

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

Rapid Response Team for Transmission | OE Docket No. RRTT-IR-001

**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”) February 27, 2012 request for information concerning incongruent development timelines for generation and transmission.¹ As the RFI explains, “[t]he differential in development times between generation and transmission creates a Catch-22 that inhibits the development of both.” *Id.* at 11,517. TAPS welcomes the Department’s leadership in addressing this problem. Because transmission timelines often lag behind generation timelines, the Department should exercise its authority to expedite transmission siting and federal approval, thereby minimizing the discrepancy between generation and transmission development times.

Specifically, TAPS encourages the Department to:

- Facilitate upgrades that will support multiple likely power supply scenarios, thereby proactively building the common infrastructure and facilitating and reducing the scope of scenario-specific transmission upgrades;
- Implement policies that encourage inclusive joint ownership of projects by area Load Serving Entities (“LSEs”), thereby expediting the state approval process; and
- Take action to expedite the federal authorization process for transmission.

¹ Rapid Response Team for Transmission, 77 Fed. Reg. 11,517 (Feb. 27, 2012) (“the RFI”).

I. INTERESTS OF TAPS

TAPS is an association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.² 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, on September 20, 2004, Comments that attached TAPS’ June 2004

² 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.³ 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); on January 30, 2012, in response to the Department’s Notice of “Plan for Conduct of 2012 Electric Transmission Congestion Study,” 76 Fed. Reg. 70,122 (Nov. 10, 2011) (hereinafter, “Congestion Study Comments”); and on February 27, 2012, in response to the Department’s Notice of Proposed Rulemaking regarding “Coordination of Federal Authorizations for Electric Transmission Facilities,” 76 Fed. Reg. 77,432 (Dec. 13, 2011) (hereinafter, “Coordination Comments”).

Communications regarding these proceedings should be directed to:

John Twitty
Executive Director
TAPS
4203 E. Woodland St.
Springfield, MO 65809
Tel.: (417) 838-8576
E-mail: 835consulting@gmail.com

Cynthia S. Bogorad
SPIEGEL & MCDIARMID LLP
1333 New Hampshire Ave., NW
Washington, DC 20036
Tel.: (202) 879-4000
Fax: (202) 393-2866
E-mail: cynthia.bogorad@spiegelmc.com

II. STEPS THE FEDERAL GOVERNMENT CAN TAKE TO ADDRESS THE CHALLENGES CREATED BY INCONGRUENT DEVELOPMENT TIMES

The RFI asks “what . . . steps the Federal government can take to address the challenges created by Incongruent Development Times.” 77 Fed. Reg. at 11,518. In

³ The White Paper is available at <http://www.tapsgroup.org/sitebuildercontent/sitebuilderfiles/effectivesolutions.pdf>.

response, TAPS encourages the Department to: (1) facilitate upgrades that will support multiple likely power supply scenarios; (2) implement policies that encourage joint ownership of projects by area LSEs; and (3) take action to expedite the federal authorization process for transmission. These steps will ameliorate incongruent development times and help ensure that needed transmission gets built.

A. *Facilitating Upgrades that will Support Multiple Likely Generation Scenarios*

The Department can lessen the “Catch-22” associated with the incongruent development timelines by facilitating upgrades that will support multiple likely power supply scenarios. Such an approach can proactively develop the common infrastructure needed to support alternative generation scenarios, thereby accommodating, facilitating, and reducing the scope of scenario-specific upgrades. Such approach also aligns well with the goal of achieving 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).

As TAPS explained in its Congestion Study Comments (at 3-6), 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 transmission planning. LSE Power Purchase Agreements and generation plans, along with the 10-year load and resource projections that all network customers must submit to their transmission providers, can provide useful tools in planning for a right-sized grid that meets the reasonable needs of LSEs, which Congress has directed the Federal Energy Regulatory Commission to facilitate. *See* Section 217(b)(4) of the Federal Power Act, 16 U.S.C.

§ 824q(b)(4). To provide greater flexibility to respond to changing public policies, technology, resource options, and customer needs, upgrades should be designed to support multiple likely power supply and public policy scenarios. The transmission expansion that results from such multi-scenario process should be sufficiently resilient to support and accommodate a range of resource plans, including those that ultimately reach fruition. That approach ensures that the resulting grid achieves the fundamental purpose of meeting the long-term needs of the nation’s electric consumers on a cost-effective, highly reliable, and environmentally responsible basis. It also minimizes the degree to which the region’s transmission infrastructure future and finances are committed to the construction of an expensive road to what may turn out to be nowhere.

