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FEDERAL ENERGY
REGULATORY COMMISSION
Reform of Generator Interconnection
Procedures and Agreements

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Docket No. RM17-8-001

**REQUEST FOR CLARIFICATION AND REHEARING
OF THE AMERICAN PUBLIC POWER ASSOCIATION,
LARGE PUBLIC POWER COUNCIL AND THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, the American Public Power Association ("APPA"), Large Public Power Council ("LPPC") and the National Rural Electric Cooperative Association ("NRECA") (together, the "Non-Profit Utility Trade Associations")¹ ask for clarification and, in the alternative, rehearing of the requirement in Order No. 845² that Transmission Providers maintain network models and underlying assumptions on either their Open Access Same-Time Information ("OASIS") site or a password-protected website.

In addition, APPA and LPPC seek rehearing of the Commission's determination in Order No. 845³ to establish a "Surplus Interconnection Service" under the *pro forma* Large Generator Interconnection Procedures ("LGIP") and Large Generator Interconnection Agreement ("LGIA").⁴ APPA and LPPC disagree with the Commission's conclusion that enabling

¹ The Non-Profit Utility Trade Associations filed comments in response to the Commission's Notice of Proposed Rulemaking in this docket on April 13, 2017. *See* Comments of the American Public Power Association, Large Public Power Council and the National Rural Electric Cooperative Association (together, the "Non-Profit Utility Trade Associations") (filed Apr. 13, 2017).

² *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 at P 236 (Apr. 19, 2018).

³ *Id.*, PP 467, 483.

⁴ Rehearing of the Order No. 845 Surplus Interconnection Service issue is being joined only by APPA and LPPC. NRECA takes no position.

Interconnection Customers to transfer Surplus Interconnection Service will help “realize the benefits of an efficiently-used transmission system.”⁵ To the contrary, in a dynamic transmission planning environment the transmission capacity set-aside contemplated by the new rule will encourage needless transmission overbuilding, while positioning surplus capacity holders to secure monopoly rents. Nor is there any rate equity associated with this aspect of the new rule, since the cost of system upgrades supporting interconnection service is borne by all system customers under the generic pricing policy reflected in Order No. 2003, *et al.* Lacking logic and a substantial basis in evidence, this aspect of Commission’s rule should be reversed.

Recognizing that there will be some period after an interconnection is established during which surplus capacity can reasonably be expected to exist, APPA and LPPC are not opposed to modification of the rule to permit the transfer of surplus capacity for a five-year period.

Specifically, the Non-Profit Utility Trade Associations request the following:

Transparency Regarding Study Models and Assumptions:

- The Commission should clarify Transmission Providers should be permitted to designate information that they believe should be treated as Critical Energy/Electric Infrastructure Information (“CEII”), for the purpose of securing the information under revised section 2.3 of the *pro forma* LGIP.⁶
- The Commission should clarify that Transmission Providers may apply reasonable standards with respect to requests for access to confidential, commercially sensitive information or CEII before permitting such information to be provided under a confidentiality agreement under LGIP section 2.3.
- If the Commission’s intention was not to permit Transmission Providers to operate in this manner, the Non-Profit Utility Trade Associations ask for rehearing of the decision.

⁵ Order No. 845, P 483.

⁶ 18 C.F.R. § 388.113(c)(2).

Utilization of Surplus Interconnection Service:

- APPA and LPPC ask for rehearing of the Commission’s decision to establish a “Surplus Interconnection Service” under the *pro forma* LGIP and LGIA. They disagree with the Commission’s conclusion that enabling interconnection customers to transfer Surplus Interconnection Service will help “realize the benefits of an efficiently-used transmission system.”⁷

DISCUSSION

I. TRANSPARENCY REGARDING STUDY MODELS AND ASSUMPTIONS

A. Background

Responding to the Notice of Proposed Rulemaking (“NOPR”) in this docket,⁸ the Non-Profit Utility Trade Associations filed comments expressing concern that the proposal in the NOPR to revise LGIP section 2.3 to require Transmission Providers to “maintain network models and underlying assumptions on [their] OASIS site for access by OASIS users”⁹ may compromise security of the grid by “providing unrestricted access to sensitive power flow information and transmission operational data.”¹⁰ The Non-Profit Utility Trade Associations explained that such models and assumptions contain, among other things, details regarding the amount of energy that passes through any particular part of a Transmission Provider’s system, including power flow information enabling third parties to evaluate strengths and vulnerabilities.¹¹ The Non-Profit Utility Trade Associations expressed the concern that the

⁷ Order No. 845, P 483.

