

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

Priority Rights to New Participant-Funded)
Transmission) Docket No. AD11-11-000
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COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

The Electric Power Supply Association¹ (“EPSA”) submits these comments in response to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) March 28, 2011 Supplemental Notice establishing a date for comments responding to the March 15, 2011 FERC technical conference, which addressed two distinct issues: (1) independent and/or merchant transmission; and, (2) generator tie lines.² EPSA’s comments herein focus solely on the conference’s second point of focus – generator tie lines. While there were several suggestions at the March 15 technical conference as to how FERC should treat such lines, the Commission should be mindful that such processes are already ongoing at NERC. The Commission should neither duplicate those efforts, nor pre-determine their outcomes by categorizing generator tie lines in any particular way in the present proceeding. The due process afforded by FPA Section 215 is at work in the NERC stakeholder process (Project 2010-07) that

¹ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. 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 See: *Notice of Technical Conference*, Docket Nos. AD11-11-000 et al (February 22, 2011); and, *Supplemental Notice Inviting Comments*, Docket Nos. AD11-11-000 et al (March 18, 2011).

has already been dedicated to this effort and the Commission should allow that process to move forward. Acting on tie lines at this time would be premature, however when these issues are ripe for action, the Commission should then consider open access issues on a case-by-case basis.

I. COMMENTS

EPSA has submitted comments concerning the classification of generator tie lines before, in Docket Nos. RC11-1-000 and RC11-2-000, which were both noticed dockets affiliated with the March 15 Technical Conference. EPSA's comments in those dockets remain EPSA's position, despite the suggestions made at the conference to fashion an "OATT-lite" for generator tie lines. In fact, any Commission action to recognize generators as Transmission Owners (TOs), even as a "lite" version of TOs, would duplicate and potentially undermine the NERC standards process currently in place to address the issue.

A. THE GENERATOR TIE LINE PANEL AT THE MARCH 15 TECHNICAL CONFERENCE

In the agenda for the conference, the Commission established that the context for discussing generator tie lines was one facet of the charge to "explore issues related to priority rights to use transmission infrastructure."³ More specifically, the Commission sought to address, "the application of the Commission's open access policies to generator lead lines in the instance when affiliated or unaffiliated third party generators also seek to use these facilities."⁴ The speakers on the panel had varying opinions on what the Commission could

³ *March 15, 2011 Final Technical Conference Agenda*, Docket No. AD11-11-000 (March 15, 2011), p. 1. Available at: <http://www.ferc.gov/EventCalendar/Files/20110315090653-Final%20Agenda.pdf> . ("March 15 Final Agenda")

⁴ *Id.*, p. 3.

do, based on the questions posed in the agenda.⁵ Two main schools of thought emerged throughout the panel as front runners for possible Commission action – a modified OATT or an amendment to the LGIA. The idea of a “slimmed down radial OATT” or “OATT-lite” was suggested by Joel Newton from NextEra and Kris Zadlo from Invenergy.⁶ Tom DeBoer from Puget Sound Energy first suggested that the Large Generator Interconnection Agreement (LGIA) be amended, specifically section 9.9.2 as this does not address generator tie lines, but does address interconnection facilities that were built by the transmission owner.⁷ While both of these suggestions respond to the questions laid out in the agenda for the conference, they are both premature and may circumvent the NERC process already in place.

The “OATT-lite” scenario was the most discussed and controversial suggestion to emerge from the panel. By way of an explanation for the idea, panelists noted that generators “are not set up to effectively administer the OATT, OASIS, code of conducts, uniform system of accounts, [or] Attachment

⁵ The three discussion topics for this panel were: (1) The unique attributes of generator lead lines among transmission facilities (including ownership structures, physical or operational characteristics, etc.); (2) The implications for generation developers and potential transmission customers of the Commission applying open access policies in the same manner to generator lead lines as it applies those policies to other transmission facilities, and whether the Commission should apply its open access policies to generator lead line facilities in a manner different from the way it applies such policies to other transmission facilities; (3) The showing required to justify priority usage allocations (e.g., types of ownership/lease arrangements and expansion/development plans with definite dates and milestones for construction), and the extent to which this showing accommodates developers’ project development and customers’ needs, while satisfying the Commission’s open access policies and responsibility to ensure that rates are just and reasonable and not unduly discriminatory or preferential. (See Final March 15 Agenda, p. 3)

⁶ *Transcript in the Matter of Technical Conference on Priority Rights to New Participant Funded Transmission*, Docket No. AD11-11-000 (March 15, 2011). (“March 15 Transcript”) Citing Joel Newton (p.112, lines 16-19) and Kris Zadlo (p.130, lines 1-6). Available at: <http://www.ferc.gov/EventCalendar/Files/20110328070902-AD11-11-3-15-11.pdf>

⁷ March 15 Transcript, citing Tom DeBoer, p. 115 lines 3-10.

