UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators	Docket No. RM17-2-000

COMMENTS OF AMERICAN PUBLIC POWER ASSOCIATION AND NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

I. INTRODUCTION AND SUMMARY

The American Public Power Association ("APPA") and the National Rural Electric Cooperative Association ("NRECA") submit these comments on the Notice of Proposed Rulemaking ("NOPR") issued in the above-referenced proceeding on January 19, 2017.[1]

APPA and NRECA question the need for the Commission's proposed requirements for real-time uplift allocation. As described herein, the Commission has not justified imposing uniform requirements across all regional transmission organizations ("RTOs") and independent transmission operators ("ISOs") on just one aspect of uplift allocation, namely the allocation of real-time uplift to deviations. Moreover, the NOPR takes an unbalanced approach that implicitly accepts an allocation of uplift to load while subjecting the allocation to deviations to close scrutiny. If the Commission imposes any across-the-board requirements to RTOs/ISOs, then it should be conditioned on ensuring that any changes to uplift allocation methodologies must be based on a determination of

[1] *Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Notice of Proposed Rulemaking, 82 Fed. Reg. 9539 (Feb. 7, 2017).

cost-causation. Otherwise, the Final Rule in this proceeding will create unjust and unreasonable rates for load.

APPA and NRECA have long supported greater data transparency and do not oppose the transparency provisions of this NOPR. However, APPA and NRECA suggest that the Commission seek input from the RTOs and ISOs on the feasibility and timing of their ability to comply with the transparency provisions.

II. DESCRIPTION OF APPA and NRECA

APPA is the national service organization representing the interests of the nation's 2,000 not-for-profit, community-owned electric utilities. Public power utilities are in every state except Hawaii. They collectively serve over 49 million people and account for 15% of all sales of electric energy (kilowatt-hours) to ultimate customers. Public power utilities are load-serving entities, with the primary goal of providing the communities they serve with safe, reliable electric service at the lowest reasonable cost, consistent with good environmental stewardship. This orientation aligns the interests of the utilities with the long-term interests of the residents and businesses in their communities.

Public power utilities operate in all the Commission-approved RTOs. Many participate directly in the organized wholesale electric markets, while others are served by a wholesale supplier—sometimes a joint action agency or another public power utility—that participates in these markets. Accordingly, APPA has a vital interest in maintaining just and reasonable rates for transmission, capacity, energy, and ancillary services in RTO regions. APPA has participated actively in many Commission proceedings concerning RTO rates, services, market rules, and related issues.

The nation's member-owned, not-for-profit electric co-ops constitute a unique sector of the electric utility industry – and face a unique set of challenges. NRECA represents the interests of the nation's more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. Electric cooperatives are driven by their purpose to power communities and empower their members to improve their quality of life. Affordable electricity is the lifeblood of the American economy, and for 75 years electric co-ops have been proud to keep the lights on. Because of their critical role in providing affordable, reliable, and universally accessible electric service, electric cooperatives are vital to the economic health of the communities they serve.

America's Electric Cooperatives bring power to 75 percent of the nation's landscape and 12 percent of the nation's electric customers, while accounting for approximately 11 percent of all electric energy sold in the United States. NRECA's member cooperatives include 65 generation and transmission ("G&T") cooperatives and 840 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. The G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives, those cooperatives that provide power directly to the end-of-the-line consumer-owners. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. NRECA members generate approximately 50 percent of the electric energy they sell and purchase the remaining 50 percent from non-NRECA members. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

NRECA' s members participate in all of the organized wholesale electricity markets as well as single Balancing Authority Areas (BAAs) throughout the country. And for this reason, NRECA participates in a variety of Commission proceedings, rulemakings and notices of inquiries on behalf of its members affecting the operation of markets as well as the reliability of the BPS.

III. COMMENTS

In the NOPR, the Commission preliminarily finds that certain RTOs' means "of allocating the cost of real-time uplift to market participants who deviate from day-ahead market schedules (deviations) are inconsistent with cost-causation, which may distort market outcomes, potentially resulting in unjust and unreasonable rates."[2] Based on this finding, the Commission proposes that if an RTO/ISO allocates real-time uplift costs to deviations, it must do so based on cost-causation.[3] However, the Commission proposes that an RTO/ISO that does not currently allocate real-time uplift costs to deviations would not be required to do so.[4]

Second, the Commission also preliminarily finds that the current reporting of uplift payments, operator-initiated commitments, and transmission constraint penalty factors are unjust and unreasonable.[5] The Commission therefore proposes to require each RTO/ISO to report total uplift payments for each transmission zone, broken out by day and uplift category and for each resource on a monthly basis; report megawatts (MW) of

---

[2] NOPR at P 4.