⁸ *Reform of Generator Interconnection Procedures and Agreements*, Notice of Proposed Rulemaking, 157 FERC ¶ 61,212 (2016).

⁹ NOPR, P 119.

¹⁰ Comments of the Non-Profit Utility Trade Associations at 13-14.

¹¹ *Id.* at 14.

OASIS system is not sufficiently secure to house such sensitive information, nor was the OASIS credentialing process designed to protect CEII.¹²

Addressing the security concerns expressed by the Non-Profit Utility Trade Associations and others, the Commission in Order No. 845 revised proposed LGIP section 2.3 to provide that “Transmission Provider[s] shall maintain network models and underlying assumptions on either [their] OASIS site *or a password-protected website*.”¹³ The Commission further noted that LGIP section 2.3 “permits transmission providers to require a confidentiality agreement for anyone that wishes to access ‘commercially sensitive information or [information that has been designated as CEII]’ that may be posted in the base case data on the transmission provider’s OASIS site or password-protected website.”¹⁴

While the Non-Profit Utility Trade Associations appreciate the steps the Commission has taken, the clarifications they seek here are important in ensuring that the scope of sensitive information for which FERC has extended protection is as broad as is needed, and that access to this information is subject to Transmission Providers’ application of reasonable standards.

B. Request for Clarification

- 1. The Commission should clarify that Transmission Providers are permitted to designate information that they believe should be treated as Critical Energy/Electric Infrastructure Information (“CEII”), for the purpose of securing the information under revised section 2.3 of the LGIP.**

Revised LGIP section 2.3 provides that Transmission Providers are “permitted to require that Interconnection Customers, OASIS site users, and password-protected website users sign a confidentiality agreement before the release of commercially sensitive information or [CEII] in

¹² *Id.*

¹³ Order No. 845, P 236 (emphasis added).

¹⁴ *Id.*, PP 240-41.

the Base Case data.”¹⁵ While the Commission’s decision to allow Transmission Providers to maintain network models and underlying assumptions on a password-protected website, and to permit Transmission Providers to require entities to sign a confidentiality agreement is useful in helping to protect sensitive information, the Non-Profit Utility Trade Associations ask the Commission to clarify that its intention is to permit Transmission Providers to protect data that would qualify for CEII treatment if it were submitted to FERC, as the definition of CEII under FERC regulations specifies.

The Non-Profit Utility Trade Associations’ concern is triggered by the passage in Order No. 845 indicating that the Commission understands the reference to CEII to be limited to “information that has been designated as CEII” by the Commission pursuant to its regulations governing CEII.¹⁶ As the Commission notes, (P 241), “the Commission’s CEII regulations in 18 C.F.R. section 388.113 only govern ‘the procedures for submitting, designating, handling, sharing, and disseminating [CEII] *submitted to or generated by the Commission.*”¹⁷ Under the Commission’s regulations, while an entity submitting information to the Commission may request that it be treated as CEII, the information is not formally designated as CEII until there is a request to access the information and the Commission has granted CEII status.¹⁸

For this reason, there is a universe of modeling and assumption information implicated by revised LGIP section 2.3 that meets the substantive definition of “critical energy infrastructure information,”¹⁹ but has not technically been determined to be CEII. This substantially limits the effectiveness of the opportunity revised LGIP section 2.3 offers to protect sensitive data.

¹⁵ Order No. 845, P 236; LGIP sec. 2.3.

¹⁶ Order No. 845, P 241.

¹⁷ *Id.*, P 241 (emphasis in original).

¹⁸ 18 C.F.R. § 388.113(d).

¹⁹ 18 C.F.R. § 388.133(c)(2).

With this in mind, the Non-Profit Utility Trade Associations ask the Commission to clarify that information may be protected under LGIP section 2.3 if the Transmission Provider determined that it would meet the substantive criteria for CEII had it been submitted to the Commission for that determination. As specified in section 388.113(c)(2) of the Commission's regulations, that criteria specifies that the information "[r]elates details about the production, generation, transportation, transmission, or distribution of energy" and "[c]ould be useful to a person in planning an attack on critical infrastructure."²⁰ In the limited instances where questions regarding the exercise by a Transmission Provider of its judgement are raised, the Commission's complaint procedures should be adequate to provide resolution.

