

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

Long-Term Firm Transmission Rights in
Organized Markets

Long-Term Transmission Rights in
Markets Operated by Regional
Transmission Organizations and
Independent System Operators

RM06-8-000 & AD05-7-000

**Comments of the
Electricity Consumers Resource Council (ELCON),
American Iron and Steel Institute (AISI),
Association of Businesses Advocating Tariff Equity (ABATE), and
Coalition of Midwest Transmission Customers (CMTC)**

The Electricity Consumers Resource Council (ELCON), the American Iron and Steel Institute (AISI), the Association of Businesses Advocating Tariff Equity (ABATE), and the Coalition of Midwest Transmission Customers (CMTC), (collectively, Industrial Consumers) appreciate the opportunity to comment on the Commission's proposed rule regarding long-term firm transmission rights in organized markets. On June 27, 2005, ELCON and AISI submitted comments on the Commission Staff's May 11, 2005 discussion paper, "Long-Term Transmission Rights Assessment." Our comments

strongly advocated the development of long-term firm transmission rights and the Commission's proposed rule is a faithful effort to achieve that objective. In particular, we commend the Commission for acknowledging in the NOPR preamble that:

... interest in long-term transmission rights in organized electricity markets has increased, stemming in large part from a desire of some market participants to obtain rights that replicate the transmission service that was available to them prior to the formation of the organized electricity markets and remains available today in regions without organized electricity markets. The principal concern of these market participants is the inability to obtain a fixed, long-term level of service under pricing arrangements that hedge the congestion cost risk that they face in the organized electricity markets. NOPR at P 15.

Summary of Industrial Consumers' Comments

Industrial Consumers are generally supportive of the Guidelines approach to the development of long-term firm transmission rights as clarified or modified below:

- FERC should confirm that the definition of "load-serving entity" includes loads that have qualified as retail providers and serve themselves in unbundled states.
- ISOs and RTOs should certify that the stakeholder process used to develop long-term firm transmission rights did not discriminate against loads and LSEs.
- Case-by-case development of long-term firm transmission rights is appropriate.
- Transmission owners should be responsible for funding revenue shortfalls associated with long-term firm transmission rights that are due to inadequate maintenance or expansion practices.

- Long-term firm transmission rights should be allocated to entities that pay for transmission upgrades or expansions except where project costs are rolled into rates.
- The length of term of long-term firm transmission rights should be at least the length of the ISO or RTO's planning horizon. Longer-term rights should be ensured with guaranteed renewal rights.
- Load-serving entities, including loads that serve themselves, should not have any "priority" in securing long-term firm transmission rights if such a preference results in one class of load subsidizing the redispatch costs that are more appropriately assigned to another class of load.
- As long as the needs of end-use customers are efficiently and fairly met without requiring one class of load to subsidize another class of load, then economic interests are appropriately balanced.

Comments of Industrial Consumers

Industrial Consumers support the eight guidelines as a package subject to certain qualifications or clarifications as detailed below. While in a more perfect world we would prefer a more prescriptive rule that ensured greater standardization of the transmission product across the different ISOs and RTOs, we recognize that, for better or worse, there are substantial differences among the ISOs and RTOs that warrant greater flexibility and case-by-case treatment.

A. FERC Should Confirm That The Definition Of Load-Serving Entity Includes Loads That Have Qualified As Retail Providers And Serve Themselves In Unbundled States.

The NOPR proposes to define load-serving entity to mean “a distribution utility or electric utility that has a service obligation.” NOPR at P 7. In addition, the proposed definition of “service obligation” is “a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.” NOPR at P 7. See definition of “load-serving entity” and “service obligation” under proposed rule 40.1(b)(2) and (3). Many large industrial end users in unbundled states served by an organized electricity market self-provide their power requirements, usually by registering as a retail provider under State law. However, the nomenclature differs and state laws typically do not use the term load-serving entity or LSE.¹ Industrial consumers who have qualified as retail providers by definition meet the FPA definition of electric utility in sections 1291 of EAct 2005, i.e., “a person... that sells electric energy.” NOPR, fn. 9. The intent of the NOPR is clearly to confirm the right of any retail provider to obtain long-term firm transmission rights. The definition of “load-serving entity” should encompass anyone that serves load consistent with Federal, State or local law.

