

I. BACKGROUND

As noted in the February 3 Notice, the Commission has undertaken this effort pursuant to the findings and recommendations included in the September 2008 GAO report (GAO report) titled, “Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations’ Benefits and Performance.”³ In 2009, staff from FERC and each of the ISO/RTO markets (staff team) developed a draft set of standardized measures, or metrics, in response to the GAO report. As outlined in that report, this staff team then solicited feedback from numerous stakeholder groups, including EPSA, through a series of meetings held at the Commission during January 2010. At that time, a formal written comment period on the metrics had not been announced. EPSA appreciates the opportunity to participate in the development of a robust formal record on the metrics. As the metrics are intended to assess “the extent to which there is consensus about ISO/RTO benefits,”⁴ it is critical that clear, quantifiable and useful data reported, along with qualitative information which provides context to that data. The GAO report notes, “Many agree that ISOs/RTOs have improved the management of the transmission grid and improved generator access to it; however, there is no consensus about whether ISO/RTO markets provide benefits to consumers or how they have influenced consumer electricity prices.”

³ *Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations’ Benefits and Performance* (September 2008), <http://www.gao.gov/new.items/d08987.pdf>. (“GAO Report”).

⁴ *Id.*, p. 2, in subsection titled, “Why GAO did this Study.”

EPSA has generated significant material on the benefits of ISOs/RTOs.⁵ While there is extensive information citing the successes of the ISO/RTO markets, as GAO notes, there is not a standardized set of metrics that is being applied by the Commission to the ISOs/RTOs (or the non-ISO/RTO regions, for that matter). Such metrics can be of great value as the ISO/RTO markets represent over two-thirds of the nation's economy and are growing; therefore, useful metrics must properly evaluate the ISO/RTOs' performance. Additionally, once the Commission determines the appropriate metrics to help measure ISO/RTO performance, the Commission should resist making these metrics hard and fast goals and the only measure for performance, and reiterate that this is not the intent of the metrics report. A metric measuring performance in one market may not have the same relevance in another market. However, we need to acknowledge that treating the final metrics as the only or primary "goals" can be a likely unintended consequence of this effort. For this reason, certain of the draft metrics should be calibrated or altered to represent achievable and widely held objectives. Additional information giving context to a particular ISO/RTO's data is an important element of the annual report. Similarly, EPSA commends the inclusion of "Section 3 – ISO/RTO Specific Key Initiatives" to allow ISOs/RTOs to include other

⁵ Susan Tierney, *Allocating Investment Risk in Today's Uncertain Electric Industry: A Guide to Competition and Regulatory Policy During Interesting Times* (September 2009). Available here: http://www.epsa.org/forms/uploadFiles/11863000007C9.filename.Tierney_-_EPSA_-_Allocating_Investment_Risk_-_September_2009_FINAL.pdf.

Susan Tierney, "Decoding Developments in Today's Electric Industry — Ten Points in the Prism" (October 2007). Available here:

http://www.epsa.org/forms/uploadFiles/a0c70000003a.filename.Analysis_Group_-_Electricity_Report_Final_10-22-07.pdf.

Putting Competitive Power Markets to the Test, analysis by Global Energy Decisions, LLC (July 2005). Available here: http://www.epsa.org/forms/uploadFiles/506A00000029.filename.Final_Report_-_070805.pdf.

Essential Elements of Well-Functioning Power Markets (November 2005). Available here: <http://www.epsa.org/forms/uploadFiles/611D0000001A.filename.EssentialElements2.pdf>.

relevant organization-specific information about their markets, giving further context to the annual report.⁶

The staff team that developed the draft metrics has distributed two versions for discussion among stakeholders, the first dated January 8, 2010, and the second dated February 3, 2010. Of note, the metrics themselves did not change from the first version to the second. The February 3 version includes additional sections to reflect stakeholder feedback received during January 2010. Of particular interest are two additions: “Section 2 – Additional Information,” and “Additional Suggestions.”⁷ Section 2 lays out eight additional topics on which the ISOs/RTOs will report, if applicable, and are not intended to act as measurements of performance but are to be used to help explain ISO/RTO operations. This supplemental qualitative information is an important addition to the metrics report, as regional differences and other variables do have impacts on the ISO/RTO markets. Therefore, the additional information that will accompany the metrics will be critical to understanding what the metrics indicate in a particular ISO/RTO and how the metrics relate to regional objectives.