- 2. The Commission should clarify that Transmission Providers may apply reasonable standards to requests for access to confidential, commercially sensitive information or CEII before such information is provided under a confidentiality agreement under LGIP section 2.3.**

While the protection for sensitive information offered through the confidentiality agreement contemplated by LGIP section 2.3 is useful and appropriate, the Non-Profit Utility Trade Associations remain concerned that the language of LGIP section 2.3 is so broad as to allow *any* entity for *any* reason to obtain network models and underlying assumptions from the Transmission Provider. On the surface of that provision, a confidentiality agreement will be offered to all "OASIS site users" which, without further expressly limiting criteria, could well include unknown entities that might pose a security risk.

To mitigate this risk, the Non-Profit Utility Trade Associations ask the Commission to clarify that its intention is to permit Transmission Providers to apply reasonable standards to requests submitted by entities seeking to enter into confidentiality agreements before information is released. The Commission's CEII regulations may serve as a useful framework in this regard.

²⁰ 18 C.F.R. § 388.113(c)(2).

Those regulations require a requester to provide its name and contact information; a statement of need; and, when the request is made on behalf of an organization, a statement that the requester is authorized to make the request on behalf of the organization and that all individuals in the organization will be bound by executed non-disclosure agreements.²¹ Some variation of the CEII Request Form located on the Commission's website could serve as a useful device for Transmission Providers to obtain such information from a requesting entity.²² The Non-Profit Utility Trade Associations suggest that requests for information under LGIP section 2.3 should be subject to a similarly limited due diligence review of the requesting entity and the reason for seeking access to the information.

The Non-Profit Utility Trade Associations note that it is commonly understood in security circles that identify verification through personal contact prior to the release of information adds a substantial layer of protection. In this case, the Non-Profit Utility Trade Associations' expectation is that the Transmission Provider's review would very likely be limited to ascertaining that the entity seeking the information is a recognized industry participant, or otherwise has a legitimate commercial, academic or governmental interest in accessing the data. The potential for anti-competitive mischief through such review seems quite limited, and certainly manageable through the Commission's complaint procedures, and possibly the enforcement hotline.

C. If the Commission declines to grant the clarifications requested above, the Non-Profit Utility Trade Associations seek rehearing.

The Non-Profit Utility Trade Associations are hopeful that the Commission will find the clarifications requested above to be within the intention of the final rule in this docket. If that is

²¹ 18 C.F.R. § 388.113(g)(5).

²² See CEII Request Form (Form OMB No. 1902-0197), available at <https://www.ferc.gov/resources/guides/filing-guide/ceii-request/ceii-req-form.doc>.

not the case, the Non-Profit Utility Trade Associations ask the Commission to grant rehearing on the ground that the decision would otherwise be arbitrary and capricious.

To this end, pursuant to Rule 713(c)(1) and (2) of the Commission's Rules of Practice and Procedure,²³ the Non-Profit Utility Trade Associations provide the following statement of issue and specification of error:

- The Commission erred in requiring Transmission Providers to post network models and underlying assumptions on internet-facing systems without permitting them adequately to protect information that if disclosed may be used to threaten critical infrastructure. Without such protection, Order No. 845 is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A).

II. UTILIZATION OF SURPLUS INTERCONNECTION SERVICE

A. Background

Responding to the NOPR, the Non-Profit Utility Trade Associations filed comments objecting to FERC's proposal to establish an expedited process for interconnection customers to utilize, or to transfer, surplus interconnection service at existing generating facilities. Non-Profit Utility Trade Associations expressed the concern that in a dynamic transmission planning environment, it is incorrect to assume that interconnection capacity that may at one point in time be assumed to be surplus will remain so.²⁴ The Non-Profit Utility Trade Associations were further concerned that conferring on interconnection customers a contractual right to transfer surplus capacity may call upon utilities to spend funds for the purpose of preserving capacity held by interconnection customers for the sole purpose of engaging in further marketing opportunities.²⁵

²³ 18 C.F.R. §§ 385.713(c)(1) and 385.713(c)(2).

²⁴ Comments of the Non-Profit Utility Trade Associations at 24-26.

²⁵ *Id.*

The Commission dismissed these concerns in Order No. 845, stating that interconnection customers' ability to transfer surplus capacity is needed "[i]n order to realize the benefits of an efficiently-used transmission system"²⁶

B. Statement of Issue and Specification of Error

Pursuant to Rule 713(c)(1) and (2) of the Commission's Rules of Practice and Procedure,²⁷ APPA and LPPC provide the following statement of issue and specification of error:

- The Commission erred in failing to establish a substantial basis in evidence for concluding that allowing an interconnection customer to transfer any surplus interconnection service will "realize the benefits of an efficiently-used transmission system." (P 483). 16 U.S.C. § 8251(b); 5 U.S.C. § 551, *et seq.*; *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 528 (D.C. Cir. 2010).

