma OATT, and end-use customers served by utilities in these regions welcome any attempt to enhance those benefits without sacrificing the gains already in hand.

The stated purpose of this rulemaking is “to strengthen the pro forma OATT to ensure that it achieves its original purpose—remedying undue discrimination—not to create new market structures.” The NOPR proposed to accomplish this by increasing the clarity and transparency of regulations for the use of the transmission system, transmission planning, and other areas of the pro forma OATT. This includes improvements to the calculation of available transfer capability (“ATC”), reforms to the transmission planning requirement in the pro forma OATT, reforms to certain rules that enable utilities to discriminate against new merchant generation, greater transparency

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<sup>1</sup> Regional Transmission Organizations, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir.2001).

in the provision of transmission services, and other reforms and clarifications in areas that have been chronic problems over the last ten years. NOPR at P 3.

Industrial Consumers note that while the proposed amendments represent a good, substantial step forward, Order No. 888 will never work as it should as long as the so-called “native load” exemption is preserved.

## **B. Summary of Industrial Consumers’ Comments**

Industrial Consumers are generally very supportive of the proposed amendments in the NOPR. In several cases, as described below, we offer qualified support. In another case, we recommend an alternative approach altogether, but nonetheless support the need for change. Specifically, Industrial Consumers support:

- The proposed rule’s requirements for improving the consistency and transparency of ATC calculations.
- A coordinated, open and transparent transmission planning requirement.
- A requirement that transmission providers/balancing authorities administer a transparent balancing energy spot market to service energy and generator imbalances.
- The proposed changes to the criteria for crediting of customer-owned transmission facilities.
- The proposal that operational penalties paid by transmission providers for violations of its own tariff be credited to unaffiliated transmission customers.
- The proposal that provides transmission customers with an “apples-to-apples” cost comparison for customer-funded system expansions.
- The reforms to the processing of transmission service requests and the imposition of operational penalties for poor performance.
- The proposed requirement that transmission providers post their rules, standards and practices relating to transmission service on the OASIS.

- Strengthening enforcement of the pro forma OATT.

Industrial Consumers give only qualified support to certain improvements to point-to-point service, including the establishment of hourly firm point-to-point service.

### **C. Comments on the Proposed Rules**

#### **1. Industrial Consumers Support the Proposed Rule's Requirements for Improving the Consistency and Transparency of ATC Calculations.**

The Commission finds that the lack of a consistent, industry-wide methodology for calculating Available Transmission Capability ("ATC"), and the lack of adequate transparency in ATC calculations, increases the potential for undue discrimination and also makes undue discrimination more difficult to detect.<sup>2</sup> NOPR at P 151-152. The lack of consistent standards can facilitate undue discrimination by giving a transmission provider the discretion, and hence the ability and opportunity, to favor itself and its affiliates over third-party customers in how it calculates and allocates ATC and, therefore, may be unjust, unreasonable, unduly discriminatory and preferential.

The Commission proposes to require public utilities, working through NERC, to develop the following standards within 6 months of the final rule in this proceeding: (1) ATC/AFC, TTC/Total Flowgate Capacity (TFC), ETC, CBM, and TRM calculation methodologies,<sup>3</sup> (2) data inputs, (3) modeling assumptions,<sup>4</sup> (4) ATC calculation

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<sup>2</sup> The NOPR also proposes to adopt the term "Available Transfer Capability" in place of "Available Transmission Capability" to be consistent with the term generally accepted in the industry.

<sup>3</sup> NERC defines ATC as the transfer capability remaining on the system for further commercial activity over and above already committed uses. This value is determined by deducting existing transmission commitments ("ETC") (including transmission reservations, network and retail customer service),

frequency, and (5) data exchange and coordination processes.<sup>5</sup> The NOPR further proposes to require public utilities, working through NAESB, to work with NERC to identify the appropriate business practices to complement the standards developed by NERC. NOPR at P 155.

The Commission shares Industrial Consumers' concern that the lack of transparency in some transmission providers' descriptions of their ATC calculations gives these transmission providers too much discretion to change ATC practices without sufficient oversight and review. In addition, this lack of transparency could allow transmission providers to unduly discriminate against their competitors when allocating transmission service. Thus, greater transparency is needed into how transmission providers calculate and allocate ATC. NOPR at P 171.

