

Testimony of John Twitty
on behalf of
Transmission Access Policy Study Group (TAPS)
Before the Committee on Energy and Commerce Subcommittee on Energy
United States House of Representatives
Hearing on Examining the State of Electric Transmission:
Investment, Planning, Development and Alternatives
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Thank you for the invitation to testify regarding the important topic of Examining the State of Electric Transmission: Investment, Planning, Development and Alternatives. My name is John Twitty, and I am the Executive Director of TAPS—the Transmission Access Policy Study Group, an association of transmission dependent utilities in more than thirty-five states, promoting open and non-discriminatory transmission access.¹ Our membership includes municipal utilities, as well as a cooperative and an investor-owned utility. Some TAPS members are in areas served by a regional transmission organization (“RTO”), and a number of members have loads and diverse resources in multiple RTOs due to the RTO-membership decisions of large transmission owners. Other TAPS members are located in non-RTO regions.

As load-serving entities (utilities with a legal or contractual obligation to serve customers) dependent on the transmission facilities largely, if not entirely, owned by others, TAPS members recognize the importance of a robust transmission grid to competitive generation markets, and have long advocated policies to get needed transmission built.² But as transmission customers that must pay transmission rates to

¹ For additional information on TAPS, see <https://tapsgroup.org>.

² See TAPS, *Effective Solutions for Getting Needed Transmission Built at Reasonable Cost* (2004) (“TAPS White Paper”), available at: <http://www.tapsgroup.org/wp-content/uploads/2013/01/effectivesolutions2.pdf>; TAPS, *Inclusive Joint Transmission Ownership*

serve their load, TAPS members are also keenly aware of the need to ensure that necessary transmission expansion is achieved at reasonable cost. Consumers and businesses should not be burdened with transmission rates that are elevated by above-cost incentives that are not needed to attract investment or that fund unnecessary facilities.

We appreciate your focus on these issues that are crucial to the ability of load-serving entities to continue to provide the reliable, affordable electric service required for our Nation's social and economic vitality. My comments will focus on the direction Congress has already provided to the Federal Energy Regulatory Commission ("FERC" or "the Commission") through Section 217 of the Federal Power Act ("FPA"), and outline other steps that should be taken to better achieve that provision's goal of a robust transmission grid at reasonable cost designed to meet the reasonable needs of load-serving entities.

I. CONGRESS HAS INSTRUCTED FERC THAT GRID PLANNING AND EXPANSION SHOULD FOCUS ON THE REASONABLE NEEDS OF LOAD-SERVING ENTITIES

Section 217(b)(4) of the FPA, enacted as part of the Energy Policy Act of 2005, provides key congressional directives to FERC on transmission planning:

The Commission shall 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.

Section 217(b)(4) thus established Congress' clear guideposts to FERC as to transmission planning and expansion. FERC is directed to:

- a. Facilitate planning to meet the reasonable needs of load-serving entities to satisfy their service obligations; and
- b. Enable load-serving entities to secure long-term firm physical, or equivalent financial, rights for long-term power supply arrangements made or planned to meet those service obligations.

As recognized by the D.C. Circuit, "Section 217(b)(4) creates a requirement for the Commission . . ."³

Section 217(b)(4)'s directives translate directly into steps FERC can and should take regarding transmission planning and investment to assure that Congress' express intent is achieved; but that is not happening to the degree necessary to meet the Commission's obligations under the law. I will discuss several of these below.

A. Load-serving entities should have a seat at the table to ensure their reasonable needs are planned for

Through its Order 890 and Order 1000 rulemaking proceedings, FERC has required an open and transparent transmission planning process. In doing so, it has expressly recognized that this process is intended to be consistent with Section 217(b)(4).⁴

The Commission recently recognized the importance of open, inclusive and transparent processes to transmission planning when it found the planning process undertaken by certain PJM transmission owners to be unjust and unreasonable, and

³ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 90 (D.C. Cir. 2014) (" , not for utilities.").