C. Request for Rehearing

The Commission's Surplus Capacity decision builds on the premise that Transmission Providers, when considering interconnection applications, must study the implications of generation output at full capacity, and assume that each interconnection customer is fully using its interconnection service when studying new requests.²⁸ On that basis, the Commission then built a right under the tariff for interconnection customers to market surplus capacity, thus obligating Transmission Providers to serve new customers licensed to use ostensibly available capacity.

APPA and LPPC take issue with the Commission's thinking for several related reasons. First, the rule fails to account for the dynamic nature of the transmission planning and operating environment. While it is true that transmission planners build certain assumptions into their

²⁶ Order No. 845, P 483.

²⁷ 18 C.F.R. §§ 385.713(c)(1) and 385.713(c)(2).

²⁸ Order No. 845, PP 468-71 (citing Order No. 2003).

models regarding prior use of the system, power flow analyses will over time reflect the dynamic nature of the transmission grid and actual transmission usage. In fact, the Commission explicitly recognizes this in stipulating that studies for the use of Surplus Interconnection capacity will focus on available reactive power, short circuit fault duty, stability analyses and “any other appropriate studies.”²⁹ Accordingly, building into planning models the assumption that capacity that has long lay idle may at any time be actively marketed by interconnecting customers alters the planning environment and will likely require additional investment.

Second, Order No. 845 fails adequately to appreciate the economic position in which the Commission places interconnection customers looking to market surplus capacity, and the associated cost to the grid. Given the lumpy nature of transmission investment, the interconnection capacity needed by any given interconnection customer may be effectively free (or close to it), when initially secured, only later to become quite valuable, when an ensuing interconnection application is considered. Permitting an interconnection customer an ongoing opportunity to remarket interconnection service permits the value of the associated capacity to be set at the cost of system expansion, regardless of the cost to the interconnection customer. This would be an unearned windfall for the initial interconnection customer, and holds the potential for it to assess monopoly rent meaningfully in excess of its cost.

Moreover, should the original interconnection customer choose not to release its capacity, the utility would be required needlessly to build out the grid for an ensuing customer, with the resulting cost borne initially by new interconnecting customers, and later by the system as a

²⁹ Order No. 845, P 461 (quoting new LGIP sec. 3.3.1).

whole, as costs are rolled into system-wide rates under FERC's generic interconnection pricing policy.³⁰

It is particularly difficult to understand the equitable case for permitting interconnecting customers to transfer surplus interconnection capacity when one considers the implication of the Commission's pricing policy under Order No. 2003. As the Commission has recognized, that policy effectively means that all system customers are responsible for the cost of network upgrades associated with interconnection applications on a rolled-in cost basis.³¹ This observation undermines any equitable claim that interconnection customers may have to the financial benefit of transmission capacity associated with network upgrades for which they have provided initial funding and may think of as their own. In fact, it is paid for by all system customers, and the effect of the Commission's new rule will be to drive up the cost of service costs for them all.

Recognizing that there will be some period after an interconnection is established during which surplus capacity can reasonably be expected to exist, APPA and LPPC are not opposed to modification of the rule to permit the transfer of surplus capacity for a period of five years.

With no basis for concluding that this aspect of the rule will engender more efficient use of the transmission grid, and legitimate concern that it will drive up system-wide costs and give

³⁰ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 130-33 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 9, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007). Under the Commission's interconnection pricing policy, interconnection customers are called upon initially to fund transmission upgrades, those funds are returned within not later than a five year period through transmission credits or a refund.

³¹ *Id.* Both Energy Resource Interconnection Service ("ERIS") and Network Resource Interconnection Service ("NRIS") may be associated with refundable costs for needed network upgrades, though the integration of generation with NRIS is more extensive. Order No. 2003-A, PP 499-501.

rise to potential gamesmanship, APPA and LPPC believe the provision should be withdrawn for lack of substantial evidence.

CONCLUSION

For the reasons articulated above, the Non-Profit Utility Trade Associations request that the Commission grant clarification, and, in the alternative, rehearing with respect to the Order No. 845 provisions addressing posting of study models and assumptions. APPA and LPPC further request that the Commission grant rehearing of its decision in Order No. 845 to establish a “Surplus Interconnection Service” under the *pro forma* LGIP and LGIA, as discussed above.

Respectfully submitted,

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Dated: May 21, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 2018, I have caused the foregoing to be served upon all parties listed on the Official Service List in this proceeding.

/s/ _____
Jonathan P. Trotta