

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

Transmission Planning Processes)
Under Order No. 890) Docket No. AD09-8-000

**POST-CONFERENCE COMMENTS OF THE
ELECTRIC POWER SUPPLY ASSOCIATION**

The Electric Power Supply Association (EPSA)¹ hereby submits comments with respect to the Commission’s October 8, 2009 notice requesting comments on the September 2009 series of conferences held with respect to Order No. 890 transmission planning processes.² EPSA staff and member representatives attended each of the three conferences as transmission is an important part of policy concerns currently before FERC, Congress and American consumers of electricity. EPSA has commented at every phase of the Order No. 890 rulemaking process and continues to advocate aggressively for non-discriminatory, fair, open access on the transmission grid. Thus, EPSA appreciates the opportunity to attend the Commission’s September conference series and submit comments on current transmission planning efforts around the country.

EPSA’s comments herein focus on Order No. 890’s core planning principles of coordination, openness and transparency. Though the rule was

¹ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

² *Notice of Request for Comments*, Docket No. AD09-8-000 (October 8, 2009). (“October 8 Notice”)

promulgated nearly three years ago, there are still areas of the country that have not complied with either the spirit or the letter of Commission directives. The time has come for the Commission to require action. Transmission planners must allow all interested and affected stakeholders in the region an opportunity to meaningfully participate in the planning process and to actually be awarded projects based on meeting established qualifications; being invited to the table is a good start but it is not productive unless independent developers are allowed to identify, develop and build transmission and generation. There is concern that “Rights-of-First-Refusal” (ROFR) allowing incumbent transmission owners to build any transmission project, whether or not they identified the project, prohibits independent entities from developing and building needed projects. Most EPSA members believe this is true for both reliability and economic transmission projects.

The Commission should require entities in non-compliance with Order No. 890’s directives to hire an independent transmission planner, as those entities to date have not signaled their intention to fully comply with Order No. 890 themselves. Further, there are several issues with the transparency of certain mitigation options that directly affect transmission planning that could be more fairly and effectively offered as transmission solutions by independent transmission planners. Finally, EPSA reiterates the importance of fairly and comprehensively considering all options in solving an identified transmission constraint, including generation and demand solutions.

I. COMMUNICATION

All pleadings, correspondence and other communications concerning this proceeding should be directed to:

Nancy E. Bagot, Vice President of Regulatory Affairs
Electric Power Supply Association
1401 New York Avenue, N.W., 11th Floor
Washington, D.C. 20005
(202) 628-8200
NancyB@epsa.org

II. COMMENTS

A. Inclusion of All Market Participants is Essential to a Robust Transmission Planning and Construction Process

At the very least, Order No. 890's planning principles mandate that interested stakeholders wishing to be included in the planning process are included. The first three planning principles in Order No. 890 – coordination, openness and transparency (collectively “the inclusion principles”) – speak to the need for substantive and meaningful coordination among all interested stakeholders in a given region. This was one of the key differences between Order Nos. 888 and 890 – where the former merely encouraged this type of inclusive planning, the latter requires it.³ EPSA supported this idea during the Order No. 890 rulemaking process; in fact, ensuring that the inclusion principles would be effectively implemented was the very reason EPSA and others called for a FERC review of Order No. 890 planning processes about a year after publication of the final rule.⁴ Unfortunately, while most areas of the country have

³ See Order No. 888-A at 30,311.

⁴ *EPSA Comments on Order No. 888 Reform Effort*, Docket Nos. RM05-25-000 and RM05-17-000 (August 4, 2006), p. 2.

embraced FERC's inclusion principles, there are still asset-holding independent power producers (IPPs) and other interested stakeholders that are effectively excluded from planning efforts in certain regions. EPSA applauds the Commission for holding this conference series in order to identify the regions where planning principles have not been properly implemented.