¹ For example, California Public Utilities Code § 394 (registration as “electric service provider”); Pennsylvania Public Utility Code Part 54 (licensing as “electric generation supplier”).

For example, the May 11, 2005 Staff Discussion Paper defines LSE as “any entity that serves retail load.” Staff Paper, fn. 3. The corporate entity that operates the “load” or an affiliate of that entity may qualify as a retail provider under State law. The procedures for qualifying as a retail provider vary from state to state, often after long fought battles with the incumbent utilities and/or the ISO or RTO. In some direct access states industrials can purchase power from an independent marketer that is not registered with the state as an LSE or utility. EAct 2005 recognized this problem and provided a savings clause in section 217(c) that grandfathers “any existing or future methodology employed by a Transmission Organization for allocating or auctioning transmission rights if such Transmission Organization was authorized by the Commission to allocate or auction financial transmission rights on its system as of January 1, 2005” While the NOPR’s proposed definitions of “load-serving entity” and “service obligation” would seem to apply to end users that are their own LSEs under State law, we request that FERC unambiguously state that any entity qualified to supply retail load under State law, including self-supply, qualifies for long-term firm transmission rights to avoid the inevitable and seemingly endless challenges to loads’ rights in restructured, unbundled states. In the alternative, the Commission should clarify in Guideline (5) that “load-serving entities” include all loads that serve themselves (whether its called an “LSE” or not) such as large industrial customers in unbundled states, or that purchases from a marketer that is or is not an LSE consistent with State law.

B. ISOs And RTOs Should Certify That The Stakeholder Process Used To Develop Long-Term Firm Transmission Rights Process Did Not Discriminate Against Loads Or LSEs.

The NOPR proposes to require each ISO or RTO with an organized electricity market to file with the Commission, within 180 days, either proposed tariff sheets that make available long-term firm transmission rights that are consistent with the guidelines, or an explanation of how the ISO or RTO already makes such rights available. NOPR at P 40. The NOPR also proposes that long-term firm transmission rights should be developed through “regional stakeholder discussion.” NOPR at P 41. ELCON and other industrial end-user groups have long had concerns regarding some ISO/RTO stakeholder processes that are not always balanced to ensure that one side of the market does not get an upper hand over the other side. Loads and LSEs are often under-represented compared to suppliers and transmission owners who are increasingly affiliates of utilities. We recommend that FERC provide guidance to assure that the specific stakeholder process utilized in connection with the development of long-term firm transmission rights include balanced composition of loads, LSEs, and other stakeholders. Compliance filings should include a statement by the ISO or RTO that its stakeholder process was fair and impartial and did not discriminate against the interests of loads and LSEs—the primary beneficiaries of long-term firm transmission rights. This can be done by submitting working group rosters, votes, and other documentation that demonstrates that applicable loads and LSEs were adequately engaged in the discussions, were not routinely outvoted when decisions went to a vote,

and that other governance processes, including dispute resolution, worked to the satisfaction of loads and LSEs.

C. Case-By-Case Development Of Long-Term Firm Transmission Rights Is Appropriate.

We support the ISO/RTO by ISO/RTO approach for the development of long-term firm transmission rights as proposed in the NOPR. We note that the comments in response to the Staff Discussion Paper by ABATE and CMTC urged the Commission to pursue this case-by-case approach in recognition of the significant differences that exist among current ISO/RTO market designs. ABATE/CMTC Comments at 9.

D. Transmission Owners Should Be Responsible For Funding Revenue Shortfalls Associated With Long-Term Firm Transmission Rights That Are Due To Inadequate Maintenance Or Expansion Practices.

The NOPR seeks comment on funding revenue shortfalls related to the provision of long-term firm transmission rights and how such charges should be allocated. NOPR at P 49. As suggested in the preamble itself (NOPR at P 49), and in ELCON and AISI's June 27, 2005 comments on the Staff Discussion Paper, the entities that ultimately are responsible for transmission system maintenance and expansion should be at risk for funding any revenue shortfall that results from their failure to adequately maintain the transmission system or to adequately expand the transmission system on a timely basis. ISOs and RTOs are not capable of managing the risk associated with the creation of any financial transmission rights, especially long-term firm transmission rights. That risk

can only be managed by the transmission asset owners. If it is now the law of the land that transmission asset owners are entitled to incentives for their failure to “grow their business,” then it is only prudent that an appropriate balance of reward and penalties be established to ensure that a critical infrastructure is adequate for the Nation’s economic and security needs.