In order to ensure that transmission service is provided in a nondiscriminatory manner, the NOPR proposes to require transmission providers to take certain measures to make their ATC calculation process more transparent. These proposed changes will give transmission customers access to sufficient information to be able to examine the

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capacity benefit margin ("CBM"), and transmission reliability margin ("TRM") from total transfer capability ("TTC"). NOPR at P 114. AFC and TFC are flow-based analogs to ATC and TTC, which are based on the contract path model.

<sup>4</sup> The NOPR would require consistent assumptions that are related to the modeling of: (1) representative load levels, (2) generation dispatch, (3) transmission reservations, and (4) counterflows, in addition to any other assumptions identified by NERC. NOPR at P 167.

<sup>5</sup> The following data, at a minimum, should be exchanged among transmission providers for the purpose of ATC modeling: (1) load levels, (2) transmission planned and contingency outages, (3) generation planned and contingency outages, (4) base generation dispatch, (5) existing transmission reservations, including counterflows, (6) ATC calculation frequency, and (7) source/sink modeling identification. NOPR at P 169.

integrity of the process. Moreover, the proposal for greater consistency in the way ATC is calculated should aid in transparency because there will be far fewer differences in the way individual transmission providers calculate ATC. This will make it less difficult to determine whether ATC is being calculated in an unduly discriminatory manner. Id.

Specifically, the NOPR proposes to require transmission providers to include, at a minimum, in Attachment C of their OATT, the following information concerning their ATC calculation methodology (including the calculation of AFC, if applicable). First, that transmission providers state their specific mathematical algorithm used to calculate their firm and non-firm ATC (and AFC, if applicable) for their scheduling horizon (same day and real-time), operating horizon (day ahead and pre-schedule) and their planning horizon (beyond the operating horizon). Second, that transmission providers provide a process flow diagram that illustrates the various steps through which the ATC/AFC is calculated. In addition, the NOPR proposes to require transmission providers to include in Attachment C of the OATT a detailed explanation of how each of the ATC components is calculated for both the operating and planning horizons. NOPR at P 172-173.

Industrial Consumers strongly support the intent of this proposed rule on ATC calculations, and the means for enhancing the consistency and transparency of ATC calculations. The task is appropriately delegated to NERC and NAESB provided that detailed guidance and a date-certain deadline for compliance is imposed.

**2. Industrial Consumers Support New Requirements for Coordinated, Open and Transparent Transmission Planning.**

Order No. 888 established certain minimum requirements for transmission system planning including requiring transmission providers to plan for the needs of their network customers on a comparable basis (section 28.2 of the OATT), and to expand their systems to accommodate point-to-point customer requests (sections 13.5 and 15.4 of the OATT). Now the Commission finds that Order No. 888 does not contain sufficient protections to guard against undue discrimination in transmission system planning. This can affect a transmission customer's ability to obtain transmission service and determine its cost for the expanded service. More important from Industrial Consumers' perspective, it can contribute to a chronically under built transmission infrastructure.

Order No. 888 does not require sufficient coordination, openness, and transparency in transmission planning to ensure that new infrastructure is constructed to meet the needs of all eligible customers on a not unduly discriminatory basis. Without adequate coordination and open participation, market participants have minimal input or insight into whether a particular transmission plan treats all loads and generators comparably. NOPR at P 211. To ensure that truly comparable transmission service is provided by all public utility transmission providers, including RTOs and ISOs, the NOPR proposes to amend the pro forma OATT to require "coordinated, open, and transparent" transmission planning on (1) a sub-regional and (2) regional level. The proposed rule would require each public utility transmission provider to submit, as

part of its compliance filing in this proceeding, a proposal for a coordinated and regional planning process that complies with the following coordinated and regional planning principles. In the alternative, transmission providers may make a compliance filing in this proceeding describing their existing coordinated and regional planning process and showing that it is consistent with or superior to the requirements set forth below. The Commission expects municipal, cooperative, and other public power entities to participate in these processes as well, consistent with their obligation to provide reciprocal transmission service as detailed in Order No. 888. An open and transparent regional planning process cannot succeed unless all transmission owners participate. NOPR at P 214.

