

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY
DEPARTMENT OF ENERGY

Plan for Conduct of 2012 Electric
Transmission Congestion Study

RE: Preparation of the 2012
Congestion Study

**COMMENTS OF
TRANSMISSION ACCESS POLICY STUDY GROUP**

The Transmission Access Policy Study Group (“TAPS”) appreciates the opportunity to respond to the Department of Energy’s (“Department”) request for comments on its Notice of the Plan for Conduct of 2012 Electric Transmission Congestion Study, which was published in the Federal Register on November 10, 2011.¹ TAPS urges the Department, in carrying out its responsibilities, to: (a) address congestion where it meets the real needs of load-serving entities (“LSEs”), thereby producing a “right-sized” grid that achieves Congress’ purposes in enacting Sections 216 and 217(b)(4) of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824p, 824q(b)(4); and (b) promote inclusive joint ownership arrangements that facilitate getting needed transmission built. These comments are pertinent to the 2012 congestion study, as well as other actions the Department takes under FPA Section 216 and otherwise to facilitate the permitting and construction of needed transmission facilities.²

¹ Notice of Plan for Conduct of 2012 Electric Transmission Congestion Study, 76 Fed. Reg. 70,122 (Nov. 10, 2011).

² *E.g.*, designating corridors under Section 216; selecting projects for expedited Federal permitting and environmental reviews through the Rapid Response Team for Transmission. *See* Counsel on Env’tl. Quality, Interagency Rapid Response Team for Transmission, *available at* <http://www.whitehouse.gov/administration/eop/ceq/initiatives/interagency-rapid-response-team-for-transmission>.

I. INTERESTS OF TAPS

TAPS is an association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.³ It participates in policy proceedings at the Department, the Federal Energy Regulatory Commission (“FERC”), and other federal agencies that deal with electric transmission and market power issues pertaining to the electric utility industry. Representing entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS has long recognized the need to strengthen the nation’s transmission infrastructure and to develop effective institutional structures that will work to that end. TAPS recognizes the critical importance of structurally competitive markets, transmission adequacy, and access to long-term power supply (with long-term firm transmission rights to mitigate exposure to debilitating congestion charges) to achieving a workably competitive electricity industry and enabling TAPS members to continue to provide reliable service to their customers at a reasonable, predictable cost. At the same time, TAPS members are sensitive to the cost of transmission service, and want to make sure that the right transmission gets built.

TAPS has been particularly active in the policy arena concerning transmission infrastructure. In addition to commenting in numerous FERC rulemaking proceedings pertaining to transmission access, planning and cost allocation, and long-term rights, TAPS responded to the Department’s July 22, 2004, Notice of Inquiry, “Designation of National Interest Electric Transmission Bottlenecks,” 69 Fed. Reg. 43,833 (July 22, 2004), by submitting Comments on September 20, 2004, that attached TAPS June 2004

³ Tom Heller, Missouri River Energy Services, chairs the TAPS Board. Cindy Holman, Oklahoma Municipal Power Authority, is TAPS’ Vice Chair. John Twitty is TAPS’ Executive Director.

White Paper, *Effective Solutions for Getting Needed Transmission Built at Reasonable Cost*. That White Paper described structural changes and regulatory actions that can work to get needed transmission built.⁴ TAPS also submitted Comments on March 6, 2006, in response to the Department’s Notice of Inquiry regarding “Considerations for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors,” 71 Fed. Reg. 5660 (Feb. 2, 2006).

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II. CONSIDERATION OF THE REASONABLE NEEDS OF LSES TO ACHIEVE A RIGHT-SIZED GRID

Section 216 of the Federal Power Act, pursuant to which the Department will be conducting its 2012 congestion study and will ultimately designate national interest electric transmission corridors (“NIETCs”), focuses on “constraints or congestion that adversely affects consumers”—i.e., the constraints that really matter. FPA Section 216(a)(2). This same perspective is reflected in FPA Section 216(a)(4)(A), which directs the Department to consider constraints that harm economic vitality and development due to the “lack of adequate or reasonably priced electricity.” *See also* Section 216(a)(4)(B)

⁴ The White Paper is available at <http://www.tapsgroup.org/sitebuildercontent/sitebuilderfiles/effectivesolutions.pdf>.

