

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

<b>Western Grid Development, LLC</b>	)	
	)	<b>Docket No. EL10-19-000</b>
	)	
	)	

**MOTION FOR LEAVE TO INTERVENE AND COMMENT  
OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), 18 C.F.R. §§ 385.211 and 385.214 (2009), the Electric Power Supply Association (“EPSA”) respectfully moves to intervene in the above-captioned proceeding and comments on the petition filed thereon on November 20, 2009, by Western Grid Development (“WGD”).<sup>1</sup> In the Petition, WGD asks the Commission to declare, by January 4, 2010, that certain Energy Storage Devices (“ESDs”) are transmission facilities for purposes of rate recovery and entitlement to incentive rate treatment.

WGD’s request to qualify storage facilities as transmission represents a new model and may set a precedent for how other RTOs/ISOs or transmission operators treat similar technology. To date, RTOs/ISOs have treated storage providers as generators, eligible to sell energy and ancillary services at market-based rates, and have sought to remove obstacles to participation for such entities in markets, especially ancillary services markets.<sup>2</sup> As generators,

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<sup>1</sup> See Petition for Declaratory Order of Western Grid Development, LLC, Docket No. EL10-19-000 (filed Nov. 20, 2009) (“WGD Petition”).

<sup>2</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,135 (2009) (accepting tariff revisions intended to integrate energy storage devices into organized regulation markets).

storage providers act in much the same way generators act and were subject to the same rules. Classifying storage devices as transmission facilities has vastly different implications.

WGD argues that, as transmission facilities, the storage facilities would be subject to transmission rate incentives from the Commission and cost-based rate recovery. But classifying storage devices as transmission facilities raises key questions about energy ownership, settlement and impacts on market prices. Before the Commission rules on the merits of WGD's Petition, it should fully explore the impacts of classifying energy storage as transmission in light of WGD's Petition and in consideration of other existing models for the treatment of storage. Because this could have national implications across all RTOs/ISOs and presents several issues of first impression, EPSA respectfully submits that these issues are better considered in a generic rulemaking or policy proceeding, rather than in the context of a case-specific petition for declaratory order. Accordingly, EPSA requests that the Commission initiate such a proceeding in order to explore the best models or principles for electric storage in organized markets.

## **I. MOTION TO INTERVENE & COMMUNICATIONS**

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who 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. EPISA seeks to bring the benefits of competition to all power customers.<sup>3</sup>

Many of EPISA's members are interconnected with the grid in California, and as such represent a significant portion of the supply capacity in that region. Moreover, this proceeding represents a possibly precedent-setting request to treat storage as transmission that may affect markets across the country. As a result, EPISA has a direct and substantial interest in the instant proceeding that cannot be adequately represented by any other party, and allowing EPISA to actively participate in this proceeding would be in the public interest. Accordingly, EPISA respectfully requests that the Commission grant this timely motion to intervene.

All pleadings, correspondence and other communications concerning this proceeding should be directed to:

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## II. COMMENTS

Electric storage is a unique product that acts as both load and supply. Depending on the circumstance, a storage facility may procure power from a generator (acting as load) or it may provide power to a load-serving entity (acting as supply). Thus, energy storage acts differently based on the type of transaction

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<sup>3</sup> The comments contained in this filing represent the position of EPISA as an organization, but not necessarily the views of any particular member with respect to any issue.

that is occurring. Though WGD's petition refers to energy storage as a "transmission competitor," it could just as easily be deemed a "generation competitor" or a "load alternative." Clearly, storage facilities are not synonymous with transmission facilities.

The Commission should take the time to explore how electric storage acts as a market participant and to tailor rules, regulations or principles appropriate to storage, particularly given the large number of novel storage devices currently being developed.<sup>4</sup> There are already well established market rules for how supply and load should act in most given market transactions, as well as rules for how costs of transmission facilities are generally to be recovered. It is important to ensure that the Commission find exactly where energy storage fits, and that rules for storage transactions are comparable to those for other market participants. EPSCA respectfully requests that the Commission initiate a rulemaking or policy proceeding in order to explore all possible energy storage models, comparability issues and provide guidance to RTOs/ISOs on core market principles as to how energy storage providers can be classified as market participants. Further, the Commission should defer action on the WGD petition until it has more fully explored the implications of allowing storage devices to be classified as

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<sup>4</sup> While energy storage, in the form of pumped hydroelectric facilities, has been part of the U.S. electric grid since 1929, there are a wide variety of new and innovative storage devices, including the ESDs described in the Petition, that are relatively new. See The Electricity Advisory Committee, *Bottling Electricity: Storage as a Strategic Tool for Managing Variability and Capacity Concerns in the Modern Grid* at 1-2 (Dec. 2008) (describing various energy storage devices), available at [http://www.oe.energy.gov/DocumentsandMedia/final-energy-storage\\_12-16-08.pdf](http://www.oe.energy.gov/DocumentsandMedia/final-energy-storage_12-16-08.pdf). What is also relatively new is that many of these new devices are being built by independent developers, *i.e.*, entities other than the traditional utilities, and thus their costs cannot be rate-based.

transmission facilities. In any case, a decision in this proceeding without benefit of a full, robust policy discussion should not be deemed precedential or dispositive.