To implement this remedy, the NOPR proposes eight planning principles that each public utility transmission provider will be required to follow, i.e., a “coordinated, open and transparent process” must satisfy the following principles: (1) coordination, (2) openness, (3) transparency, (4) information exchange, (5) comparability, (6) dispute resolution, (7) regional participation, and (8) congestion studies. NOPR at P 214.

The Commission encourages the use of an independent third party to oversee this planning process, and encourages participation by state commissions and other agencies. NOPR at P 215.

Industrial Consumers strongly support this proposed rule. The inability of the electric utility industry to adequately maintain and upgrade its transmission

infrastructure as necessary to meet the needs of consumers and the domestic economy is one of FERC's most intractable problems.

The Commission seeks comment on how much flexibility each transmission provider in a region should be given in implementing any of the eight principles. Ideally, Industrial Consumers believe that the response should be – as little as possible. NOPR at P 217. Order No. 2000 failed, in part, because transmission providers were given too much flexibility to interpret the meaning of the four minimum characteristics and eight functions established by that rule. Open-ended discretion invites endless adjudication. We also fear a proliferation of committees, subcommittees, task forces and working groups that affected stakeholders ignore at their own peril. Nonetheless there is tremendous potential value in a true open inclusive regional planning process that addresses both reliability and economic upgrades. Market participants and the Commission need to work together to ensure that this great potential is realized.

The Commission seeks comment of whether there should be a requirement that, at least for large new transmission projects (such as new regional backbone facilities), there be an open season to allow market participants to participate in joint ownership of these projects. NOPR at P 218 (b). Industrial Consumers believe that this is an idea whose time has come. We are frustrated that (1) given the conventional wisdom that new infrastructure is need and (2) that third-party interests (e.g., public power utilities) have stated their willingness to jointly fund transmission projects, that the Commission has not already acted on this proposal. Spreading the financial risk of such investments

over multiple owners—especially to the extent that it leads to the construction of new baseload generation—is a win for all customers whether served by investor-owned utilities or by public power.

The Commission seeks comment on whether there should be a specific study process to identify opportunities to enhance the grid for purposes beyond maintaining reliability or reducing current congestion. NOPR at P 218(c). Industrial Consumers believe that the answer is an unqualified yes. The planning process should study all credible proposals for the construction of new resources regardless of the ownership of those resources. The process should also consider upgrades that increase opportunities for economic trades. Given the lumpy nature of transmission investments there is no compelling reason to limit the number of factors that support the need for new or upgraded facilities.

The Commission seeks comment on whether it should require public utilities to develop cost allocation principles to address the sharing of costs of new transmission projects. NOPR at P 218(d). Industrial Consumers believe that there is nothing new that needs to be said on this matter.<sup>6</sup> The industry knows how to allocate costs. The hard part is deciding to commit to the costs in the first place if conflicting economic interests are involved.

### **3. Reforms to the Pro Forma OATT's Prices for Transmission Service.**

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<sup>6</sup> Section 1242 of the Energy Policy Act of 2005 arguably ensures that the full range of cost allocation methodologies is available to the industry for costs related to transmission upgrades.

Consistent with the Commission's original focus of Order No. 888 on the non-rate terms and conditions of open access, the NOPR does not intend to initiate broad reform of transmission pricing policy through this NOPR. However, the NOPR does identify several pricing rules that are part and parcel of OATT service that merit reform.

**a. Industrial Consumers Recommend That Transmission Providers/Balancing Authorities be Required to Administer a Transparent Balancing Energy Spot Market to Service Energy and Generator Imbalances.**

FERC finds that existing energy and generator imbalance charges may be excessive and otherwise unrelated to the cost of providing the service and, therefore, proposes to reform energy and generator imbalance pricing. The NOPR proposes to require that all such imbalance charges meet the following criteria: the charges must (1) be related to the cost of correcting the imbalance, (2) be tailored to encourage accurate scheduling behavior, such as by increasing the percentage of the adder as the deviations become larger, and (3) account for the special circumstances presented by intermittent generators, such as by waiving the higher ends of the deviation penalties.

As a matter of principle, Industrial Consumers support imbalance charges based on the actual cost of the service. We also believe that a rule should only discourage deliberate, egregious attempts to under or over schedule. Loads or generation resources should not be subject to imbalance penalties if they are constrained by the intermittent nature of a process technology (e.g., process-following cogenerators), weather, or other factors out of their direct control.