The Additional Suggestions section reflects potential additional items suggested by stakeholders. The draft notes, “the items below from those suggestions are under review to identify a potential subset that might be included.”⁸ EPSCA believes certain of the Additional Information and Additional Suggestions are appropriate to serve as metrics, and proposed as such during our stakeholder meetings with the joint staff team. Additionally, certain of the proposed metrics do not offer useful data to measure

⁶ *FERC Draft ISO/RTO Performance Metrics on Reliability, Markets Organizational Effectiveness*, Docket No. AD10-5-000 (February 3, 2010), p. 5. (“Draft Metrics”).

⁷ *Id.*, Section 2 (pp 3-4) and Additional Suggestions (p. 6).

⁸ *Id.*, p. 6.

performance, and in fact may result in unintended and inappropriate performance goals for ISOs/RTOs. Therefore, EPSA submits the following comments on the draft proposed metrics as issued February 3, 2010.

II. COMMENTS

Comments on individual proposed metrics are below. More generally, similar metrics to assess the performance of the non-ISO/RTO regions are necessary to establish and measure those markets in a similar manner, both to assess bilateral regions in their own right but also to put the performance of RTO and non-RTO regions in context. This effort is of particular importance in light of the utter lack of meaningful transparency of these non-ISO/RTO regions in comparison to the ISOs/RTOs.⁹ Further, metrics for both RTOs/ISOs and non-ISO/RTO bilateral regions are necessary to address the GAO's goal of comparing the benefits of RTOs and ISOs versus not having them.¹⁰ FERC's *Strategic Plan for FY 2009-2014* states that such an effort for the non-ISO/RTO markets is planned for 2011.¹¹ EPSA commends the Commission for doing so, urges that this effort be accomplished expeditiously, and looks forward to working with the Commission in the development of useful performance metrics for those non-ISO/RTO regions.

⁹ In the Entergy region, three full years after the Order No. 890 was issued by FERC, the state commissions in the Entergy region have begun to work together in an unprecedented and constructive manner in a new Regional State Committee which is working with stakeholders to ensure that numerous improvements are finally implemented to achieve meaningful open access and transparency in that region. *Notice of Conference*, Entergy Services Inc., Docket Nos. ER05-1065-000 and ER09-555-000, issued April 17, 2009.

¹⁰ GAO report, "[I]nformation gleaned from such measures could help FERC address the divisions among experts and industry participants about the benefits of RTOs." (at page 8) "[S]ome believe that these benefits could have been achieved without RTOs." (at page 7).

¹¹ Federal Energy Regulatory Commission, *The Strategic Plan: FY 2009-2014*, issued October 23, 2009. "FY 2011: Explore and develop appropriate operational and financial metrics for non-ISO/RTO regions." (at page 13). Available at: <http://www.ferc.gov/about/strat-docs/FY-09-14-strat-plan-print.pdf>.

A. “Markets” Draft Metrics

i. Market Pricing

The first proposed metric for markets is based on load-weighted Locational Marginal Prices (LMPs) and variations on the components of total power cost based on LMPs, including fuel-adjusted LMPs. While the metrics should be diverse and measure various elements of the ISO/RTO markets, EPSA cautions against any undue focus on price as a determinative metric. Prices are only part of the market, and differences from one region to the next and within regions reflect many complex variables outside of the realm of ISO/RTO operations or control. These include but are not limited to federal, state or regional policy priorities driving particular environmental rules, the available generation resource mix in the ISO/RTO’s footprint, and differing peak needs that vary by region. Additionally, LMPs are designed to respond to and reflect market and infrastructure conditions at various grid nodes, and as a result are not reflective of the ISOs/RTOs performance as the system operator.