[3] *Id.*

[4] *Id.*

[5] *Id.*at P 5.

operator-initiated commitments in or near real-time and after the close of the day-ahead market, broken out by transmission zone and commitment reason; and define in its tariff the constraint penalty factors, as well as the circumstances under which those factors can set locational marginal prices (LMPs), and the process by which they can be changed. [6]

APPA and NRECA herein comment broadly on each of these two portions of the NOPR without commenting on the specific aspects of the proposals.

1. The NOPR Should Address Uplift Allocation to Load that is Not Based on Cost-Causation.

The Commission explains in this NOPR that there are two primary means of allocating uplift and the associated economic principles. First, RTOs/ISOs may allocate uplift broadly to load, based on the principles that (1) load is the ultimate beneficiary of operator actions to ensure reliability and (2) load is currently the class of market participants best able to take such allocation without distorting market behavior. The Commission states that allocating uplift cost to load would minimize the potential for distorting market participant behavior since load is the market participant that is the least likely to be responsive to price.[7] In this view, wholesale demand response is relatively inelastic in response to changes in wholesale price of the magnitude that would result from uplift allocation. While the Commission refers to allocation to load as "beneficiary pays" for ease of reference, the justification for an allocation to load of avoiding distortions in market behavior is not based on a "beneficiary pays" principle.

[6] NOPR at P 5.

[7] NOPR at P 13.

Second, uplift can be allocated to the entities that caused the need for uplift, known as the "cost-causation" principle.[8] In the case of real-time uplift that is the subject of the NOPR, such cost-causers are generally market participants who deviate in real-time from their day-ahead schedule, which then leads the RTO/ISO to dispatch other resources in real-time to ensure reliability, and to compensate those resources via uplift for costs incurred in excess of the clearing price at that time. The Commission defines such deviations as "megawatt hour differences between a market participant's scheduled deliveries or receipts at particular points—as determined by the day-ahead market clearing process—and those amounts actually delivered or received in real-time that are not related to real-time economic or reliability-related operator."[9] The Commission presumes these cost-causers will change their behavior in response to changes in wholesale price resulting from the allocation of uplift to them.

According to the NOPR, the New York ISO ("NYISO") generally allocates uplift to load; the California ISO ("CAISO") to load, exports, or transmission owners (who pass it on to transmission customers); ISO New England ("ISO-NE") divides uplift between deviations and load; the PJM Interconnection ("PJM") allocates only non-reliability uplift to deviations, including virtual bids, and the Southwest Power Pool ("SPP") and Midcontinent System Operator ("MISO") try to identify and allocate uplift to its cause.[10]

Despite this variation in RTO/ISO practices, the NOPR only subjects the allocation of real-time uplift to deviations to any scrutiny, and accepts as a given the

[8] Load may still be allocated uplift under this second category, but only if it were identified as the cost-causer. The term "allocation to load" herein means an allocation across the board to load, possibly subject to criteria such as location or metered during a certain time frame, regardless of the cause of the uplift.

[9] NOPR at P 4.

[10] NOPR at P 19.

allocation of uplift to load. The Commission proposes to require that each RTO/ISO that currently allocates real-time uplift costs to deviations to change its allocation methods to those set forth in the NOPR, intended to "ensure that if an RTO/ISO chooses to allocate real-time uplift costs to deviations, it must do so consistent with cost-causation."[11] The Commission does not propose to address any other method of allocation of uplift cost allocation.[12] By ignoring all allocations of uplift except to deviations, the Commission runs the risk of discouraging a greater allocation of uplift to deviations.

The Commission proposes to limit the NOPR to allocation of real-time uplift costs to deviation because, according to the NOPR, "deviations may increase the need for operator actions that cause real-time uplift, such as additional unit commitments in real-time to replace a shortfall in generation or an increase in load compared to the day-ahead market solution."[13] However, the Commission also notes that RTOs/ISOs sometimes allocate uplift costs to load not because load benefits from or causes the uplift, but because load is viewed as the class of market participants "for whom an allocation is least likely to distort market behavior."[14] Despite the Commission's implicit approval of an allocation of uplift costs to load, there is no justification offered by the Commission for such an allocation in circumstances where load neither causes the uplift nor has been shown to benefit. In particular, there is no determination in the NOPR of the benefits received by load from real-time uplift and whether the amount of uplift cost allocated to load is commensurate with such benefits.

---

[11] NOPR at P 35.

[12] *Id.* at P 15.

[13] *Id...,*

[14] NOPR at P 13.