K.”⁸ Thus, a stream-lined set of requirements to govern generators who own tie lines emerged as a possible solution. However, other panelists cited unease with the idea of modifying Order No. 888 and its predecessors, noting that Independent Power Producers in particular should be “very reluctant to poke too many holes in a policy that has been a foundation to our industry.”⁹

The LGIA modification suggestion, which was predicated on the supposition that there is very little difference between an interconnection facility constructed by a generator and one constructed by a transmission owner,¹⁰ met less controversy over the course of the discussion. In response to a question from FERC Staff Member Arnie Quinn concerning the viability of modifying LGIA Section 9.9.2, most panelists said while they were “thinking about it for the first time,” it could be a viable solution.¹¹

While EPSA may prefer one of these solutions over the other, the questions posed for which these solutions were offered are simply not ripe for the consideration of the Commission at this time. There is a concurrent process already engaging stakeholders at NERC on this same issue and affording the due process promised in the Federal Power Act (FPA); the Commission should look at these issues only after the NERC process has concluded and submitted the product of that process to FERC for consideration.

⁸ March 15 Transcript, citing Kris Zadlo, p.129 lines 18-20.

⁹ March 15 Transcript, citing Kurt Adams, p. 126, lines 17-19.

¹⁰ March 15 Transcript, citing Tom DeBoer, p. 115 lines 3-10.

¹¹ See discussion in March 15 Transcript, pp. 175-176.

B. HOW THE TECHNICAL CONFERENCE SUGGESTIONS RELATE TO THE ONGOING NERC PROCESS AND FPA SECTION 215

EPSA understands (and has stated in other dockets) the concern over generator tie lines as they relate to reliability and open access concerns. Both the Commission and the industry should be assured that generators are building and operating radial lines in a reliable and transparent manner. However, EPSA has serious concerns with the process by which both FERC and NERC may elect to address those concerns. There are three issues to consider in thinking about how the discussion at the conference may relate to the ongoing NERC process to consider generator tie lines: (1) the ongoing balancing act between commercial interests and the need to assuage reliability/open access concerns; (2) the letter and intent of FPA Section 215; and, (3) the content of NERC Project 2010-07.

First, the Commission and NERC must continue to consider the delicate balance between commercial interest and the reliable, transparent operation of the grid. EPSA contends that the issue of whether generators should be transmission owners/operators based on generator tie line ownership is one of the issues caught in the crosshairs of that delicate balance. Indeed, the Commission identified the question of balance as one of the main topics of discussion for the March 15 Technical Conference in stating that “participants are encouraged to identify and discuss the appropriate balance between the Commission's requirements for open access and the needs of project developers.”¹² Considering how such lines are classified and treated in multiple

¹² March 15 Final Agenda, p. 1.

venues will only serve to aggravate the issue and discourage new generation investment, especially for smaller projects whose viability may depend on the ability to quickly construct generator tie lines rather than to wait for the incumbent utility to construct a transmission interconnection that would be acceptable under the current LGIA.¹³ While EPSA recognizes that open access issues are not the same as the reliability issues being considered in the NERC process, it would be helpful to project developers if the matter of reliability obligations could be settled before a broader discussion on additional potential open access obligations takes place. Uncertainty creates business risk that inhibits commercial investment; adding an additional layer of uncertainty to entities regarding their reliability responsibilities will only serve to further deter investment.

Second, as EPSA has discussed in the Milford and Cedar Creek dockets,¹⁴ any premature decisions on classifying a generator as a TO/TOP circumvents the rights of stakeholders working on NERC's registry criteria and circumvents the standards development process as contemplated by FPA Section 215(c)(2)(D).¹⁵ In addition to potentially deterring investment as mentioned above, action by FERC on new open access obligations of generator tie line owners may actually predetermine the outcome of the NERC process. For example, a Commission proceeding to craft an "OATT-lite" would indicate to some extent that owners of generator tie lines are also transmission owners

¹³ Note that in response to FERC Staff Member Mike McLaughlin's question: "I'm curious why you're building gen tie lines, and not going through the generator interconnection process of the utility? Why are you entering that business model if you -- I didn't think you had to do that?" Kris Zadlo replied, "Well, that's actually a simple question. Because we can do it quicker, faster and cheaper than the utility." See March 15 Transcript, p. 132, lines 3-11.