⁴ Order 890-A, P 24 (stating that to "appropriately balance the needs of these various classes of transmission customers, including the transmission provider's native load, [load-serving entity] customers serving network load, and other firm users of the system . . . is entirely consistent with, if not expressly required by, FPA section 217").

inconsistent with the transparency and coordination principles required for a compliant planning process.⁵ As a result of these deficiencies, stakeholders did not have an opportunity to have meaningful input into the planning process. Similar concerns about the lack of transparency in the transmission planning process have been raised in other regions. For example, stakeholders in California have filed a complaint at FERC alleging that Pacific Gas and Electric is improperly developing 80 percent of its transmission projects without stakeholder input.⁶

TAPS supports the Order 890 and 1000 planning requirements, and urges Congress to continue its appropriate role in conducting oversight of FERC to ensure that these requirements are met; more is needed to ensure that Congress' Section 217(b)(4) mandates are fully satisfied. Specifically, more should be done to encourage joint transmission ownership arrangements. Under such arrangements, load-serving entities embedded in the transmission system have the opportunity to invest in their load-ratio share of the transmission grid; they have a seat at the “grown up” table in the planning process, so they can play an integral role in ensuring their load is being properly served with necessary infrastructure. Non-profit, public power load-serving entities also have no interest in “gold-plating” the transmission system, so including them in the transmission planning process helps to assure that the grid is robust and reliable, without imposing unnecessary costs.

⁵ *Monongahela Power Co.*, 162 FERC ¶ 61,129 (2018) (“PJM Order”).

⁶ *California PUC Complaint Targets PG&E Transmission Planning*, PowerMarketsToday (Feb. 7, 2017), https://www.powermarketstoday.com/public/California-PUC-complaint-targets-PGE-transmission-planning.cfm?utm_source=Real%20Magnet&utm_medium=Email&utm_campaign=108112161.

Such arrangements have a long track record of ensuring all load-serving entity needs are fully and fairly considered in the planning process. They also bring together diverse interests to expedite state siting and local permitting processes, thereby facilitating the construction of needed transmission. As detailed in TAPS' White Paper and Position Paper, such arrangements can take the form of an inclusive transmission-only company (or transcos), such as the Vermont Electric Power Company, formed in 1956, and the more recent example of the 2001-formed American Transmission Company in Wisconsin, Michigan, Minnesota, and Illinois.⁷ Inclusive shared system arrangements are another option with a long history of success in Georgia, Indiana, Minnesota, North Dakota, and South Dakota, and have more recently been established in Connecticut. Joint ownership arrangements also include inclusive arrangements for new facilities, such as 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. CapX investment now amounts to some \$2 billion and includes four 345-kV transmission lines and a 230-kV line.

The Commission itself has repeatedly recognized the value of these arrangements. For example in Order 1000, the Commission stated:⁸

We reiterate here our statement in Order No. 890 that we believe there are benefits to joint ownership of transmission

⁷ GridLiance's recent efforts to partner with public power and cooperatives in transmission investments provide another example of this type of arrangement.

⁸ Order 1000, P 776 (citing Order 890, P 593). *See also* Order 1000-A, P 81 (“[T]he Commission supports investment in transmission infrastructure by transmission dependent utilities.”).

facilities, particularly large backbone facilities, both in terms of increasing opportunities for investment in the transmission grid, as well as ensuring nondiscriminatory access to the transmission grid by transmission customers.

The Commission commented favorably on the benefits of such arrangements in its rulemakings implementing FPA Section 219's authorization of incentive-based rate treatments.⁹ The Commission's 2012 Policy Statement on Incentives "encourages incentives applicants to participate in joint ownership arrangements and agrees . . . such arrangements can be beneficial by diversifying financial risk across multiple owners and minimizing siting risks."¹⁰ The Policy Statement emphasizes risk-reducing (rather than rate-increasing) incentives by stating the Commission's expectation that applicants take all reasonable steps to mitigate risks before they seek an incentive return on equity, noting that "[e]vidence regarding whether an applicant for incentives considered joint ownership arrangements may be relevant in assessing whether the applicant took appropriate steps to minimize its risks during project development."¹¹ This encouragement, however, has not led to tangible, real world progress.