The proposal to include a determination of price “components” – such as “fuel costs” -- appears to be especially problematic (proposed Markets Metric A.2). In a single-clearing price market, the bid submitted by the marginal unit can be expected to generally reflect its short-term operating costs, a significant portion of which will be driven by fuel costs. Units of other fuel types, however, will likely also be dispatched at the same time. It is not clear why the fuel cost component for those non-marginal units would be meaningful in determining the efficiency of a single price clearing mechanism. Further and even more fundamentally, many cost components apparently would not be measured. For example, there does not appear to be any intention in calculating price components to determine the recovery of capital expenditures and fixed operation and

maintenance costs (nor would it be possible to determine them based on data available to the ISOs/RTOs). The proposed “price component” metric thus would not appear to provide much useful information and may even provide misleading information.

Rather, an appropriate measure would be one that reflects how often market prices are flagged by the ISO/RTO for possible mistakes, including when prices are reset or settlements are redone. Such actions create risk and uncertainty for market participants and lead to increased administrative costs. Consequently, EPSA supports the inclusion of metrics that identify instances of flagged prices, pricing resets and settlements. Information collected on the relative size and number of such market corrections in a particular ISO/RTO market would be helpful. Note that this type of metric is included in Additional Suggestions #2¹² and would be a more appropriate indicator of ISO/RTO performance than LMP prices. EPSA therefore urges the Commission to include such a performance metric in lieu of the proposal to use LMPs.

There is great concern that focusing on LMPs or pricing information outside of the market context would implicitly at first, perhaps explicitly eventually, drive the ISOs/RTOs to simply achieve lower short-term prices irrespective of other factors and at the expense of long-term investment, innovation and reliability. As noted above, there is concern that the metrics set out in this document could soon inappropriately represent goals for the ISOs/RTOs rather than informational data. Therefore, any metric must be developed and defined with that possible purpose and result in mind. Order No. 2000 envisioned ISOs/RTOs as independent entities that administer the market; a pricing metric would give these independent administrators incentive to actively influence market prices, thereby tainting the ISO/RTO's neutral role as system operator and

¹² Draft Metrics, p. 6.

create unintended consequences affecting generation dispatch and investment. Further, market-based pricing regimes reflect just and reasonable prices that are most efficient for the marketplace; “lowest” price does not necessarily represent appropriate prices or dispatch decisions based on reliability concerns or limitations, and therefore a metric on LMP pricing may lead to inappropriate data for the measurement of benefits brought by an ISO/RTO. By contrast, the ability of the ISO/RTO to efficiently settle its market correctly on an ongoing basis is an important measure of performance for the system operator.

ii. Generator Cost and Revenue Information

While not a draft metric proposed in the February 3 document, there has been recent public advocacy for the Commission to require ISOs/RTOs to examine the revenues and production costs of each specific generator unit selling power into each ISO/RTO market (essentially leading to a requirement for generators to charge only marginal costs) as indicators of whether ISO/RTO markets provide benefits.¹³ The concerns regarding market pricing measurements above apply equally to this request for even more specific cost and revenue information. Additionally, the requested information poses serious concerns for the integrity of the market itself. The U.S. Department of Justice’s Antitrust Division is on record before this Commission cautioning against disclosure of “detailed firm- and transaction-specific information [that] may increase the risks of coordination that raises prices to consumers.”¹⁴ The RTO

¹³ See, e.g., American Public Power Association, Electricity Consumers Resource Council, National Consumer Law Center, PJM Industrial Customer Coalition, Portland Cement Association and Public Citizen, *ISO/RTO Performance Metrics* at 2-3, Docket No. AD10-5-000 (filed Feb. 19, 2010) (arguing that the “just and reasonable” standard mandates the Commission to require “the prices that the generators obtain in RTO-run centralized markets [be] close to their marginal costs....”).