Imbalance charges based on the actual cost of providing the service should recognize that the lowest cost resource providing the energy may not be the resources owned or controlled by the control area operator, which we strongly believe would otherwise be discriminatory. Industrial Consumers recommend that the final rule require the transmission provider/balancing authority to administer a transparent balancing spot energy market. This balancing spot market would open up supply in a non-discriminatory and transparent way to all entities requiring balancing energy to serve load. The benefits of these markets should be obvious. First, the existence of these physical spot markets would complement existing trading “hubs” and provide greater price discovery in markets that are noted for not having much price discovery.<sup>7</sup> Second, the spot markets are more load and resource friendly, and reduce the need for penalties for imbalances. There is also no need to implement other mechanisms such as monthly netting or waivers to mitigate the potential economic harm of such penalties to, for example, intermittent resources.

**b. Industrial Consumers Support the Proposed Changes to the Criteria for Crediting of Customer-Owned Facilities.**

The Commission proposes to retain most elements of its existing policy respecting the crediting of customer-owned facilities, including the requirement that such facilities meet the integration standard. However, the NOPR proposes to eliminate the requirement that new facilities can receive credits only if they are “jointly

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<sup>7</sup> For example, this was an observation of the Electric Energy Market Competition Task Force in its draft report, “Report to Congress on Competition in the Wholesale and Retail Markets for Electric Energy,” Docket No. AD05-17-000, Dated June 5, 2006, at 3.

planned" because this requirement may provide a disincentive to coordinated planning. Rather, it proposes that such new facilities be eligible for credits if: (1) such facilities are integrated into the operations of the transmission provider's facilities, and (2) such facilities would be eligible for inclusion in the transmission provider's annual transmission revenue requirement if owned by the transmission provider. NOPR at P 255. However, the network customer's transmission facilities must provide additional benefits to the transmission grid in terms of capability, delivery options, and reliability, and relied upon for the coordinated operation of the grid. NOPR at P 256.

Industrial Consumers support this proposal. We agree that the link between the credits for new facilities and the requirement for joint planning acts as a disincentive to prudent transmission planning at a time when there is a severe paucity of prudent transmission planning in the US.

c. **Industrial Consumers Support the Proposal That Operational Penalties Paid By Transmission Providers for Violations of Its Own Tariff Be Credited to Unaffiliated Transmission Customers.**

The existing pro forma OATT allows transmission providers to impose certain operational penalties against transmission customers for violations of the tariff, but does not address the consequences of a transmission provider itself who violates its OATT. The NOPR proposes to have transmission providers pay "non-offending,

unaffiliated” transmission customers when the transmission provider or its affiliate incurs operational penalties.<sup>8</sup>

Industrial Consumers support this proposal because, as the Commission observes, it is consistent with the Commission precedent for the treatment of penalties collected by the transmission providers from its customers, and creates an incentive for the transmission provider to develop non-penalty remedies for eliciting good behavior.

**d. Industrial Consumers Support the Proposal That Provides Transmission Customers With An “Apples-to-Apples” Cost Comparison for Customer-funded System Expansions.**

It has long been Commission policy that system expansions should be priced at the “higher of” the embedded cost rate (including rolled-in expansion costs) or the incremental cost rates. The transmission provider may not charge both an incremental cost rate and an embedded cost rate associated with existing network transmission facilities, which is sometimes called “And” pricing. NOPR at P 284.

When transmission customers seek a quote from a transmission provider for the incremental cost of a needed facility upgrade, the NOPR proposes to require that the quote be in the form of a monthly rate and not just the total dollar amount. The monthly rate can then be directly compared with the embedded cost rate. NOPR at P 285. Industrial Consumers support this change.

**4. Reforms to the Pro Forma OATT’s Non-Rate Terms and Conditions**

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<sup>8</sup> The NOPR also prohibits transmission providers from recovering for ratemaking purposes or through any service or facility under FERC’s jurisdiction any cost it incurs when it or an affiliate pays an operational penalty. NOPR at P 283.

a. **Industrial Consumers Give Qualified Support to Certain Improvements to Point-to-Point Service.**

The Commission concludes that the existing methods for evaluating requests for long-term firm point-to-point service may no longer be just, reasonable and not unduly discriminatory. When a transmission provider considers a new resource to serve native load, the transmission provider does not eliminate an otherwise economic option because the resource may not be deliverable in a few hours of the year. For transmission customers, however, the transmission provider evaluates whether service can be granted in every hour of the year that is modeled and, if not, it informs the customer that service cannot be provided out of existing transfer capability. Only if the transmission customer agrees to pay for time-consuming and costly facilities studies does the transmission provider evaluate redispatch options, including whether they are less expensive than the upgrade options.