In the preceding price formation dockets, the Commission has focused largely on the goal of providing the "right" price incentive to induce optimal behavior by market participants. For example, in the Final Rule on energy offer caps, the Commission asserts that "LMPs that reflect the short-run marginal costs of production are particularly important during high price periods because they provide a signal to consumers to reduce consumption and a signal to suppliers to increase production or to offer new supplies to the market."[15] The Commission therefore reasoned in Order No. 831 that assigning these higher LMP costs to load will be justified by the benefit of improved incentives to demand and supply. In this NOPR, the Commission is similarly arguing that "the proposed reforms to uplift costs allocated to deviations should improve market participants' incentives to perform in real-time consistent with operator instructions and bid into the day-ahead market and submit day-ahead schedules consistent with expected real-time system conditions."[16]

Incentives can take the form of increased revenue, as in Order No. 831, or a greater or reduced allocation of costs, as in the NOPR uplift allocation proposal. The Commission appears to be making the case that market participants whose deviations are the cause of uplift will change their behaviors in response to their being allocated or not allocated a share of such uplift. If, as the Commission has argued, a central benefit of price formation is to provide proper incentives to elicit optimal behavior of market participants, allocating a share of costs to load, who cannot respond to such allocation, is not in sync with this central theory.

[15] *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 157 FERC ¶ 61,115 (2016) ("Order No. 831") at P 5.

[16] NOPR at P 7.

Even if the Commission were accepting a true "beneficiary pays" principle for leaving alone allocation of uplift to load, the Commission has not demonstrated that such a principle would apply here. Principles of cost-causation require that costs be allocated in a manner that is "roughly commensurate" with estimated benefits, and that those who do not benefit from a facility or service should not have to pay for it.[17] The Commission acknowledges that "beneficiary pays" here is based not on benefits or cost-causation, but is based at least in part on the notion that load is simply best suited to shoulder these costs. Having made this acknowledgement, the Commission should address allocations to load that may not be justified.

The Commission also does not delve into or justify whether payments of real-time uplift are a true benefit to load or instead a correction for an action that did not itself provide any benefits. For example, deviations may be caused by virtual transactions in the day-ahead and real-time market. Unless such a transaction can be shown to be providing a clear benefit to load as opposed to a profit to a financial entity, then load cannot be said to be a "beneficiary" of uplift that results only from an RTO/ISO action taken to ensure reliability following a virtual transaction-induced deviation. APPA and NRECA recommend that any Final Rule should require that each RTO/ISO investigate and report to the Commission on whether any of the uplift currently allocated broadly to load regardless of cost-causation can be allocated according to cost-causation principles.

---

[17] See the Comments of the Transmission Access Policy Study Group page 3, and in particular, the reference in Footnote 4 to *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) ("FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members."); *id.* at 477 (while "there will be *some* benefit to the midwestern utilities just because the network *is* a network," FERC's approval of the allocation of the costs of 500 kV transmission lines to those utilities is improper because "[n]othing in the Commission's opinions enables an answer to [the] question" of whether that benefit is enough "to justify the costs that FERC wants shifted to those utilities.").

2. The Commission Should Not Apply a Uniform Method for Determining Cost-Causation

The Commission proposes in this NOPR to categorize real-time uplift costs allocated to deviations into at least two categories based on the reason the uplift costs were incurred; a system-wide capacity category (resource commitments made to ensure sufficient system-wide online capacity to meet energy and operating reserve requirements); and a congestion management category (resource commitments to manage transmission congestion on specific constraints). Within each uplift category, uplift costs would then be allocated to a market participant's net ''harming'' deviations, *i.e.*, relevant ''harming'' deviations net of relevant ''helping'' deviations.[18]

As APPA and NRECA have recommended in prior price formation rulemaking proceedings, the Commission should not apply standardized methods to individual RTOs/ISOs with different characteristics and market rules. In this case, for those RTOs/ISOs that are already using a cost-causation principle to allocate at least a portion of uplift, the Commission has not justified any changes to those methodologies, which have often been the product of lengthy stakeholder processes. For example, MISO uses multiple methodologies to allocate uplift on a cost-causation principle, and reported to the Commission last year that the RTO does not expect to propose any changes to its uplift allocation methodology.[19] SPP states that it "and Stakeholders spent years on the development and theory behind allocation of uplift to cost-causation principles…. After analyzing and weighing all the options and seeing what works best in other RTOs/ISOs, SPP

[18] NOPR at P 35.

[19] Report of the Midcontinent System Operator, Docket AD14-14, March 4, 2016, P. 42-46.

feels we are aligned with the principles of uplift allocation to cost-causation."[20] The CAISO was in the middle of a year-long stakeholder process focused on the development of a real-time bid cost recovery cost allocation that would be based on deviations, but has suspended that process until the Commission adopts a final rule or takes other actions.[21] PJM stated that it "does not believe there is a nonsubjective way to determine if a deviation either 'helps' or 'harms' the system in isolation, therefore does not support the NOPR proposal."[22] In all of these cases, there is no evidence that the methodologies used by the RTOs/ISOs are not applying cost-causation principles and imposing a new methodology has not been justified. Moreover, as previously noted, by upsetting one side of the apple cart, these changes may put load at risk of a greater allocation of real-time uplift.