¹⁴ See: *Comments of the Electric Power Supply Association*, Docket Nos. RC11-1-000 and RC11-2-000 (December 7, 2010).

¹⁵ 16 U.S.C. § 824c(c)(2)(D).

subject to an OATT. Though the open access obligations may be lessened, their imposition by FERC may override a NERC process that could have determined that generator tie lines do not qualify their owners as TO/TOPs. Thus, the industry input envisioned in FPA Section 215 for NERC standard setting processes may be thwarted by a FERC proceeding that considers a different facet of the same problem – whether generator tie line owners are or should be obligated in the same ways as TO/TOPs.

Finally, the actual content of the work that NERC is doing in Project 2010-07 should be a main factor of consideration in assessing whether the Commission should move forward on open access concerns. NERC has instituted a standards drafting team to address:

Significant industry concern exists regarding the application of Transmission Owner and Transmission Operator requirements, and more generally, to the registration of Generator Owners and Generator Operators as Transmission Owners and Transmission Operators, based on the facilities that connect the generators to the interconnected grid... Absent these revisions and additional requirements, Generator Owners and Generator Operators are subject to what some believe to be inappropriate registration as Transmission Owners and Transmission Operators to ensure coverage for certain reliability requirements.¹⁶

Thus, the issue of generator interconnection facilities is already the subject of NERC Project 2010-07, which has a stated purpose of: “propos[ing] changes to the requirements and the add[ing] new requirements will add significant clarity to Generator Owners and Generator Operators regarding their reliability standard

¹⁶ *NERC Standards Authorization Request Form from the Ad Hoc Group for Generator Requirements at the Transmission Interface* (January 15, 2010), p. 2. http://www.nerc.com/docs/standards/sar/2010-07_SAR_GOTO_Point-of-Interconnection_2010Feb12.pdf.

obligations at the interface with the interconnected grid.”¹⁷ By pursuing this issue in the context of Project 2010-07, not only can the Reliability Standards be tailored to the reliability issues that are unique to interconnection facilities, NERC will avoid registering entities that have not had the opportunity of participating in the standards process. (a central issue in the Milford and Cedar Creek dockets). Further, by allowing the NERC process to run its course before any FERC action concerning open access generator tie lines, the Commission will avoid robbing NERC stakeholders of due process under FPA Section 215 and discouraging necessary commercial investment.

C. THERE SHOULD BE NO COMMISSION ACTION CONCERNING GENERATOR TIE LINES AS A RESULT OF THE MARCH 15 TECHNICAL CONFERENCE

For the reasons mentioned above, EPSA maintains that there should be no further Commission action at this time concerning generator tie lines. While EPSA recognizes the difference between open access issues and reliability concerns, a FERC proceeding could very well predetermine the outcome of the ongoing NERC standards setting process. Further, of the two main solutions to emerge from the March 15 Technical Conference – an “OATT-lite” or an amendment to the LGIA – one was highly controversial and the other had only been fully contemplated by one of the seven panelists. There is certainly not a sufficient record based on the March 15 panel to change either the OATT or the

¹⁷ See NERC Project 2010-07 Website: http://www.nerc.com/filez/standards/Project2010-07_GOTO_Project.html; See also: Standards Announcement, Standards Authorization Request (SAR) Comment and Drafting Team Nominations Period Open, Project 2010-07: Generator Requirements at the Transmission Interface, http://www.nerc.com/docs/standards/sar/Stdz_Announce_Cmmnt-Pd_DT_Nominations_2010-07_GOTO_2010Feb12.pdf (“Standards Announcement”). Of note, the group working on the SAR is generally known in the industry as the GO TO team.

LGIA. EPSA appreciates the Commission taking the time to look into the issue, as how to treat generator tie lines has been the subject of several controversial proceedings at FERC; however, EPSA respectfully requests that the Commission take no further generic action at this time pending NERC activity on the issue.

In any case, and notwithstanding EPSA concerns regarding the ongoing NERC process, the Commission should address treatment of generator tie lines on a case-by-case basis rather than setting general regulatory requirements. Should this or other proceedings pertaining to generator tie lines proceed, EPSA reserves the right to advocate for a case-by-case Commission approach.

II. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission consider the comments herein and that no further action be taken at this time on the subject of generator tie lines.

Respectfully Submitted,



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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. May 5, 2011.



Nancy Bagot, VP of Regulatory Affairs