¹⁴ *Comments of the Department of Justice on Transparency Provisions of the Energy Policy Act of 2005*, Docket No. AD06-11-000 (January 25, 2007), p 2. USDOJ comments specify, “Moreover, given the

and ISO markets are among the most open and transparent in the world, and are closely monitored by the Commission and independent market monitors to ensure against the exercise of market power. The release of overly detailed cost and price information raises strong anti-competitive concerns, including by aiding and abetting the exercise of monopsony power by the very advocacy groups suggesting its adoption as an ISO/RTO metric.

The argument raised by certain commenters that the “just and reasonable” standard requires marginal cost pricing is, in essence, a collateral attack on the legality of market-based pricing that has been uniformly rejected by the courts and the Commission. The U.S. Supreme Court “has repeatedly held that the just and reasonable standard does not compel the Commission to use any single pricing formula”¹⁵ The courts of appeals have similarly affirmed that, where the Commission has found that buyers and sellers lack market power, the Commission may “rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result....”¹⁶ The courts have done so because “competition normally provides a reasonable assurance that rates will approximate cost....”¹⁷ Contrary to the suggestion of some commenters, however, this does not mean that the Commission must require only a unit’s marginal cost at each moment (which would mean that a plant

amount of information currently available in many of these markets, the incremental benefit of increased public dissemination of firm- and transaction-specific information may be small relative to the risks of coordination. Should the Commission decide to issue new rules calling for the dissemination of additional information, it can reduce the potential for facilitating coordination by adopting certain safeguards, including aggregating information, masking the identities of individual participants, and releasing information with an appropriate lag time.”

¹⁵ *Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993) (“*Elizabethtown*”) (quoting *Mobil Exploration v. United Distribution Co.*, 111 S. Ct. 615, 624 (1991)).

¹⁶ *Elizabethtown*, 10 F.3d at 870. See also, e.g., *Louisiana Energy & Power Auth. v. FERC*, 141 F.3d 364, 365 (D.C. Cir. 1998).

¹⁷ *Interstate Natural Gas Ass'n of Am. v. FERC*, 285 F.3d 18, 31 (D.C. Cir. 2002) (“*INGAA*”).

could never recover fixed costs). Instead, Commission-supervised competition will ensure that market-based prices will be “roughly in line”¹⁸ with cost-based prices “over the long haul.”¹⁹ In ISO/RTO markets, not only has the Commission determined that each market-based rate seller lacks market power or is appropriately mitigated in certain circumstances, but it has also required ISOs/RTOs to adopt a range of additional market monitoring measures and regular reports to ensure that these markets are competitive. In fact, the ISO/RTO markets are extensively scrutinized and exhaustively analyzed (much more so than in the absence of an ISO/RTO), with conclusions reported to stakeholders and the public on a regular basis.²⁰ Consequently, the

¹⁸ *INGAA*, 285 F.3d at 31 (citing *Elizabethtown*, 10 F.3d at 870).

¹⁹ *Id.* at 32.

²⁰ See Roy Shanker, *Market Misconceptions and Regrets About Past Business Decisions* (March 3, 2009), prepared based on an oral statement that Dr. Shanker presented to the Pennsylvania Public Utility Commission in December 2008, Available here:

<http://www.competecoalition.com/files/Shanker%20Market%20Misperceptions.pdf>.

Frank Huntowski, Neil Fisher, and Aaron Patterson, *Embrace Competition or it's Déjà vu All Over Again*, Prepared by the Northbridge Group (October 2008) Available here:

http://www.nbggroup.com/publications/Embrace_Electric_Competition_Or_Its_Deja_Vu_All_Over_Again.pdf.

Ross Baldick, *Single Clearing Price in Electricity Markets* (February 18, 2009). Available here: <http://www.competecoalition.com/files/Baldick%20study.pdf>.