(consideration that “economic growth ... may be jeopardized by reliance on limited sources of energy”).

TAPS members strongly agree that the needs of consumers, and the load-serving entities that are charged with providing them reliable electric service at a reasonable cost, should be a consideration in identifying the congestion that should be addressed and defining corridors to spur planning and expansion of the grid. Consistent with that goal, Congress in FPA Section 217(b)(4) directed FERC to

exercise the authority of the Commission under this chapter 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 needs.

Recognizing that we need a robust, adequate, reliable transmission system that satisfies FPA Section 217(b)(4), TAPS emphasizes the need for a “right-sized” grid—a reliable system that is neither under- nor over-built, with adequate facilities to relieve congestion, minimize seams issues, and enable the delivery to load of generation (both existing and new resources, including but not limited to renewable and low-carbon resources). Generation and transmission should be considered together, in order to ensure that an economical, integrated electric system is built and maintained for the benefit of consumers. To provide greater flexibility to respond to changing technology, resource options, and customer needs, such upgrades should be designed to support multiple likely power supply and public policy scenarios, rather than committing the region’s transmission infrastructure future and finances to the construction of a road to what may turn out to be nowhere.

This approach was successfully undertaken by CapX 2020, a joint transmission-planning process in the northern Midwest. CapX consists of eleven investor-owned, municipal, and rural cooperative utilities in Minnesota, North Dakota, South Dakota, and Wisconsin that have jointly planned needed transmission upgrades and have opportunities to jointly own those facilities.⁵ 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.⁶ These facilities, estimated to cost about \$1.7 billion,⁷ are designed to meet the load-serving and reliability needs of all eleven participating utilities, and to provide the common infrastructure to reach new sources of supply. The facilities have been well-received by the state regulators responsible for granting siting approval. CapX energized the first segment (Monticello to St. Cloud) of the Fargo-St Cloud 345 kV line on December 21, 2011.⁸

CapX is beginning to plan its later phase projects, which will be focused primarily on enabling area utilities to meet their renewable energy needs under state law. The cost estimates for these facilities range between \$4-7 billion.⁹

⁵ See CapX2020 frequently asked questions, *available at* <http://www.capx2020.com/faq.html> (last visited Jan. 24, 2012).

⁶ *Id.*

⁷ See *id.* Additional “partner project” related upgrades are required on individual systems.

⁸ Press Release, CapX2020, CapX2020 Transmission Line Between Monticello and St. Cloud Energized and in Service (Dec. 21, 2011), *available at* http://www.capx2020.com/monticello/REVISED%20press%20release_monti-st.%20cloud%20energized_12.22.2011_with%20partners.pdf.

⁹ Statement of Terry Wolf on Behalf of Missouri River Energy Services and the Transmission Access Policy Study Group at 8-9 n.4, *Priority Rights to New Participant-Funded Transmission*, Docket No.

Transmission planning processes designed to achieve a right-sized grid have also been underway in other regions or subregions (e.g., the Upper Midwest Transmission Development Initiative and the New England 2030 Power System Study), and the California Independent System Operator Corporation has adopted “least regrets” planning criteria that incorporate key elements of this approach.¹⁰

TAPS urges the Department, in conducting its congestion study and moving forward to designate NIETCs, to address congestion where it meets the real needs of LSEs, thereby producing a “right-sized” grid that achieves Congress’ purposes in enacting Sections 216 and 217(b)(4).

III. NEED FOR INCLUSIVE OWNERSHIP STRUCTURES TO GET TRANSMISSION BUILT

As the Department carries out its responsibilities under Section 216, TAPS also urges the Department to promote arrangements that have a proven track record of getting needed transmission built: inclusive joint ownership arrangements open to all LSEs in the relevant footprint, and inclusive transcos. We recognize the availability of FPA Section 216(b) FERC backstop siting authority with regard to projects in a Department-designated NIETC. Experience, however, has confirmed that inclusive joint ownership arrangements help facilitate state siting, which would expedite development of needed transmission and avoid further testing federal backstop siting authority.¹¹

AD11-11-000 (Mar. 16, 2011), eLibrary No. 20110316-4012.