This approach was successfully undertaken by CapX2020, 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.⁴ 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.⁵ These facilities, estimated to cost about \$1.7 billion,⁶ are designed to meet the load-serving and reliability needs of

⁴ See CapX2020 frequently asked questions, <http://www.capx2020.com/faq.html> (last visited Mar. 23, 2012).

⁵ *Id.*

⁶ See *id.* Additional “partner project” related upgrades are required on individual systems.

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, 2011.⁷ 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.

TAPS urges the Department to consider and foster the use of multi-scenario approaches designed to build the facilities required to flexibly meet the needs of LSEs, thereby producing a “right-sized” grid and reducing the “Catch-22” associated with the incongruent development timelines.

B. Implementing Policies that Encourage Inclusive Joint Ownership by Area Load Serving Entities

The Department can expedite transmission siting by encouraging inclusive joint ownership of projects by area LSEs. As explained in TAPS Congestion Study Comments (at 6-10), inclusive joint ownership arrangements help facilitate state siting, which can help expedite development of needed transmission. By meeting the needs of multiple utilities, a joint project is able to demonstrate multiple benefits. Further, although participation by municipals 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 state permitting and addressing local concerns.

⁷ 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.

Experience has shown that inclusive joint ownership structures, whether they be pooled systems as in Georgia, Indiana, and Minnesota or an LSE transco as in Wisconsin and Vermont, lead to a collaborative and inclusive process for planning and development, which has been proven to be highly effective in getting transmission sited and built that accommodates all needs.⁸ For example, the CapX facilities, benefited by the support of their broad range of participating utilities, are progressing through state siting approval 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,⁹ and are at various stages of the process for obtaining a Minnesota Route Permit.¹⁰ This

⁸ See TAPS, *Effective Solutions for Getting Needed Transmission Built at Reasonable Cost* (June 2004), available at <http://www.tapsgroup.org/sitebuildercontent/sitebuilderfiles/effectivesolutions.pdf>.

⁹ Order Granting Certificates of Need with Conditions, *In re Great River Energy*, Docket No. CN-06-1115, Document ID No. 20095-37752-01 (Minn. Pub. Utils. Comm'n May 22, 2009), *modified*, Order Granting and Denying Motions for Reconsideration, and Modifying Conditions, Document ID No. 20098-40627-01 (Minn. Pub. Utils. Comm'n Aug. 9, 2009), *modified*, Order Amending May 22, 2009 Order and Setting New In-Service Date for the Brookings to Hampton Transmission Line Project, Document ID No. 20113-60052-01 (Minn. Pub. Utils. Comm'n Mar. 2, 2011), available at <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&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=showPop&documentId={EA1BC6A6-C854-48F1-9CEB-51568E6A6178}&documentTitle=20097-39617-01>.

¹⁰ 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=showPop&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).

experience shows the benefits of inclusive ownership arrangements that galvanize broad support for projects, and is certainly very different from the usual siting process.

To reduce the discrepancy between transmission and generation timelines, TAPS urges the Department to harness the benefits of inclusive, jointly owned transmission projects. The Department should 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. For example, the Department should make clear that it will consider inclusive joint ownership arrangements as a significant factor in determining if a transmission project is eligible for expedited federal permitting review.

C. Expediting Federal Authorization Requests

TAPS recognizes that prompt resolution of federal authorization requests is critically important to getting needed transmission built on a timely basis. The Department should take action to expedite the federal authorization process, as it is doing with its new Rapid Response Team for Transmission effort, as well as soliciting comments on proposed new regulations regarding coordination of the federal authorization process.¹¹ In its Coordination Comments, TAPS described how the Department might consider further expediting federal authorizations. Specifically, TAPS explained that the Department may wish to model its regulations on the framework used by the State of Wisconsin, which features a 30-day completeness process followed by a

¹¹ See Coordination of Federal Authorizations for Electric Transmission Facilities, 76 Fed. Reg. 77,432 (Dec. 13, 2011).

firm timeline for government authorizations. The Wisconsin example may be of particular interest to the federal government because the Wisconsin Environmental Policy Act of 1971, Wis. Stat. § 1.11, imposes requirements similar to those of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.* A federal approach modeled on Wisconsin's would facilitate the simultaneous environmental and permitting review that Congress directed in enacting Section 216(h)(4)(B) of the Federal Power Act. *See* 16 U.S.C. § 824p(h)(4)(B). At the same time, it would help close the gap between transmission and generation development times.

CONCLUSION

TAPS appreciates the opportunity to respond to the RFI and hopes that the information provided in these comments will be of assistance to the Department.

Respectfully submitted,

/s/ Cynthia S. Bogorad

Cynthia S. Bogorad

Attorney for Transmission Access
Policy Study Group

Law Offices of:
Spiegel & McDiarmid LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 879-4000

March 28, 2012