The inclusion principles set forth in Order No. 890 are clear and do not lend themselves to misinterpretation. The Commission has set forth an ample record in the rulemaking proceeding leading to Order No. 890's issuance and has set forth clear directives in the Order itself. FERC was extremely clear that the first three planning principles in Order No. 890 represented an inclusive process in which all stakeholders would get the chance to meaningfully participate. Order No. 890 states:

Without adequate coordination and open participation, market participants have no means to determine whether the plan developed by the transmission provider in isolation is unduly discriminatory.⁵

FERC was careful in this order not to be proscriptive, allowing for regional differences. However, even noting that there are various market structures in the country that may incorporate the principles in different forms, Order No. 890 clearly defined the legal requirement with which every jurisdictional planning entity in the country must comply. The Commission stated, "[W]e are more concerned about the substance of coordination than its form."⁶ The

⁵ Order No. 890, P. 425.

⁶ Id., P. 452.

“substance” discussed in Order No. 890 allows all interested stakeholders to participate in a transmission planning process. Order No. 890 goes on to state:

Transmission providers are not required to meet with customers and other stakeholders that chose not to meet... Transmission providers are, however, required to craft a process that allows for a reasonable and meaningful opportunity to meet or otherwise interact meaningfully.⁷

Such was the mandate of Order No. 890 – no matter what the transmission planning scheme looks like, it must be inclusive to all interested stakeholders at the very least. Unfortunately, some areas of the country have yet to comply with Order No. 890’s clear directives.

FERC’s notice in the instant proceeding speaks to the inclusion principles in noting that, “[i]n some regions, there are transmission planning practices that disproportionately affect certain types of generation, such as resources developed by independent power producers.”⁸ Further, the notice goes on to ask two key questions:

- (1) Are there adequate opportunities for stakeholders to participate in planning activities that span different regions, including for example those undertaken pursuant to bilateral agreements?;⁹ and,
- (2) Should similar assumptions regarding resource availability be used for generation owned by the transmission owner and merchant or independent developers?¹⁰

There are still areas of the country where the answers to these questions are not consistent with Order No. 890 inclusion principles. Specifically, these are areas

⁷ Id., P. 453.

⁸ October 8 Notice, p. 3.

⁹ Ibid.

¹⁰ Id., p. 4.

where vertically-integrated companies are still allowed to operate in a vacuum outside of RTOs. In some cases, the rules that the transmission owners have in place for resource and transmission planning exclude independent generation or treat independent generation as if the resource would not be as readily available as one of the transmission owners' own incumbent generation facilities.

Some planning schemes in the Southeast blatantly ignore FERC's inclusion principles, to the point of having counterintuitive *exclusive* rules in place. The starkest example of this is one from the Florida Reliability Coordinating Council (FRCC) that was mentioned at the September 10, 2009 conference in Atlanta, GA. Though the FRCC is a sanctioned NERC planning entity, it does not treat merchant generation in the same way as incumbent utility generation for planning purposes. Merchant generation in Florida must have a contract as a network resource with a load serving entity in order to be included in planning studies. If no such contract is available at the time planning studies are started (which is years in advance of actual transmission builds), merchant generation is not even considered as a viable resource in the study. In contrast, generation that is part of a vertically-integrated company is always considered and modeled for in FRCC planning studies. This puts independent power producers at a distinct disadvantage and discourages independent investment in the region. Even independent generators in the region that are designated as Network Resource Integrated Service (NRIS) providers cannot be included in planning studies unless there is a firm contract. In July of this year, IPPs in the

Florida region petitioned for inclusion in the FRCC planning process, but were turned down.¹¹

Order No. 890 requires regions to comply with its inclusion principles; Florida and other entities in the Southeast should be no exception. What harm could there be in including all generation in a given area in planning assumptions for studies? Especially in the example above, some generators have been designated as network resources but still cannot be included because they lack a contract at the outset of the transmission planning study. FRCC's rules are unnecessarily exclusionary and biased towards incumbent vertically-integrated utilities. In answer to the Commission's questions in the notice seeking comment, there are not adequate opportunities for stakeholders to participate in planning processes in regions that rely heavily on bilateral agreements.