B. Above-cost rate incentives do not advance the objective of planning for a grid right-sized to meet the reasonable needs of load-serving entities

Section 217(b)(4) expressly anchors planning and expansion in meeting the *reasonable needs* of load-serving entities. Congress did not mandate a "build it and they

⁹ See, e.g., Order 679, P 354 ("[P]ublic power participation can play an important role in the expansion of the transmission system. . . . Encouraging public power participation in [new transmission projects] is consistent with the goals of Section 219 by encouraging a deep pool of participants.").

¹⁰ *Promoting Transmission Investment through Pricing Reform*, Policy Statement, 141 FERC ¶ 61,129, P 24 (2012).

¹¹ *Id.* at n. 33.

will come” approach. TAPS advocates for a robust grid that supports competitive markets and long-term transmission rights to support long-term power supply arrangements to meet service obligations, but is concerned about mounting transmission rates.

TAPS members in a number of regions have experienced rapid increases in the cost of transmission service. For example:

- American Electric Power, a utility serving customers in eleven states with an over 40,000-mile transmission network, has increased its zonal transmission rate from \$27/kW-year to \$54/kW-year between 2012 and 2017—meaning rate increases of about 15 percent per year. For PPL, another large transmission provider in PJM, the zonal transmission rate increase over the same period was even larger. It went from \$24/kW-year to \$61/kW-year, growing at about 20 percent per year.
- In New England, total regional network service transmission rates have increased from about \$15/kW-year in 2003 to just over \$103/kW-year in 2016, an average annual increase of about 16 percent.
- In the Southwest Power Pool, which extends from North Dakota to the Texas Panhandle, the average annual rate increased from \$5.97/kW-year in 2013 to \$13.14/kW-year in 2018. That means an average annual increase of about 17 percent.

While a portion of the increased transmission rates is justified by the need to maintain reliable service, TAPS is concerned that transmission has become a magnet for excessive investments. The potential for guaranteed, incentive-elevated returns on equity on transmission facilities that are low-risk investments, with full cost recovery ensured by formula rates, will encourage over-investment. FERC’s allowance of forward-looking formula rates eliminates any potential for returns to be diminished by regulatory lag. We attribute to this low-risk, high-return investment vehicle the increasing trend of transmission owners actively seeking to increase their regulated transmission

investments, while reducing their exposure to the risk associated with generation investments, particularly in deregulated markets.¹²

The FERC-allowed ensured returns on low-risk transmission investments are so rich that large transmission owners are reluctant to share the investment opportunity with others. In fact, transmission owners have litigated against each other for the lucrative opportunity to build.¹³ Despite Commission recognition of the benefits of joint ownership arrangements, large transmission owners have similarly rejected TAPS members' efforts to secure joint transmission ownership opportunities. As a result, small load-serving entities cannot offset the increasing transmission rates they must pay others against transmission revenues received for their transmission investment. Rather, the businesses and consumers that depend on these entities for service bear the full brunt of rising transmission rates.

TAPS is also concerned that the high-equity-return-fueled interest by transmission owners and others in investing in low-risk transmission may spur investment that is not necessary, or which—particularly given the changes underway in our electric system, including flat or declining load growth and the emergence of distributed energy resources—could become a stranded cost burdening our economy and our citizens as the industry further evolves. We support the Commission's ground-up examination of

¹² *Utilities Continue to Increase Spending on Transmission Infrastructure*, U.S. Energy Information Administration (Feb. 9, 2018), <https://www.eia.gov/todayinenergy/detail.php?id=34892>.

