

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

Managing Transmission Line Ratings

)

Docket No. RM20-16-000

**REQUEST FOR REHEARING OF THE
MISO INDEPENDENT MARKET MONITOR**

Pursuant to Section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 825l, and Rule 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713, Potomac Economics, Ltd., respectfully seeks rehearing of the Commission’s December 16, 2021 *Order No. 881 Managing Transmission Line Ratings* in the above-captioned proceeding (the “Final Rule”.) *See* 177 FERC ¶ 61,179 (2021). The Final Rule revised both the *pro forma* Open Access Transmission Tariff and the Commission’s regulations under the FPA to improve the accuracy and transparency of electric transmission line ratings.

As is explained below, the Final Rule’s change from the NOPR’s phased implementation schedule is based on multiple determinations that are arbitrary and capricious and are not the product of reasoned decision making. The Final Rule: (i) fails to make, or to adequately explain, rational connections between the facts in the record and its conclusions; (ii) departs from well-established Commission precedent and policy without adequate explanation. To address these deficiencies, we respectfully request that the Commission grant rehearing and require a more reasonable implementation schedule as described herein.

I. NOTICE AND COMMUNICATIONS

All correspondence and communications in this matter should be addressed to:

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II. SPECIFICATION OF ERRORS AND STATEMENT OF ISSUES

In accordance with Rule 713(c),¹ Potomac Economics submits the following specifications of error and statement of the issues on which it seeks rehearing of the Final Rule:

1. The Final Rule is arbitrary and capricious because it fails to articulate a reasoned basis for its modified schedule for implementing ambient adjusted ratings (“AARs”) and the associated delay in ensuring just and reasonable wholesale rates. *New England Power Generators Association, Inc. v. FERC*, 881 F.3d 202, 210 (D.C. Cir. 2018) (citing *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983)).
2. The Final Rule is arbitrary and capricious because it fails to articulate a reasoned basis for not requiring the implementation of emergency ratings in a more timely manner to ensure just and reasonable wholesale rates. *New England Power Generators Association, Inc. v. FERC*, 881 F.3d 202, 210 (D.C. Cir. 2018) (citing *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983)).

III. BACKGROUND

Potomac Economics is the Commission-approved independent market monitor for the Midcontinent Independent System Operator (“MISO”), the New York Independent System Operator (“NYISO”) and ISO New England. Potomac Economics filed initial comments in this proceeding on March 22, 2021 (“Potomac Initial Comments”), and reply comments on April 22, 2021 (“Potomac Reply Comments”), and was duly granted party status by the Commission.

¹ 18 C.F.R. § 385.713(c).

Potomac Economics' Initial Comments provided support for the Notice of Proposed

Rulemaking's ("NOPR") preliminary finding that transmission line ratings:

directly affect the cost of wholesale energy, capacity and ancillary services, as well as the cost of delivering wholesale energy to transmission customers. Because of those relationships, inaccurate transmission line ratings may result in Commission-jurisdictional rates that are unjust and unreasonable.²

Potomac's Initial Comments also provided detailed evidence that AARs and Emergency ratings in the MISO market are necessary to achieve just and reasonable rates. We also showed that AARs and emergency ratings are not employed on a large share of binding transmission facilities and the substantial potential savings from increasing their use.³ The Commission made findings consistent with this evidence in its Final Rule. The Final Rule correctly finds:

that transmission line ratings, and the rules by which they are established, are practices that directly affect the rates for the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce (hereinafter referred to collectively as "wholesale rates"). Thus, the Commission has jurisdiction over transmission line ratings. We further find that, because of the relationship between transmission line ratings and wholesale rates, inaccurate transmission line ratings result in wholesale rates that are unjust and unreasonable.⁴

In the NOPR, the Commission rejected the arguments that AARs should be required only on a subset of facilities. The Commission recognized that there was a benefit in prioritizing the requirement for AARs on:

...historically congested lines within one year from the date of the compliance filing for implementation of any final rule, and on all other lines within two years from the date of the compliance filing for implementation of any final rule....we recognize that a staggered implementation schedule would allow RTOs/ISOs and transmission owners to focus implementation on transmission lines where AAR implementation is likely to provide the most benefits and gain operational experience with the new AAR requirements prior to full implementation.⁵

² NOPR, 173 FERC ¶ 61,165 at PP 26, 38.

³ Potomac Initial Comments at p. 8-15.

⁴ Final Rule, 177 FERC ¶ 61,179 at PP 21, 29.