E. Long-Term Firm Transmission Rights Should Be Allocated To Entities That Pay For Transmission Upgrades Or Expansions Except Where Project Costs Are Rolled Into Rates.

Proposed Guideline (3) would continue the Commission’s policy to allow entities that pay for network upgrades or expansions to receive the long-term firm transmission rights that would not be feasible but for those expansions. NOPR at P 51. We support this policy as a necessary incentive to encourage transmission investments. However, if the project costs are subsequently rolled into rates, the entity should forfeit any entitlement to the long-term firm transmission rights and the rights made available to customers that are responsible for bearing the embedded costs of the expanded system.

F. The Length Of Term Of Long-Term Firm Transmission Rights Should Be At Least The Length Of The ISO Or RTO’s Planning Horizon. Longer Term Rights Should Be Ensured With Guaranteed Renewal Rights.

Proposed Guideline (4) states that the term lengths of long-term firm transmission rights, including rights of renewal, should be “sufficient to meet the needs of load-serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation.” NOPR at P 53. The feasibility of long-term firm

transmission rights is tightly intertwined with future investments in generation, transmission, and demand response. Therefore, the efficacy of long-term firm transmission rights must be tied to the appropriate planning horizon of the ISO and RTO. We note that some RTOs are considering extending their transmission planning horizon from five to ten years in anticipation of the long-term FTRs. This is appropriate and allows base-load generation planning and transmission planning to be better coordinated. We also support the suggestion (“example”) in the NOPR preamble that “the right to renew long-term firm transmission rights may be limited to a load-serving entity that can demonstrate that the renewal right is needed to allow the load-serving entity to match the term of its transmission rights to the term of a particular long-term power supply arrangement.” NOPR at P 57. The critical need is that financial interests that provide the capital for new base-load generation perceive long-term transmission rights and renewal rights that extend the term out to 15, 20 years or longer as being truly “firm.” One option that should be considered was recommended by TAPS in its June 27, 2005 comments on the Staff Discussion Paper. They suggested a rolling ten-year term that affords the holder unconditional renewal rights or a term at least through the end of a ten-year-plus contract term. For example, the holder would be required to notify the ISO or RTO in year one if it wanted the FTR in year 11; in year two, it would notify the ISO or RTO if it wanted the FTR in year 12, etc. TAPS Comments at 19-20.

G. Load-Serving Entities, Including Loads That Serve Themselves, Should Not Have Any “Priority” In Securing Long-Term Firm

Transmission Rights If Such A Preference Results In One Class Of Load Subsidizing The Redispatch Costs That Are More Appropriately Assigned To Another Class Of Load.

Proposed Guideline (5) states that “[l]oad-serving entities with long-term power supply arrangements to meet a service obligation must have priority to existing transmission capacity that supports long-term firm transmission rights requested to hedge such arrangements.” The sole purpose for the existence of the electric industry is to serve load. Without load there are no investment opportunities. The proposed assignment of long-term firm transmission rights to LSEs on a preferential basis is driven by the load served by the LSE. Thus all loads are entitled to the preference and LSEs are merely the agent to facilitate the transaction. It has been the experience of many large industrial end users (i.e., large loads) in the organized electricity markets that they had to fight for the right to obtain adequate short-term FTRs (or the market value of the FTRs, for example, through auction revenue rights). We anticipate similar battles with the introduction of long-term FTRs if the Commission does not clarify that such rights always go with the load. Thus we urge the Commission to clarify that the priority given in Guideline (5) is to LSEs in trust for loads or to loads directly, and that any “priority” or preference not create two classes of loads—one class of load that subsidizes the congestion costs of another class of load.

New section 217(b)(4) of the Federal Power Act provides:

The Commission shall exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the *reasonable* needs of load-serving entities to satisfy the service obligations

of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such rights.² (Emphasis added)

The statute does not mandate two classes of loads—one inferior to the other for access to transmission rights to hedge congestion costs, but only that the needs of load-serving entities be met on a “reasonable” basis. To do otherwise is to condone discrimination, a violation of the Federal Power Act.