#### **A. EXISTING ELECTRICITY STORAGE MODELS IN RTOS**

WGD has requested that its energy storage projects be deemed wholesale transmission facilities that are eligible for incentive rate treatment and rate recovery. In large part, WGD has supported its petition by noting that “[t]he Texas PUC has concluded that an ESD [Energy Storage Device] is a transmission facility.”<sup>5</sup> In fact, however, the Texas PUC has reached no conclusion on the broad question of whether ESDs to be classified as transmission facilities. On the other hand, the New York ISO, ISO New England and MISO have all revised their tariffs to facilitate participation of energy storage providers in ancillary services markets on a comparable basis with generators; similar tariff provisions are in the late steps of development in the CAISO stakeholder process.

The April 6 Texas Order that WGD points to expressly states that the “case is not precedential with respect to any subsequent application, proceeding, or process for determining whether a[n]...energy storage facility is a transmission asset eligible for inclusion in T[ransmission] C[ost] O[f] S[ervice].”<sup>6</sup> The TX PUC stated that it needs more time to consider fully all of the implications of storage. The conclusion in the referenced proceeding was the direct result of a negotiated settlement and constituted a particular carve out for the entity that had applied for the approval.

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<sup>5</sup> WGD filing, p. 16.

<sup>6</sup> Final Order, Texas Public Utility Commission Docket 35994, dated April 6, 2009, p.12.

During the course of this case before the PUC in Texas, there was specific debate concerning the “precedential value” of the proceeding. Thus, the final order in the case was careful to state that it is not intended to set precedent. The Texas PUC has not “concluded than an ESD is a transmission facility,” as WGD states, but that one ESD could be classified as such in a single, non-precedential instance. As EPSA does herein, concerned market participants in Texas have asked for a rulemaking proceeding at the PUC to determine the effects of allowing energy storage to be classified transmission.<sup>7</sup>

Most other RTOs treat electric storage companies as providers of energy and ancillary services; California is in the midst of tariff revisions to allow the same treatment.<sup>8</sup> Earlier this year, NYISO filed tariff revisions with the Commission to integrate ESDs into its Regulation Service Market; on May 15, 2009 FERC approved NYISO’s tariff proposal.<sup>9</sup> The NYISO proceeding looked at how scheduling, operations and settlements would take place for ESDs, something not considered by the instant WGD proposal. It is important that proposed changes affecting such matters be considered and developed through the ISO/RTO stakeholder process and filed with FERC, rather than in response to request for declaratory order submitted by a single market participant.

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<sup>7</sup> *Concerned ERCOT Market Participants’ Initial Brief*, PUC Docket No. 35994 (January 27, 2009),

<sup>8</sup> See CAISO Straw Proposal for Non-Generator Resource Participation in CAISO Ancillary Services Markets.

<sup>9</sup> *FERC Order Accepting Tariff Revisions*, Docket No. ER09-836-000/001, 127 FERC ¶ 61,135 (May 15, 2009).

MISO is another model for consideration; it was the first RTO to recognize energy storage as different from generation or demand response and made numerous changes to its tariff to incorporate Stored Energy Resources (SERs).<sup>10</sup> Rather than lumping SERs into an already existing classification like “transmission facility,” MISO recognized the unique nature of storage products. For example, MISO exempts SERs from substituting for contingency reserve products (Spinning or Supplemental Reserves), thereby eliminating any need for SERs to be able to provide sustainable energy for longer than a dispatch interval.<sup>11</sup> ISO-NE has a FERC-approved pilot program in place that has a “regulation payment formula” to account for the difference in dispatch time between traditional generators and storage providers (in ISO-NE’s case, flywheel technology).<sup>12</sup> All of these RTOs have designed slightly different programs to allow storage providers to participate as an ancillary service provider, not as a transmission substitute.