Further, similar assumptions should be used regarding resource availability for generation owned by the transmission owner and merchant or independent developers, but independent developers are not given an equal opportunity to be included in transmission planning studies when there are rules in place like those in the FRCC's planning process. FERC should clarify that the inclusion principles in Order No. 890 are indeed mandatory. Further, FERC should have a process in place to allow appeals that have been ignored or denied in the region, even when planning practices are clearly at odds with Order No. 890. In these cases, stakeholders should bring the issue before the Commission. A more detailed option for remedying non-compliance with Order

¹¹ See Minutes of FRCC Planning Committee Meeting (August 4, 2009), full proposal at Exhibit D.

No. 890 is explained in Section B below. Enforcing the inclusion principles promulgated in Order No. 890 is one of the very tangible actions that should emerge from FERC's September series of transmission planning conferences.

The same principle of inclusion is applicable to transmission development. RTOs/ISOs use existing rules establishing a "right-of-first-refusal," allowing the incumbent transmission owner to build any project whether or not it identified the project, thereby prohibiting independent entities from developing and building new projects in an incumbent's service territory. The RTO/ISO planning rules also provide disparate treatment between incumbent-proposed projects and those proposed by independent developers when it comes to participation in the RTO/ISO regional transmission plan and allocation of costs for those projects. These rules have inhibited development of independent transmission in the Eastern Interconnection. Such rules provide no consumer benefit and, in fact, are detrimental to determining the least cost alternative, which should result in lower costs to the consumer.

FERC should make it clear that in the development, construction and ownership of transmission projects pursuant to the regional planning process, there can be no rights-of-first-refusal or other discriminatory rules and that all entities proposing transmission projects shall operate on a level playing field. An independent transmission company shall be allowed to participate in the process from the beginning and to be awarded projects through the RTO/ISO regional or any super-regional transmission planning process.¹²

¹² While most EPSA members have serious concerns with ROFR as stated above, if ROFR remains, a transmission owner should be required to exercise a right of first refusal within a

B. Independence of Planning Entities

In the Order No. 888 reform process, EPSA had proposed a FERC corrective action for entities that did not adhere to the inclusion principles that would eventually be mandated by Order No. 890.¹³ Because coordinated regional transmission planning in Order No. 890 was one of the most important linchpins of the reform effort, the Commission must have a remedy in place to address complaints against entities that do not adequately and timely comply with this requirement. EPSA proposes a corrective solution rather than a punitive one. If an entity has not fully and substantively complied with the new OATT within a specified period of time, the entity should be required to hire an independent administrator to oversee OATT compliance and regional planning efforts. As it has been nearly three years since the issuance of Order No. 890, EPSA advances that a sufficient period of time has lapsed. This corrective action, taken only after an entity has continually failed to comply with Commission directives, is a viable way to correct the problem and help create fair, transparent transmission access for all relevant market participants. If the Commission does not enforce its Order No. 890 requirements, some entities could and will prolong the process indefinitely or just refuse to comply with the mandatory planning principles as the FRCC has done in the above example. The planning process, in particular, must be timely in order to underpin the overall OATT reform effort

specific, expeditious timeframe in order to provide certainty to other potential transmission developers. See: *Order on SPP Compliance Filing*, 127 FERC ¶ 61,171, Docket No. OA08-61-000 (May 21, 2009), P. 43.

¹³ *EPSA Comments on Order No. 888 Reform*, Docket Nos. RM05-25-000 & RM05-17-000 (August 4, 2006), p. 58-59.

and to develop a transmission planning and expansion program that will bring needed capacity in those regions that will soon experience constraints and shortfalls unless new generation capacity is built.