¹³ *See, e.g., Pioneer Transmission, LLC v. N. Ind. Pub. Servs. Co.*, 140 FERC ¶ 61,057 (2012) (FERC denying a complaint brought by Pioneer Transmission arguing that Northern Indiana Public Service Co. does not have ownership and investment rights associated with a 765 kV line in Indiana); *ITC Midwest, LLC v. Am. Transmission Co., LLC*, 142 FERC ¶ 61,096 (2013), *reh'g denied*, 152 FERC ¶ 61,155 (2015) (FERC granting a complaint brought by ITC Midwest arguing that American Transmission is not entitled to ownership and construction of the entirety of the facilities for a 136 mile, 345 kV transmission line).

potential grid resilience issues, and we recognize the importance of a robust transmission system to resilience.

However, “resilience” should not be permitted to serve as a blanket justification for excessive investment. There will always be opportunities to make the grid more resilient. The crucial question is what is the appropriate level of resiliency, consistent with Section 217(b)(4)’s directive to FERC to facilitate planning for the reasonable needs of load-serving entities, allowing them to continue to provide the reliable, affordable electric service on which our businesses and consumers depend.

C. Transmission planning should honor and support long-term rights for load-serving entities’ long-term power supply arrangements

As Congress recognized in enacting Section 217(b)(4), load-serving entities’ long-term power supply arrangements are a key contributor to reliability and resource adequacy, and should be supported by firm physical or equivalent financial transmission rights. Long-term power supply arrangements include not only the moment-by-moment deliveries of energy, but also the power or capacity to make the deliveries necessary for resource adequacy. FERC’s *pro forma* open access transmission tariff that has been in place since its seminal Order 888 rulemaking in the late 1990s defines firm transmission service as providing for delivery of capacity and energy.¹⁴

While FERC has implemented Section 217(b)(4), in part, by enabling load-serving entities in RTOs to secure long-term transmission rights (or equivalent financial rights) for the delivery of *energy* under their power supply arrangements, FERC has

¹⁴ Order 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,530 (Order 888-A tariff § 28.3); *Id.* (Order 888-A tariff § 28.2).

refused to apply Section 217's directives to ensure the delivery of the *capacity* associated with these power supply arrangements.¹⁵ As a result, load-serving entities may be unable to rely on these long-term power supply arrangements to meet resource adequacy requirements, even though their long-term firm transmission arrangements expressly provide for the delivery of both capacity *and* energy. Instead, these load-serving entities are effectively forced to purchase, at potentially higher prices, other capacity at their load.

This disruption of load-serving entities' reliance on their long-term power supply arrangements, including investments in long-lived generation, is a particular problem where a load-serving entity's generation is separated from the load to which it has long been dedicated by a "seam" created by the RTO choices of the large transmission owners in which the load-serving entity's load or generation is embedded. Although the load-serving entity's generation and load may have been in the same RTO when its long-term generation commitments were made, the ability of large transmission owners to switch RTOs (or join or leave an RTO) without protecting embedded load-serving entities from any adverse impacts may later separate the small load-serving entity's generation from the load to which it is dedicated. The Commission's acceptance of new RTO resource adequacy requirements that fail to fully preserve and honor the load-serving entities' long-term rights to firm delivery of its capacity to its load¹⁶ undermines these long-term

¹⁵ *Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,176 (2018); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,197, P 178 (2017); *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,041, P 19 (2015).

¹⁶ See *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,197, PP 175, 176, 178 (accepting new deliverability assessments that could cause load-serving entities to be deprived of their long-term resources supported by long-term firm transmission rights, effectively putting such load-serving entity uses that should have been planned for on the margin).

power supply arrangements and improperly leaves such small load-serving entities (and the businesses and consumers which rely on them) exposed to increased costs and risks.

II. KEY TAKEAWAYS

A. *Congress should reaffirm the importance of FPA Section 217(b)(4), and take FERC to task for not fully embracing its dictates*

As I've highlighted above, FPA Section 217(b)(4) provides a crucial framework for assessing policy choices pertaining to transmission planning and investment. In calling for planning for load-serving entities' *reasonable* needs, including long-term transmission rights for long-term power supply arrangements, the statute provides essential focus and constraints on the planning process. It points toward an inclusive planning process that produces a right-sized grid that meets the needs of load-serving entities to provide reliable service, at an affordable cost, to businesses and consumers. And it cautions against a planning process that produces grid investment that is not necessary to meet those reasonable needs. The Committee should exercise its appropriate oversight authority to ensure that FERC takes seriously Section 217's guideposts as it makes policy choices regarding planning and investment in the grid.