¹⁰ On June 4, 2010, the California ISO proposed an approach to the planning needed to meet that state’s 33% renewable portfolio standard. CAISO’s Revised Energy Transmission Planning Process proposed a process for identifying Category 1 policy-driven transmission elements based on a “least regrets” evaluation of alternative generation scenarios. This approach was accepted by FERC in *California Independent System Operator Corp.*, 133 FERC ¶ 61,224, PP 196-99 (2010), *clarified and reh’g denied*, 137 FERC ¶ 61,062 (2011).

¹¹ See *Piedmont Envtl. Council v. FERC*, 558 F.3d 304, 325 (4th Cir. 2009), *cert. denied sub nom. Edison*

For example, the CapX facilities, benefited by the support of their broad range of participating utilities, are progressing through state siting approvals processes, in many instances with minimal opposition. 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. All four projects have received a Minnesota Certificate of Need,¹² and are at various stages of the process for obtaining a Minnesota Route Permit.¹³ One of the projects, the 230 kV line, had no interventions at all filed in the Minnesota Certification of Need proceeding.¹⁴ 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

Elec. Inst. v. Piedmont Envtl. Council, 130 S. Ct. 1138 (2010).

¹² Order Granting Certificates of Need with Conditions, *In re Great River Energy*, Docket No. CN-06-1115, Docket ID No. 20095-37752-01 (Minn. Pub. Utils. Comm'n May 22, 2009) ("*Great River Energy*"), *modified*, Order Granting and Denying Motions for Reconsideration, and Modifying Conditions, Docket No. CN-06-1115, Docket ID No. 20098-40627-01 (Minn. Pub. Utils. Comm'n Aug. 10, 2009), *available at* <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={BE377BE8-DEF9-4763-910A-70523BD56C8F}&documentTitle=20098-40627-01>; *In re Otter Tail Power Co.*, Docket No. CN-07-1222, Document ID No. 20097-39617-01 (Minn. Pub. Utils. Comm'n July 14, 2009), *available at* <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={EA1BC6A6-C854-48F1-9CEB-51568E6A6178}&documentTitle=20097-39617-01>.

¹³ Findings of Fact, Conclusions of Law, and Order Issuing an HVTL Route Permit to Xcel Energy and Great River Energy, *In re N. States Power Co.*, Docket No. TL-09-246, Document ID No. 20107-52483-01 (Minn. Pub. Utils. Comm'n July 12, 2010), *available at* <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=viewDocument&documentId={C13A6C8C-5AB3-420C-90D1-160125E7F21C}&documentTitle=20107-52483-01&userType=public>; *In re Great River Energy*, Docket No. TL-08-1474, Document ID No. 20109-54429-01 (Minn. Pub. Utils. Comm'n Sept. 14, 2010), *available at* <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={22E8FC0B-0F17-4E60-96D0-C02861982101}&documentTitle=20109-54429-01>; *see In re Otter Tail Power Co.*, Docket No. TL-07-1327 (Minn. Pub. Utils. Comm'n); *In re N. States Power Co.*, Docket No. TL-09-1056 (Minn. Pub. Utils. Comm'n); *In re Xcel Energy*, Docket No. TL-09-1448 (Minn. Pub. Utils. Comm'n).

¹⁴ *See In re Otter Tail Power Co.*, Docket No. CN-07-1222 (Minn. Pub. Utils. Comm'n).

enough.¹⁵ Minnesota regulators ultimately required that those proposed facilities be “upsized” (i.e., built to accommodate double-circuit 345 kV lines).¹⁶ This experience shows the benefits of inclusive ownership arrangements that galvanize broad support for projects and is certainly very different from the usual siting process.

The CapX success in getting transmission expansion approved is similar to successes achieved elsewhere where an inclusive ownership model has been adopted. The American Transmission Company, LLC (“ATC”) is a transmission company located primarily in Wisconsin and the Upper Peninsula of Michigan, and owned by 5 investor-owned utilities, 17 municipal utilities, and 6 rural cooperatives. This single purpose transmission company has a legal obligation to meet the needs of all of the load-serving entities in its footprint and to provide a robust grid to support wholesale competition. ATC has brought approximately \$2.7 billion of new transmission into rate base and, according to its 2011 10-Year Assessment, has plans for an additional investment of between \$3.8 and \$4.4 billion over the next 10 years.¹⁷ ATC has experienced no rejections of its applications to construct, most have proceeded expeditiously, and there have been no complaints filed against ATC before FERC.