Competitive Electricity Markets: The Benefits for Customers and the Environment, National Economic Research Associates, Inc. (NERA), February, 2008. Available here:

http://www.nera.com/image/PUB_CompetitiveElectricityMarkets_Feb2008.pdf.

2009 State of the Markets Report, ISO/RTO Council, September 2009. Available here:

<http://www.isorto.org/atf/cf/%7B5B4E85C6-7EAC-40A0-8DC3-003829518EBD%7D/2009%20IRC%20State%20of%20Markets%20Report.pdf>.

Facilitating Wind Development: the Importance of Electric Industry Structure, B. Kirby & M. Milligan, National Renewable Energy Laboratory (NREL), May 2008. Available here:

<http://www.nrel.gov/docs/fy08osti/43251.pdf>.

Increasing Demand Response and Renewable Energy Resources: How ISOs and RTOs are Helping Meet Important Public Policy Objectives. ISO/RTO Council, October 2007. Available here:

http://www.isorto.org/atf/cf/%7B5B4E85C6-7EAC-40A0-8DC3-003829518EBD%7D/IRC_Renewables_Report_101607_final.pdf.

Putting Competition Power Markets to the Test - The Benefits of Competition in America's Electric Grid: Cost-Savings and Operating Efficiencies, Global Energy Decisions Study at ES-1, (2005); Howard J. Axelrod, *The Fallacy of High Prices*, 144 *Public Utilities Fortnightly* at 55 (Nov. 2006).

Kira R. Fabrizio et. al., *Do Markets Reduce Costs? Assessing the Impact of Regulatory Restructuring on US Electric Generation Efficiency*, (September, 2007) Available here:

<http://ideas.repec.org/a/aea/aecrev/v97y2007i4p1250-1277.html>.

Annual Baseline Assessment of Choice in Canada and the United States, prepared by the Energy Retailer Research Consortium (December 2009).

Commission does not need to re-impose cost-of-service regulation to ensure that rates in such markets are just and reasonable.

Further, snapshots of cost and profit information are not indicative of whether market-based rates are just and reasonable, as they vary over time based on the supply and demand fundamentals in the market at any particular time. Should cost and revenue be an indicative measurement of success, then it follows that such measurements should also assess and identify situations of under recovery of costs related to a plethora of market conditions and requirements, including attracting sufficient capital for additional infrastructure as needed, reliability compliance and improvements, and environmental compliance. The balance over time has been the case historically in several competitive markets, in which competitive suppliers vastly under-recovered in some years (which is not rectified by captive ratepayers as is the case with traditional rate-based utilities), and have experienced sufficient revenues in other years. The proper concern here is whether the markets are sufficiently competitive to support market-based rates, an evaluation made by the Commission on a regular basis in triennial reviews market-wide and for each generator with market-based rate authority, and monitored on a daily basis by independent market monitors and the Commission's market oversight team in the Office of Enforcement.

As support that some particular price point is not indicative of a market's competitiveness, it is instructive to look at the prices and independent reports on the state of the markets for the ISOs/RTOs over the past few years. Prices in many ISOs/RTOs were historically higher in 2007 and 2008, and in those years the

Michael Moynihan, *Electricity 2.0: Unlocking the Power of the Open Energy Network*, prepared by NDN and the New Policy Institute (February 2010). Available here: <http://ndn.org/sites/default/files/paper/Electricity20.pdf>.

independent market monitors of each made findings that the markets were sufficiently competitive.²¹ Recently, prices have dropped considerably in many of these markets.

In New England,

“Year over year, the average price of wholesale electricity fell 48 percent in 2009, from \$80.54 per megawatt-hour (MWh) in 2008 to \$41.99/MWh last year. The 2009 price was lower than the comparable low of \$48.55/MWh set in 2003, the year that competitive markets in their current form were launched in New England.”²²

Similarly, in New York the ISO reported that in April 2009 wholesale power prices had reached their lowest point since 2002.