The Committee should also investigate whether Section 217(b)(4)'s second directive—that the Commission enable load-serving entities to secure long-term rights (physical or financial) for the delivery of their long-term power supply arrangements' energy and capacity—has been adequately adhered to. The Commission's failure to fulfill its mandate with regard to delivery of capacity, a key component of long-term power supply arrangements, undermines the very arrangements Section 217(b)(4) seeks to support and honor.

B. Equity incentives should be limited

As I explained, incentive rates of return—that pay investors more than the “base return on equity” (i.e., the level required to attract and maintain investors)—place a heavy burden on the nation’s businesses and consumers with no corresponding benefit. There is no shortage of entities seeking to invest in transmission, and thus no need for incentive rates of return. These incentive rates of return encourage over-investment in the grid and incentivize the exclusion of small load-serving entities from being allowed to make their share of needed grid investment, to the detriment of businesses and consumers.

FPA Section 219(a) authorized the Commission to grant incentive-based rate treatments “for the purpose of benefitting consumers.” In its 2012 Policy Statement on Incentives, the Commission has rightly emphasized risk-reducing incentives, and limited the circumstances when it would award equity incentives. Given the significant interest in investing in low risk, nearly assured recovery, transmission assets at the Commission’s “base” equity return that is intended to reflect the cost of attracting capital, there is no reason to expand the availability of equity return heighteners beyond those in FERC’s 2012 Policy Statement.

C. Joint transmission ownership arrangements should be more aggressively encouraged

Although FERC’s 2012 Incentive Policy Statement rightly recognizes the role of joint ownership arrangements as a way of demonstrating that an applicant for incentives is using appropriate mechanisms to minimize risks, it has not yielded expanded opportunities for transmission investment by load-serving entities ready, willing, and able to make such investments. Given the Commission-recognized benefits of joint ownership arrangements (including minimizing state siting and permitting risk, making it more

likely that the project will be built), more should be done to make opportunities for all load-serving entities in the footprint to invest in their load-ratio share of the transmission grid a reality. Doing so would achieve Section 217's purposes by enabling load-serving entities to directly participate in ensuring that their reasonable needs are satisfied, and would allow them to offset the increasing cost of transmission, benefiting consumers and businesses.

Those seeking transmission rate incentives, particularly incentive equity returns, to induce their investment should not be permitted to turn away load-serving entities in the footprint seeking to make their load-ratio investment in the grid. Instead, a showing that the applicant has offered such investment opportunities on reasonable terms should be a prerequisite for incentives.

In addition, the Order 1000 transmission planning process can be a more effective vehicle for inclusive transmission investments. Non-incumbent transmission developers, especially those (like GridLiance) that accommodate participation by small load-serving entities, should have a fair opportunity to compete to develop needed new transmission. Unfortunately, despite Order 1000's efforts to promote a competitive transmission development process and vigorous competition for those projects that have been open to competition, positive results have been limited. FERC Staff's own analysis shows that in 2016, no proposals submitted by nonincumbent transmission developers were selected by any of the transmission planning regions that had competitive proposal windows—a strong indication that the Commission's effort to foster more efficient and cost-effective

transmission development through competition is significantly flawed.¹⁷ Congress should encourage the Commission to revisit and reinvigorate the Order 1000 competitive transmission development process in a manner that will promote joint transmission ownership, as well as use competitive discipline to curb rising transmission cost.

Once again, I would like to thank the Committee for this opportunity and look forward to your questions.

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¹⁷ *2017 Transmission Metrics Staff Report* at 4, FERC (2017), available at: <https://www.ferc.gov/legal/staff-reports/2017/transmission-investment-metrics.pdf>.