EPSA is making no recommendation to the Commission here on which model, if any, is better. In fact, the solution may be to create energy storage market rules that do not follow any particular existing model. EPSA does urge, however, all solutions on energy storage treatment be properly vetted through an open FERC rulemaking or policy process. This Commission action may change the course of how these new technologies are implemented across the country

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<sup>10</sup> See MISO, Section 205 Filing to Revise Tariff Provisions Regarding Stored Energy Resources, Docket No. ER09-1126-000 (filed May 8, 2009).

<sup>11</sup> Note that these tariff changes are still pending at the Commission and have not yet been approved.

<sup>12</sup> *Delegated Staff Letter Authorizing Tariff Revisions to Market Rule 1 concerning the provision of Regulation by non-generating resources from Larry D. Gasteiger to James H. Douglass*, Docket No. ER08-54-006 (September 15, 2009).

and should not be decided on an expedited basis in light of the facts surrounding a single set of projects in a single ISO/RTO market.

## **B. COMPARABILITY**

In this proceeding and any generic proceeding that the Commission undertakes concerning energy storage, it is vital that the Commission remain focused on the issue of comparability. Because ESDs act as both supply and load, rules concerning ESDs should be comparable with market rules for suppliers and load in any given transaction. Moreover, the Commission should not tilt the playing field in favor of a single ESD relative to other storage providers, but instead should ensure all types of energy storage remain on equal footing with respect to the Order No. 890 planning process and the markets. WGD's petition would give it a distinct advantage over other types of storage technology competing to relieve reliability constraints in the same Order No. 890 planning process.

Moreover, California is in the midst of changing tariff provisions to allow energy storage to participate in ancillary services markets. Beacon Power, a provider of flywheel storage technology, has been a major proponent of these tariff changes.<sup>13</sup> However, should WGD get rate recovery and incentive rate treatment from FERC, it will have an administratively engineered advantage over Beacon and other similar companies with no such rate recovery mechanisms. The WGD petition spends a lot of time comparing WGD's projects with

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<sup>13</sup> See: *Comments of Beacon Power on CAISO Order No. 890 Compliance Filing*, Docket No. OA08-12-001 (April 1, 2009). AND *Presentation of Beacon Power at California Energy Commission Energy Storage Workshop* (April 2, 2009). Available here: <<[http://www.energy.ca.gov/2009\\_energypolicy/documents/2009-04-02\\_workshop/presentations/2\\_4\\_Beacon\\_Power\\_-\\_Chet\\_Lyons.pdf](http://www.energy.ca.gov/2009_energypolicy/documents/2009-04-02_workshop/presentations/2_4_Beacon_Power_-_Chet_Lyons.pdf)>>

transmission builds,<sup>14</sup> but little time noting that there are other technologies, including other storage technologies, in California that may be disadvantaged should FERC grant the petition. FERC should not allow one type of storage to have an advantage over another type at this nascent stage for such technologies.

### **C. REQUEST FOR RULEMAKING/POLICY PROCEEDING**

EPSA respectfully requests that the Commission initiate a rulemaking or policy proceeding to explore all possible models and principles for integrating storage devices into organized markets. FERC should not be overly proscriptive, nor should it create a one-size fits all approach to be applied across RTOs. However, as it did in Order Nos. 890 and 719, FERC should provide the industry with clear guidance on how to ensure certain market fundamentals (in this instance concerning storage) are maintained and supported by FERC-approved tariffs. Further, the robust record that should emerge from a Commission rulemaking or policy proceeding will allow both the Commission and all interested parties to learn about the issue and make more informed decisions concerning applicable market rules. The Commission should not act on WGD's petition until it has developed such a record on how treating ESDs as transmission facilities would affect market prices, settlement issues and how it would affect other emerging storage technologies. As storage projects are becoming increasingly more prevalent, especially in discussions as a solution for the intermittency

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<sup>14</sup> WGD Petition at p. 7 states: "Although traditional transmission solutions might also be implemented at these locations, where CAISO has identified reliability violations, WGD intends to demonstrate through the CAISO Order No. 890 planning process that the WGD Projects are demonstrably more cost effective and efficient than traditional transmission upgrades."

problems of renewable generation, it is important that the Commission and RTOs make well-informed decisions that ensure the integrity of competitive electric markets.

### **III. CONCLUSION**

Wherefore, EPSA respectfully requests that the Commission grant its motion for leave to intervene in this proceeding and consider the comments herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "N. Bagot", is written above a horizontal line.

Nancy Bagot, Vice President of Regulatory Affairs  
Tara Ormond, Manager of Regulatory Affairs  
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December 22, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the comments by via email or postal mail upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., December 22, 2009.

A handwritten signature in cursive script that reads "Nancy Bagot". The signature is written in black ink and is positioned above a horizontal line.

Nancy Bagot, VP Regulatory Affairs