The average price of wholesale electric energy in the state was \$39.64 per megawatt-hour (MWh) in April — a 13% drop from prices in March and almost half the January price of \$73.28/MWh. The last time wholesale electric energy prices were this low was in May 2002 when the average price was \$37.44/MWh.²³

²¹ *2008 State of the Market Report for the Midwest ISO*, prepared by Potomac Economics, p. ii. Available here: http://www.midwestmarket.org/publish/Document/7e7fdb_1225bf59491_-7e090a48324a/2008%20State%20of%20the%20Market%20-%20Final%20text.pdf?action=download&_property=Attachment.

PJM 2007 and 2008 State of the Market Reports, prepared by Monitoring Analytics, p. 1 and 2, respectively, Available here:

http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2008.shtml

ISO New England 2008 Annual Markets Report, p. 1. Available here: http://www.iso-ne.com/markets/mktmonmit/rpts/other/amr08_final_061709.pdf.

2008 State of the Market Report New York ISO, prepared by Potomac Economics, p. vii. Available here:

http://www.nyiso.com/public/webdocs/documents/market_advisor_reports/NYISO_2008_SOM_Final_9-2-09.pdf.

California ISO 2007 Annual Report, p. 1. Available here: <http://www.caiso.com/1f9c/1f9c8b49e9f0.pdf>.

SPP 2008 State of the Market Report, prepared by Boston Pacific Company, p. 63. Available here: <http://www.spp.org/publications/SPP%202008%20State%20of%20the%20Market%20Report.pdf>.

²² ISO-New England news release, “ISO New England Reports 2009 Wholesale Electricity Prices and Demand Fell to Lowest Levels in Seven Years,” issued March 1, 2010. Available at: http://www.iso-ne.com/nwsiss/pr/2010/price_demand_release_3110.pdf

²³ NYISO news release, “Wholesale Electricity Prices Drop Again: Wholesale energy price in April at a level not seen since 2002,” issued May 12, 2009. Available at: http://www.nyiso.com/public/webdocs/newsroom/press_releases/2009/NYISO_Wholesale_Electricity_Prices_Drop_Again_05122009.pdf

What is puzzling and in fact quite troubling is that chronic critics of ISOs/RTOs, who claim that ISOs/RTOs are responsible for causing prices to rise when they increase, do not acknowledge or explain how substantially lower prices occur in these same markets which they blamed for the earlier higher prices. This debate over market “success” based on high or low prices at a particular time discounts all of the factors that go into a wholesale power price,²⁴ and does not acknowledge that one of the many benefits of competitive markets is that revenues are not guaranteed on a daily, monthly or other time period basis.

There is an additional danger in this approach to measuring market success. If the assumption underlying this metric is that it is FERC’s responsibility to determine what constitutes sufficient profits in the market-based rate context – i.e., to set a cap on revenues, then that responsibility would apply equally to the need to determine when profits are insufficient – i.e., to guarantee some specific level of revenues. Do chronic ISO/RTO critics really want to journey down this path?

In sum, the request to utilize generator-specific cost and revenue information is simply an inappropriate metric for numerous reasons and does not reflect market success or benefits. Therefore, it is of great importance that the Commission reject demands for generator-specific cost and price information as a metric.

²⁴ ISO/RTO Council, *2009 State of the Market Report*, p. 18. “Declines in power prices within ISOs/RTOs, relative to the levels that would otherwise have prevailed, reflect a number of factors including: the cost reductions made possible through security-constrained economic dispatch, incentives for improved generator availability, investments in new more efficient generating units, and retirement of uneconomic facilities. The actions of individual market participants, acting under the decentralized incentives of wholesale market pricing, have resulted in higher power-plant availability, lower outage rates, the development of demand response programs, and new plant construction when and where needed, all of which have contributed to lower power prices.” Available at: http://www.isorto.org/site/c.jhKQIZPBlmE/b.2604461/k.6151/Documents_and_Issues.htm.