⁵ NOPR, 173 FERC ¶ 61,165 at PP 58, 92,94.

This finding recognizes that implementing rating adjustments requires time and resources. Hence prioritizing the near-term implementation on the most congested facilities is reasonable and consistent with the record in this proceeding. The Final Rule provides the following limited discussion on modifying the NOPR's proposal to adopt a phased-in implementation of AARs:

We find that applying the AAR requirements to all transmission lines will both ensure that wholesale rates remain just and reasonable and strike an appropriate balance between benefits and challenges of AAR implementation. For this reason, we do not adopt the phased-in implementation schedule proposed in the NOPR in which a transmission provider would initially implement AARs on only historically congested lines.⁶

In summary, in the Final Rule, FERC has recognized that AARs and Emergency ratings are needed for accurate ratings and just and reasonable rates consistent with the requirements of the FPA. Yet, with almost no discussion, the Final Rule delays compliance requirements on the highest priority "historically congested" facilities by *two years* and on the remaining facilities by one year.

IV. REQUEST FOR REHEARING

The "arbitrary-and-capricious" standard is firmly rooted in the Administrative Procedure Act⁷ and decades of well-known judicial precedent. It requires the Commission to 'examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'⁸

⁶ Final Rule, 177 FERC ¶ 61,179 at ¶ 64 at p. 84.

⁷ Under the Administrative Procedure Act, an agency action, finding, or conclusion can be set aside where it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or is "unsupported by substantial evidence" 5 U.S.C. § 706(2)(A).

⁸ *New England Power Generators Association, Inc. v. FERC*, 881 F.3d 202, 210 (D.C. Cir. 2018) (citing *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983)).

As discussed below, the Final Rule failed to meet these standards in two specific instances. In each instance, the Commission made a determination that is not reasonably supported by record evidence and that cannot be shown to be reasonable. The Commission therefore also necessarily failed to provide a reasoned explanation of its inherently flawed determinations. These failures render the December 16 Order arbitrary and capricious.

A. The Final Rule is arbitrary and capricious because it fails to articulate a reasoned basis for its modified schedule for implementing AARs and the associated delay in ensuring Just and Reasonable wholesale rates.

The Commission made a well-reasoned finding that failing to adjust transmission ratings for changes in ambient temperatures and failing to utilize emergency ratings can lead to wholesale rates that are unjust and unreasonable. Hence, in order to satisfy the requirements of the Federal Power Act, the Commission should require implementation of AARs and emergency ratings as soon as practicable. To allow continued use of inaccurate ratings for far longer timeframes periods than necessary to correct the ratings inaccuracies will unjustifiably perpetuate unjust and unreasonable wholesale rates as the Commission found.

The only possible justification for perpetuating unjust and unreasonable wholesale rates in this manner would be if it were infeasible to require AARs and emergency ratings more quickly than the 3-year deadline established in the Final Rule. However, there is no credible evidence in the record that AARs for individual transmission facilities cannot be implemented relatively quickly. In fact, we described in our initial comments the program implemented by Entergy, which resulted in AARs being implemented on many constraints relatively quickly.⁹ Further, we showed that the bulk of the benefits available from implementing AARs are associated with a small number of constraints – two-thirds of the benefits can be achieved on roughly twenty

⁹ Initial Comments of Potomac Economics at p. 9.

constraints.¹⁰ Therefore, a phased implementation that focuses on the most congested transmission constraints was both reasonable and fully supported by the record in this proceeding.

The only rationale provided in the Final Order for the much longer implementation schedule is that:

...applying the AAR requirements to all transmission lines will both ensure that wholesale rates remain just and reasonable and strike an appropriate balance between benefits and challenges of AAR implementation...for this reason, we do not adopt the phased-in implementation schedule proposed in the NOPR in which a transmission provider would initially implement AARs on only historically congested lines.¹¹

This purported justification is illogical and is not reasoned decision-making. While it may require three years to implement AARs on all constraints because one system could include hundreds or even thousands of constraints, congestion generally occurs on a very small share of these constraints. If each transmission owner were to simply begin adjusting on one highly-congested constraint per month, the vast majority of the AAR benefits would be captured and the associated unjust and unreasonable wholesale rates would be remedied in less than one year. MISO and others expressly recognized the fact that most of the effects of failing adjust transmission ratings for ambient temperatures occur on a small number of constraints: “MISO’s experience in examining the issues raised in the NOPR is that the vast majority of the benefit to AARs will be to address real-time market congestion.”¹²

To delay implementation on the highest priority facilities for two years in order to pursue a single implementation of AARs on all constraints is simply not reasonable and will perpetuate unjust and unreasonable wholesale rates much longer than necessary. We respectfully suggest

¹⁰ Id. at p. 8.