The NOPR proposes to address this problem by clarifying that a transmission provider must use all of its available redispatch options to satisfy a request for firm point-to-point service and, at the transmission customer's option, these redispatch options must be studied before the customer is obligated to incur the costs and time delays associated with a facilities study. The NOPR also seeks comment on whether this remedy is adequate or, alternatively, whether the pro forma OATT should be modified such that the nature of point-to-point service is changed to require that transmission providers offer a "conditional firm" service that would be subject to curtailment prior to firm service only a limited number of hours of the year.

Industrial Consumers support greater flexibility where such flexibility reduces total costs to end-use consumers. The proposal to require generator redispatch to accommodate requests for firm point-to-point service has merit. However, there is concern that the alternative approach posed—conditional firm service—may not in a strict sense support long-term contracts for firm power, but may in fact act to facilitate a greater volume of short-term trading.

**b. Industrial Consumers Give Only Qualified Support for the Establishment of Hourly Firm Point-to-Point Service.**

The current pro forma OATT contains a one-day minimum term for firm point-to-point service. The NOPR proposes to reduce the minimum term to one hour. This proposal is not without controversy and the industry has been deeply split over the merits of this service requirement since before the issuance of Order No. 888. NOPR at P 337. This lack of consensus concerns us.

Proponents—including the Commission—argue that the service eliminates a barrier to the development of markets by encouraging trading and liquidity, and thereby decreases opportunities for undue discrimination. NOPR at P 335 and P 343. Skeptics and opponents are concerned that the rights of long-term firm customers may be negatively affected by introducing this service. NOPR at P 336-337.

The NOPR attempts a compromise by requiring that hourly firm service be subject to preemption by longer-term requests for service. The price for hourly service

will also be different depending on whether the service is taken during peak or off-peak hours.<sup>9</sup>

Industrial Consumers give qualified support for hourly firm service. We urge the Commission to carefully monitor the use of this service and to reconsider its continued need if the quality of long-term firm services is in any way impaired by the addition of hourly service.

c. **Industrial Consumers Support the Reforms to the Processing of Transmission Service Requests and the Imposition of Operational Penalties for Poor Performance.**

The NOPR proposes to require transmission providers to report the length of time they take to complete studies pursuant to OATT sections 19 (“Additional Study Procedures for Firm Point-to-Point Transmission Service Requests”) and 32 (“Additional Study Procedures for Network Integration Transmission Service Requests”). This reform is necessary to increase transparency and improve the ability of transmission customers and FERC to detect undue discrimination. NOPR at P 382. The NOPR proposes to require transmission providers to post on their OASIS sites quarterly metrics, for each of the next three calendar years, that track their performance in processing system impact studies and facilities studies associated with requests for transmission services. The transmission provider will be required to post the quarterly performance metrics within 15 days of the end of the quarter, and should be calculated

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<sup>9</sup> For example, the cost allocation methodology that the Commission proposes is premised on the assumption that a customer using the transmission system for the 16 peak hours of the day should pay the same contribution to fixed costs as customer who has reserved capacity on a daily basis. NOPR at P 344.

separately for affiliates' and non-affiliates' requests for short-term and long-term transmission service. A transmission provider will also be required to post performance metrics for studies that it conducts for RTOs. Id.

The NOPR also proposes to impose operational penalties when transmission providers routinely fail to meet the 60-day due diligence deadlines prescribed in sections 19.3, 19.4, 32.2, and 32.4 of the pro forma OATT. NOPR at P 384.

The NOPR also proposes to change the priority rules to give priority to pre-confirmed transmission service requests submitted in the same time period. It also proposes to add price as a tie-breaker in determining reservation queue priority when the transmission provider is willing to discount transmission service. NOPR at P 400-401.

Industrial Consumers strongly support these reforms.