iii. Generator Availability

A very important measurement of a system operator's performance is how often "uplift captured in balancing charges" or "Out of Merit/Out of Market" (OOM) dispatch is required to match real-time energy needs with the real-time or day-ahead schedule. This measurement was strongly suggested by EPSA but is not reflected in "Additional Suggestions." This would include both the number of physical OOM dispatches required to maintain system integrity and load requirements, and related costs associated with those calls, including uplift payments. Such a measurement would help indicate the transparency and efficiency of the market. Uplift charges may often mask inadequate modeling by the ISO/RTO or inefficient pricing protocols. Further, uplift charges are assessed to end-users outside of the energy market and cannot be practically hedged. This OOM information measures the efficient daily operation of the ISO/RTO market, and is therefore an appropriate measure of how that ISO/RTO is performing. Information on cumulative OOM calls and associated costs should then reflect where the ISO/RTO may regularly lack precision or display systemic failures in matching load with available supply.

iv. Congestion Management

The proposed metrics for congestion management pose a significant risk of creating perverse incentives for ISO/RTO operations and thus should not be used as written in the February 3 draft. Measuring congestion charges, or a percentage of congestion costs hedged through ISO/RTO-administered markets, does not include any context or baseline by which to determine the appropriateness of the level of existing congestion. The presence of congestion in markets with locational pricing is not necessarily an undesirable characteristic; congestion should not necessarily be

eliminated entirely from the market. It would be inefficient to build a transmission system in such a way that all – or nearly all -- congestion would be eliminated or hedged. Such a system would most likely be overbuilt, imposing more extensive costs on consumers than a system with some level of congestion.

Additionally, there are numerous ways in which congestion can be managed by a system operator and market participants. It may be economic to redispatch specific generation resources to relieve congestions, for instance. Including congestion levels without any context or baseline as a performance metric therefore may be misleading and could convey inappropriate incentives.

v. Demand Response and Renewables

Each of these two metrics pose similar concerns – to simply measure megawatts, even as a percentage of total capacity, energy or ancillary services, is not reflective of how those resources are integrated into the market operations, function as part of the market, or whether they offer cost-effective benefits to consumers. The nature and extent of various supply-side and demand-side resources utilized in various markets is reasonable to report, particularly given how ISO/RTOs facilitate the development and integration of renewable resources.²⁵ However, in different regions, physical capabilities may impact the addition of certain types of megawatts. To use

²⁵ As of 2009, nearly 80 percent of wind resources were located in the RTO markets, while only 44 percent of wind energy potential and only 53 percent of electric demand is found in those areas. *2009 State of the Markets Report*, ISO/RTO Council, September 2009; *Facilitating Wind Development: The Importance of Electric Industry Structure*, B. Kirby & M. Milligan, National Renewable Energy Laboratory (NREL), May 2008.

According to EIA, independent power producers and other competitive suppliers have developed renewable resources at a rate of ten times rate-based generation entities. *Electric Power Annual*, Energy Information Administration, January 21, 2009 (citing 2007 data).

A recent DOE report undertaken to look at scenarios which would enable the findings of DOE's 2008 "The 20% Report" indicates that RTO/ISO markets help facilitate the cost-effective interconnection of renewable resources to the electricity grid. *Eastern Wind Integration and Transmission Study*, prepared for National Renewable Energy Laboratory by EnerNex Corporation, January 2010.

simply the number of megawatts as a metric will set up arbitrary quantities that represent “success” outside the context of regional variations, regional requirements, or how these megawatts actually function in the marketplace.

If the measurement of demand response and renewable megawatts is retained as a metric, at a minimum it should also measure contribution under peak conditions. This would provide information about their role in meeting reliability in the region and whether the ISO/RTO is appropriately utilizing and measuring their relative contribution to the benefit of the system and consumers. In addition, in the case of demand response, a metric should include the levels of actual response of the identified resources when directed to curtail or, in the case of price responsive demand, when prices reach the level at which curtailment is expected. This would also be useful information concerning the role of these resources in terms of their relative ability to, and how, they meet ISO/RTO reliability needs.