¹¹ Final Rule at para 84, p. 64.

¹² Initial Comments of MISO at p. 17.

that the Commission grant rehearing and modify its proposed implementation schedule to require that AARs be implemented within one year of the Final Rule on a designed number of the most congested constraints that are not currently being adjusted. While full implementation may require a longer total timeframe than proposed in the NOPR, we believe a phased approach to initially implement AARs on the most congested constraints within one year consistent with the NOPR proposal is reasonable, highly beneficial, and fully supported by the record.

B. The Final Rule is arbitrary and capricious because it fails to articulate a reasoned basis for not requiring the implementation of emergency ratings in a more timely manner to ensure Just and Reasonable wholesale rates.

As described above, the Final Rule indicates it seeks to “strike an appropriate balance between benefits and challenges of AAR implementation.”¹³ In attempting to strike this balance, the Commission requires the provision and use of emergency ratings on the same implementation timeframe as AARs. This is not reasonable because the emergency rating for most facilities is either known or can be readily determined by transmission owners based on the information that routinely possess on their transmission facilities.

Hence, while there may be “challenges” or resources required to provide AARs, this is not generally true of emergency ratings. Emergency ratings, unadjusted for ambient conditions, can be provided under most RTOs’ current systems with no significant modifications. We showed in our initial comments that doing so would provide substantial benefits and lead to substantial progress toward addressing the unjust and unreasonable wholesale rates cited by the Commission associated with inaccurate ratings.

Emergency ratings are particularly important because the vast majority of real-time constraints are first-contingency constraints where emergency ratings are presumptively

¹³ Final Order at p. 64.

appropriate. This includes 90 percent of the binding constraints on the MISO system.¹⁴

Therefore, it is unreasonable for the Commission not to require near-term implementation of fixed emergency ratings pending the implementation of AARs given that:

- The failure to utilize emergency ratings on contingency constraints is a major contributor to unjust and unreasonable wholesale rates;
- The information needed to provide unadjusted emergency ratings is readily available for most constraints; and
- There are no dependencies between providing fixed seasonal emergency ratings and later adjusting such ratings for changes in ambient temperatures.

Because of the ease of implementation of fixed emergency ratings, allowing this requirement to be suspended for up to three years, resulting in inflated congestion costs and curtailments of low-cost generation, is indisputably unreasonable, unsupported by the record in this proceeding, and has not been reasonably justified or explained by the Commission.

Therefore, we respectfully recommend that the Commission revise its implementation schedule to require near-term implementation of reliable emergency ratings in the real-time markets, day-ahead markets, and forward markets and planning studies. At a minimum, such ratings should be implemented for constraints that have been congested in recent years, subject to an exception when it is demonstrated that post-contingency actions cannot reduce flows to normal levels in a reasonable timeframe.

V. CONCLUSION

In summary, the record does not support the Commission's conclusion that establishing a 3-year implementation timeframe for AARs and emergency ratings is reasonable. In fact, the record demonstrates the opposite – that the phased implementation schedule whereby emergency

¹⁴ See initial comments of MISO at p. 25.

ratings and AARs would be implemented on the most congested transmission facilities is the only reasonable and lawful option.

Inaccurate transmission ratings are leading to hundreds of million of dollars in wasteful congestion and inefficient curtailments of wind resources and other low-cost resources. The Commission rightfully found that these results are not just and reasonable. Therefore, the failure to correct these inaccurate ratings in a timely manner cannot be just and reasonable. Remedying most of the adverse effects of inaccurate ratings could be accomplished relatively quickly by implementing fixed emergency ratings and AARs on a limited number of the most-congested facilities. Allowing these unjust and unreasonable adverse effects to continue for the next three years by establishing a single implementation timeframe for all of the changes required under the Final Rule is not reasoned decision-making.

For the reasons set forth above, the Commission should grant rehearing of the Final Rule and require phased implementation schedules. The Commission should require Compliance filings to propose alternative schedules up to three years only for the subset of requirements that cannot be achieved in the first year. This is consistent with the record and is required to restore just and reasonable wholesale rates as soon as practicable.

Respectfully submitted,

/s/ David B. Patton

David Patton
President, Potomac Economics, Ltd.

January 18, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day e-served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 18th day of January 2022 in Fairfax, VA.

/s/ David B. Patton