APPA and NRECA therefore recommend that the Commission require each RTO/ISO to demonstrate that its real-time uplift cost allocation rules are based on a determination of cost-causation, whether that cause is deviation or other causes. If not, then the Commission should require the RTO/ISO adopt the revisions summarized in Paragraph 35 of the NOPR for that portion of uplift found to be due to deviations. Regardless of whether the Commission accepts APPA and NRECA recommendation, any mandatory change in uplift allocation resulting from this NOPR must not produce any

---

[20] Report of the Southwest Power Pool on Price Formation Issues, Docket AD14-14, March 4, 2016, p. 20.

[21] Bid Cost Recovery Enhancements Draft Final Proposal Posted and Initiative Suspended, Market Notice, CAISO, February 3, 2017.

[22] Uplift Cost Allocation & Transparency Notice of Proposed Rulemaking Overview, Rebecca Stadelmeyer, Sr. Consultant, Market Services, Market Implementation Committee, PJM Interconnection, Slide 4, March 8, 2017.

unjust increased allocations to load. In other words, allocations to load must be based on cost causation.

Finally, the methodology that the Commission is recommending lacks clarification. Uplift is to be allocated hourly, but it is not clear whether the netting of helpful and harmful deviations is also hourly. For example, can a participant's deviations be "helpful" for 30 minutes and "harmful" for 30 minutes, and be a net zero for the hour? APPA and NRECA propose that were the Commission to require any uplift allocation changes, such details of the netting period be left to the RTOs/ISOs to determine.

3. APPA and NRECA Support Increases in Transparency

APPA and NRECA have long supported greater transparency in the RTO markets[23], and therefore do not object to the release of additional information as proposed in this NOPR for uplift amounts by resource, operator-initiated commitments, and transmission constraint penalty factors. While load-serving entities have tended to support greater data transparency, generators have argued that greater transparency can lead to increased collusion. In the NOPR, the Commission correctly points out that "RTO/ISO energy markets are mitigated, so concerns about the potential for collusion can be addressed through must offer requirements and market power mitigation rules."[24]

However, APPA and NRECA caution the Commission not to overstate the possible outcomes that may result from the provision of the additional information. For example, the NOPR states that: "Providing more detailed information about the uplift

[23] For example, see American Public Power Association Resolution 10-06, *In Support of Additional Transparency in Wholesale Electricity Markets Operated by Regional Transmission Organizations/Independent System Operators.*

[24] NOPR at P 88.

incurred to address a local reliability issue could potentially incent market participants to advocate for changes to the RTO/ISO's operational procedures or to undertake investments that could resolve the local reliability issue more efficiently (*e.g.,* install additional capacitors)."[25] Even if a merchant market participant might not be "incented" to undertake a cost of installing capacitors just because they had information about it, there is still value in making the information available. Therefore, APPA and NRECA support the transparency proposal, even if they do not fully agree with the Commission's reasoning. NRECA and APPA also support the Commission considering and taking into account comments from the RTOs/ISOs on the feasibility and timing of implementation of the transparency requirements.

IV. CONCLUSION

APPA and NRECA recommend that the Commission (1) require a report from each RTO and ISO on their ability to ensure that uplift allocated is caused by cost-causation; (2) require each RTO and ISO that does not currently allocate uplift by cost-causation to adopt the reforms in the NOPR for real-time uplift resulting from deviations; and (3) adopt the transparency requirements in the NOPR, taking into account comments from the RTOs/ISOs on the feasibility and timing of implementation of such revisions.

Respectfully submitted,

[25] NOPR at P 78.

/s/ Elise Caplan
Delia D. Patterson
Vice President of Regulatory Affairs and General Counsel
Elise Caplan
Senior Manager, Electric Market Analysis
American Public Power Association
2451 Crystal Drive, Suite 1000
Arlington, VA 22202
202-467-2900
dpatterson@publicpower.org
ecaplan@publicpower.org

/s/ Paul M. Breakman
Paul M. Breakman
Senior Director and FERC Counsel
Paul McCurley
Chief Engineer
National Rural Electric Cooperative Association
4301 Wilson Boulevard
Arlington, VA 22203
703-907-5844
Paul.breakman@nreca.coop
Paul.mccurley@nreca.coop

Adrienne E. Clair
Thompson Coburn LLP
1909 K Street, NW
Suite 600
Washington, DC 20006
(202) 585-6919
aclair@thompsoncoburn.com

Counsel to the National Rural Electric Cooperative Association

April 10, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2017, I have caused a copy of the foregoing to be served upon each party designated on the Official Service list in this proceeding.

/s/ Jillian Allen