Experience has shown that joint ownership structures, whether they be pooled systems as in Georgia, Indiana, and Minnesota or a load-serving entity transco as in

¹⁵ *Great River Energy* at 43.

¹⁶ *Id.* at 44.

¹⁷ Am. Transmission Co., *Sept. 2011 10-Year Assessment: 2011 10-Year Executive Summary 2*, available at http://www.atc10yearplan.com/documents/ExecutiveSummaryandRelatedDocs_.pdf. While ATC’s transmission plan does account for proposed new generation in the ATC footprint, including renewable energy, it does not yet take into consideration the transmission needed to integrate potential offshore Great Lakes wind or planned changes in the energy portfolio of interconnected regions. *See id.*, Sections on Planning Factors & Regional Planning, available at <http://www.atc10yearplan.com/R1.shtml>.

Wisconsin and Vermont, lead to a collaborative and inclusive process for planning and development, which TAPS believes has been proven to be highly effective in getting transmission sited and built that accommodates all needs.¹⁸ In short, benefits of joint ownership include:

1. It makes joint planning real. Although FERC has issued rules in an effort to promote joint planning, there is a big practical difference when all LSEs are at the table as owners. When diverse parties are owners, openness, transparency, and more balanced decisionmaking flow automatically.
2. Joint ownership results in a better and more efficient transmission system planned to meet multiple needs. This has been the experience of TAPS members in Wisconsin, where combining five systems into one jointly-owned transco has certainly led to a more rationally developed system than balkanized planning and construction. We also see it in CapX. This is a far better approach than a reactive approach, planning for discrete transmission or interconnection requests after the requests are made.
3. The diverse support that joint ownership provides is very important in siting. By meeting the needs of multiple utilities, a joint project is able to demonstrate multiple benefits. Although participation by municipalities and cooperatives may be relatively small percentage-wise, these utilities bring a wealth of political support to the state approval process. This support can make all the difference in speeding up permitting and addressing local concerns.
4. Joint ownership arrangements such as CapX and the ATC provide the critical alignment of interests that makes it easier for state regulators to approve proposed transmission projects. When state commissions are presented with projects that are least-cost because they meet multiple needs, when they see unity among the utilities on need, and when they are faced with a broad base of support from diverse stakeholders, it is far easier for them to grant requested authorizations.
5. Joint ownership makes the cost allocation issue easier to resolve, although it still remains a thorny issue. For instance, the transmission rates paid by some ATC customers have tripled because of ATC's major construction program. Through their ownership in ATC, however, municipal and cooperative owners have been able to offset about 25% of that increase. This has made it much easier for them to support ATC's build-out. Similarly, investor-owned utilities that are able to participate in projects have an earnings opportunity, rather than simply an opportunity to pay.

¹⁸ See TAPS, *Effective Solutions for Getting Needed Transmission Built at Reasonable Cost* (June 2004), available at <http://www.tapsgroup.org/sitebuildercontent/sitebuilderfiles/effectivesolutions.pdf>.

6. Joint ownership spreads the risk of major projects broadly and provides a variety of sources of capital for projects. In a post-financial-crisis world of tightened credit and tougher credit-worthiness standards, the financial diversity and strength achieved through joint ownership arrangements should be increasingly valuable. Rating agencies have recognized that ATC's inclusiveness is a significant benefit.¹⁹
7. The broad base of support achieved through joint ownership arrangements can also be essential to securing state legislative action required to better align retail rate recovery with the need for supporting major transmission investment, as has occurred in Minnesota with the full support of the CapX group.

There should be opportunities for inclusive joint ownership in projects that emerge from the Department's implementation of Section 216. TAPS urges the Department to advance the goal of getting needed transmission built by promoting and supporting arrangements that offer transmission-dependent utilities in the pricing zone or the state(s) where the project is or will be located (or a broader region where an RTO or ISO so provides) the opportunity to participate in the project on reasonable terms.

Respectfully submitted,

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¹⁹ Fitch Rating, *Global Power North America Credit Analysis: American Transmission Company LLC*, 1 (Mar. 16, 2001) (Att. 2 to the Comments of Wisconsin Public Power Inc., Electricity Market Design and Structure, Docket No. RM01-12-000 (Mar. 12, 2002), eLibrary No. 20020314-0339).