The inclusion principles should be the cornerstone for this corrective action, as some regions with independent coordinators of transmission still exclude competitive power suppliers from pertinent planning processes. For example, in a recent Entergy Independent Coordinator of Transmission (ICT) meeting, it became known that the ICT staff was not invited to a seams/data exchange meeting between Entergy, the Tennessee Valley Authority and Southern Company. If these type of meetings are deemed ‘closed’, even to the independent ICT, then there are obvious concerns about other stakeholders’ ability to gain access. Also, this directly contradicts Order No. 890’s openness principle, which requires that “transmission planning meetings be open to all affected parties.”¹⁴ There are areas of the country that are doing it right, and should be commended. When a FERC determination is made that an Order No. 890 planning process is not sufficient and that an independent coordinator will help address the insufficiency, that independent coordination model should be based on RTO and other success stories for transmission coordination and planning.

RTOs have been required to do this type of joint planning since the issuance of Order No. 2000.¹⁵ Though RTO planning processes may not be perfect, it is important to note the difference in tone of the discussion between the

¹⁴ Order No. 890, P. 460.

¹⁵ Order No. 2000, Docket No. RM99-2-000 (December 1999), p. 466 – 496.

Philadelphia FERC Planning Conference (which included MISO, PJM, NYISO and ISO-NE) and the Atlanta FERC Planning Conference (which included the Southeast). While RTO planning processes are already looking for solutions to tough issues like meeting renewable portfolio standards and how to tackle plant retirement issues in light of an aging generation fleet, entities in the Southeast admitted that they will only integrate those issues into planning processes when forced by federal law.¹⁶

This is not to say that RTOs are the only regions that have incorporated Order No. 890's planning processes correctly. There was wide scale agreement at the Phoenix FERC Planning Conference on September 3, 2009, that the Western Electricity Coordinating Council (WECC) has afforded interested stakeholders ample opportunity to participate in WECC's regional planning process and path rating process. FERC should require corrective action for areas identified to have exclusive and nontransparent planning activities such as FRCC and Entergy. Independent entities could serve as an effective remedy in these situations as long as they are modeled on FERC's core inclusion principles – coordination, openness and transparency. While reflecting the need for regional variation, WECC and RTO planning processes can serve as a guide for how FERC's inclusion principles can be applied so that all stakeholders in a given region can have an opportunity to participate.

¹⁶ During the question and answer session in Panel 3 of the Atlanta conference (focusing on cost allocation), there was heavy focus on Southeastern entities only planning for reliability rather than economic and renewable planning. This is contrasted with discussion of these issues on almost every panel of the Philadelphia conference.

C. Transparency in Mitigation Affects Planning

The transparency provisions of Order No. 890 “require transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions and data that underlie their transmission system plans.”¹⁷ Though it may not have been apparent at the time of Order No. 890’s issuance, certain mitigation measures are being used in planning schemes to defer the need for new investment. While this may be a sound practice, it is not transparent to all market participants; thus those market participants (often independent power producers in heavily vertically-integrated areas) do not have the opportunity to employ the same mitigation measures as the incumbent utility. EPSC is not suggesting that there is anything wrong with these mitigation measures. Rather, EPSC notes that because this mitigation is something that underlies transmission system planning, the measures should be transparent and available for all market participants to see and use.

The most pertinent example of lack of transparency in mitigation measures is that of remedial action scheme (RAS) or special protection scheme (SPS), which especially lack transparency in areas outside of RTOs. When a Transmission Planner (TP) studies a new transmission request or a new network resource and identifies a transmission constraint or overload that limits the ability of the transmission system to accommodate the request, there may be several options available to resolve the transmission limitation. One would be to build additional transmission facilities or upgrade existing facilities to resolve the

¹⁷ Order No. 890, P. 471.