We urge the Commission to recognize the potentially polarizing consequences of attempting to create two classes of loads in which one class is given superior rights to hedge congestion cost risk.

The Commission also seeks comments on whether an ISO or RTO should adopt limits on the amount of transmission capacity they will allocate to long-term rights. NOPR at P 59. LSEs in trust for loads (or loads directly) should be allocated short-term and long-term transmission rights on a pro rata basis as necessary to serve the total load. However, and depending on how the right is structured, the market value of a megawatt of a long-term firm transmission right will likely be higher than a megawatt of a short-term transmission rights because the longer right will entail greater forecast error. Therefore, holders of long-term firm transmission rights may have to be allocated a greater share of the embedded costs of the transmission system.

² Pub. L. No. 109-58, § 1233, 119 Stat. 594, 958.

Also, we recommend that some form of balancing mechanism be established to handle the expected mismatch between forecasted and actual load during the time frame of the long-term firm transmission rights and the power supply contract it supports. The LSE or load serving itself should have access to additional capacity rights for unforeseen load growth, and similarly, the LSE or load serving itself should be required to surrender that portion of its rights for the amount of any permanent load reduction. This procedure follows the policy that the FTRs or the market value of FTRs go with the load.³ Finally, the Commission should clarify in its Guidelines that holders of FTRs are only entitled to the quantity that they need and that the ownership of excess rights (outside some reasonable bandwidth) is prohibited.

H. As Long As The Needs Of End-Use Customers Are Efficiently And Fairly Met Without Requiring One Class Of Load To Subsidize Another Class Of Load, Then Economic Interests Are Appropriately Balanced.

Proposed Guideline (8) states that the “[a]llocation of long-term firm transmission rights should balance any adverse economic impact between participants receiving and not receiving the right.” NOPR at P 65. In the ensuing discussion in the NOPR, there seems to be an allegation that “entities that prefer to hold short-term transmission rights” are at odds with, or at a disadvantage to, holders of long-term rights. Nonetheless, the Commission professes a belief that “it is possible for a

³ This same principle applies to the interpretation of proposed Guideline (6) whereby a long-term firm transmission right held by a LSE to support a service obligation should be re-assignable to another entity that acquires that service obligation.

transmission organization to introduce long-term firm transmission rights in a way that balances their economic impact between those receiving and not receiving the rights.” NOPR at P 66. We agree. But clearly this will be an important issue to be vetted in each ISO or RTO stakeholder process.⁴ As we stated above, as long as it is recognized that the ultimate beneficiary of FTRs or the market value of FTRs is customers (“load”), there should be no competing needs for these rights. We strongly support the proposal to give preference to holders of long-term rights because such rights are essential for ensuring long-term adequacy of base-load generation, especially with the objective of increasing fuel diversity.⁵ If in fact, the total available rights (short- and long-term) are insufficient to meet the needs of end-use customers—an indication that the owners of the transmission system are mismanaging the maintenance and planning of their assets—then it may be necessary to ration the rights, but still preserving the preference to holders of long-term rights. The real issue here is not that “economic interests” are not appropriately “balanced,” but that transmission owners have abrogated their responsibilities. That is the problem that needs to be fixed.

⁴ In our comments above in section G, we suggest that holders of long-term transmission rights may need to be allocated a greater portion of the embedded cost of the transmission system to avoid a situation in which holders of long-term rights are subsidized by holders of short-term rights.

⁵ We single out the June 27, 2005 Comments of the Transmission Access Policy Study Group (“TAPS”) in response to the Staff Discussion Paper (Docket No. AD05-7-000) for its well-articulated arguments supporting the need for long-term rights, especially to help finance new base-load generation. See TAPS Comments at 5-14.

Conclusions

Once again Industrial Consumers appreciate the opportunity to comment on this important proposed rulemaking. We support the proposed eight Guidelines, as well as the case-by-case approach by which each ISO or RTO with an organized electricity market develops and implements the long-term firm transmission rights. We recommend that several of the Guidelines be clarified to ensure that the end-use customers (“loads”) are the beneficiaries of the new long-term rights, and that loads served by a traditional distribution company are not given preferential treatment over loads that serve themselves in states that have unbundled electricity services, or that the Guidelines are not interpreted to mean that one class of load is given a superior ability to hedge congestion cost risk over another class of load.

Respectfully submitted,

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