**d. Industrial Consumers Strongly Support the Proposed Requirement that Transmission Providers Post Their Rules, Standards and Practices Relating to Transmission Service.**

The NOPR proposes to require transmission providers to post on OASIS all their business rules, practices and standards that relate to transmission services provided under the pro forma OATT. NOPR at P 451. This reform will provide greater transparency and mitigate the potential for undue discrimination against transmission customers taking service under the pro forma OATT.

Industrial Consumers strongly support this proposal. We believe that any rule, standard or practice used by the transmission provider and any of its employees (or

contractors, as appropriate) in order to approve or disapprove a request for service should be committed to writing, if not already done so, and posted on the OASIS. The posted information should be sufficiently detailed such that a disinterested third party would reach the same conclusion as the transmission provider if confronted with the same information.

**5. Industrial Consumers Strongly Support Strong Enforcement of the Pro Forma OATT.**

FERC's proposed reforms include several clarifications of the terms and conditions of the pro forma OATT that have made undue discrimination difficult to detect and otherwise frustrated enforcement of the obligation to provide open access, non-discriminatory transmission service. The Commission's new civil penalty authority under EAct 2005 also gives it ample power to remedy tariff violations, but it also places upon FERC an increased responsibility to make the rules as clear as possible. In addition, the NOPR proposes a number of posting and reporting requirements that will provide the Commission and market participants with information about each transmission provider's performance of pro forma OATT obligations. For example, the NOPR proposes to require transmission providers to post specific performance metrics related to their completion of studies required under the pro forma OATT.<sup>10</sup> The NOPR states that the Commission will continue to audit compliance with the pro forma OATT, and toward that end proposes to require transmission information kept on OASIS to be retained for audit purposes for five years. Finally, the NOPR makes a number of

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<sup>10</sup> See section 4(d) infra.

proposals relating to operational penalties assessed under the pro forma OATT, including so-called “over-use” penalties, and the treatment of operational penalty revenues collected from transmission providers and their affiliates.

Industrial Consumers strongly believe that OATT reform will only be successful in eliminating discrimination if transmission providers are sanctioned for violating the OATT. Greater specificity as to what constitutes a violation is just one of the necessary reforms. It is also important that the Commission provide clarity and certainty regarding the applicability of penalties for tariff violations. The OATT should make clear that all violations will be subject to penalties, including civil penalties. This clarification is an important deterrent to discriminatory behavior and therefore a critical element in achieving the goal of Order No. 888—ensuring that transmission service is provided in a non-discriminatory comparable manner.

Industrial Consumers also recommend that in addition to sanctions and penalties, the pro forma OATT should be amended to provide for the revocation of the transmission provider’s market-based rate (“MBR”) authority for certain OATT violations. This would include the MBR authority of its affiliates. That a public utility’s transmission function is required to be functionally separate from its marketing function has no bearing on whether revocation of its MBR authority can be an appropriate remedy for certain OATT violations. The Commission should not eliminate

from its remedy toolbox a remedy that in a given case could well be appropriate and tailored to the tariff violation.<sup>11</sup>

**D. Description of Organizations Sponsoring Industrial Consumers' Comments and Primary Contacts**

**Electricity Consumers Resource Council ("ELCON")**

ELCON is the national association of industrial consumers of electricity organized to promote the development of coordinated and rational federal and state policies that will assure an adequate, reliable, and efficient electricity supply for all users at competitive rates. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. Many members also generate some of their power requirements.

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<sup>11</sup> *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (citations omitted) ("the breadth of agency discretion is . . . at [its] zenith when the action assailed relates primarily . . . to the fashioning of policies, remedies and sanctions, including enforcement and voluntary compliance programs in order to arrive at maximum effectuation of Congressional objectives.")

### **American Iron and Steel Institute (“AISI”)**

AISI is the principal trade association of the North American steel industry. Its member companies account for about seventy percent of the steel production in the United States. The steel industry is one of the most energy-intensive sectors in the United States; the cost of electricity may constitute as much as twenty percent of the manufacturing cost of a steel mill product.

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### **American Forest & Paper Association (“AF&PA”)**

AF&PA is the trade association of the forest, pulp, paper, paperboard, and wood products industry in the United States. AF&PA's members are among the nation's largest consumers of electric power, purchasing over 82 billion kilowatt-hours of electricity annually nationwide. AF&PA's members include electricity consumers and producers.

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