limitation. Another option may be to install either a RAS or SPS which will automatically take action during or after a contingency to reconfigure the transmission system to eliminate the transmission overload that would otherwise occur. A similar option may be to establish an operating procedure which would be done manually either before or after the contingency that would also eliminate the transmission overload. Installing an RAS or SPS would be the lowest cost option to solving a transmission constraint in many cases, especially if a Transmission Owner/Operator has a short term emergency rating for the overloaded facility and a manual operating procedure can be implemented within the time period of the emergency rating.¹⁸

While these mitigation measures may provide excellent low cost alternatives to new transmission builds, EPSA remains concerned whether these options for RAS/SPS or Operating Procedures are applied consistently and in a non-discriminatory manner. TPs generally will look for these types of solutions for their own resources or transmission service requests. However, when a third party transmission request is received, the immediate option presented to the requestor is the construction of new facilities without a review of the other options that may be feasible and acceptable in a given case. Again, a viable solution to this problem is to evaluate the transmission request or new network resource by an independent third party. Without the independent review, one cannot be

¹⁸ If the overload would exceed the emergency rating of the facilities, it may still be possible to implement a pre-contingency procedure that would prepare the system for the contingency and either eliminate the overload or reduce it to the point where further post-contingency actions could be taken to keep the transmission system within the NERC reliability standard requirements. A RAS or SPS would be the next lowest cost alternative while the construction of new facilities is most certainly the most expensive.

certain that preferential treatment would not be provided to the affiliated requestor over the third party requestor. At the very least, the current mitigation efforts to avoid unnecessary new construction should be transparent and available to all market participants in a given region. Only then will the transparency provision of Order No. 890 be truly fulfilled.

D. Consideration of all Resources in Planning Efforts

In order for planning efforts to be robust and truly beneficial to consumers, it is important to consider all solutions to an identified transmission constraint. Sometimes transmission is the least cost option and sometimes it is not. In an open, collaborative planning process, new transmission builds should be required to compete against alternatives, including generation solutions. Further, as new resources like demand response and renewables enter the market, they should be treated on a comparable level with both transmission and generation solutions; this includes having a comparable level of obligation to perform reliably or penalties when failing to do so.

Though Order No. 890 has a comparability standard, it does not require transmission providers and independent evaluators to consider all possible solutions to a transmission constraint. Currently, the cost of a transmission project is not compared to an equitable generation solution, even in organized RTO markets. The least-cost transmission solution is the only consideration in today's transmission planning scenarios. EPSA encourages FERC to require transmission planners to determine a true least-cost solution to a reliability

problem, which must include competition against appropriate generation or other resource solutions.

III. CONCLUSION

While Order No. 890 has greatly improved open access principles through its open, coordinated regional planning mandate, there are still areas of the country that have not yet complied. In those areas, there are rules that actually exclude willing, qualified asset-holding market participants from the planning process. The Commission must remedy this problem as it has been nearly three years since the issuance of Order No. 890. Planning entities still in non-compliance with the rule are blatantly disobeying FERC's clear directives. The Commission should correct these areas of non-compliance by mandating an independent transmission planner be hired to uphold the core inclusion principles of Order No. 890.

Further, an independent transmission planner would allow greater transparency in mitigation schemes, which have a direct and lasting effect on whether or not new builds in a given region are necessary. Mitigation schemes that may prevent the need for new builds or upgrades should be transparent and available to all requestors of network service. Finally, the Commission should expand its comparability principle so that transmission planners must consider all solutions to an identified transmission constraint, including new generation resources. The Commission's efforts in Order No. 890 have greatly improved transparency and open access. EPSA looks forward to working with the Commission as those efforts continue.

Respectfully Submitted,



Nancy Bagot, Vice President of Regulatory Affairs
Tara Ormond, Manager of Regulatory Affairs
Electric Power Supply Association
1401 New York Avenue, NW, 11th Floor
Washington, DC 2000
(202) 628-8200

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., November 23, 2009.

A handwritten signature in cursive script, appearing to read "Nancy Bagot", with a horizontal line extending to the right from the end of the signature.

Nancy Bagot, VP of Reg. Affairs