A better measure may be an overall picture of the supply and demand in a region, so that the totality of fuel usage and reliance can be tracked on a forward-going basis as changes occur to meet certain policy goals. EPSA is concerned that an ISO/RTO may be perceived as not “successful” if it does not have as many renewable resource MWs as another ISO/RTO, when in fact the amount of renewable resources can be influenced by various factors. Additionally, a complete fuel mix scenario may better represent a particular region and whether and how its resources are based on availability and feasibility. As noted previously, it must be acknowledged that any metrics adopted by the Commission may inappropriately become goal-oriented measures, and therefore must be reasonable in light of regional and market differences while still setting out a standard way to quantify the progress and benefits of the

ISO/RTO markets. The metric that would be of value is whether renewable resources are facing discrimination or barriers in ISOs/RTOs, not simply how many MWs exist.

B. “Organizational Effectiveness” Draft Metrics

In this section, EPSA had suggested that there might be a measurement for interaction with the Board by stakeholders. This measurement would reflect accessibility, an important aspect of the governance of the market. Of note, what decisions are reached by the Board should not play a role in this metric, but rather the ability of stakeholders and stakeholder groups to be heard and understood by the Board. A fair and open airing of all opinions and views is a reasonable measurement of a robust, transparent and fair governance process. The fact that a stakeholder’s position did not prevail is not a measure of whether the participant had an opportunity to be heard in the stakeholder process.

C. “Reliability” Draft Metrics

EPSA has several suggestions to modify certain of the reliability metrics, and also suggests the addition of one new metric. It should be noted that NERC is in the process of developing reliability metrics independent of this proceeding. Therefore, the following metrics proposed by the joint staff team should consider the metrics that are developed at NERC, and whether and how they may inform or replace FERC reliability metrics in certain cases. Additionally, in any instance in which NERC has measurements or information that are appropriate to be utilized in this ISO/RTO metrics context, that work should be incorporated, thus avoiding duplication of effort.²⁶ There is some concern generally that the FERC reliability metrics apply to the ISO/RTO markets, but those markets do not always match geographically with the NERC reliability regions.

²⁶ The NERC Reliability Metrics Working Group publishes a list of approved and unapproved metrics at <http://www.nerc.com/filez/rmwg.html>. Of note, metrics are approved in the NERC Committee process.

Therefore, certain data may not be conducive for application to the ISO/RTO market in this context.

- i. New Metric G: “Operational Performance – Energy Management System (EMS) – (1) EMS Unavailability (Including Planned Outages); (2) EMS Unavailability (Excluding Planned Outages); (3) EMS State Estimator Unavailability; (4) EMS Significant Outage Events (defined by exceeding a predetermined and significant outage duration threshold).*

The Energy Management System and selected subcomponents such as State Estimation capability are critical to reliable operation of the transmission system. If the EMS system is not available, system operators are blind to what is happening on the transmission system. Overall unavailability of the system and the State Estimation function should be tracked and trended as well as the number of outage events that exceed a specific duration.

- ii. Proposed Metric A: National or Regional Reliability Standards Compliance*

For this metric, two of the five specific metrics could serve as clear measurements of reliability compliance – #A1 and #A4. The other specific metrics are merely supporting information on the total number of violations that will provide the context of the violations over time, and therefore should not stand as metrics but should be included as supporting information instead. For instance, specific metric #A2 on the number of violations self-reported may be valuable to NERC in understanding the dynamics of compliance over time by showing whether ISOs/RTOs are effective in self identifying issues versus having them identified by external audits. However, as written, it will not be possible to determine, at the outset and beforehand, if an increase or decrease in self-reports shows progress or increased reliability. Therefore it should not

be considered a stand-alone performance measure, but instead should be included as supporting data.

iii. Proposed Metric D: Long-Term Reliability Planning – Transmission

For specific metric #D1, a simple number reflecting the number of facilities approved with no additional context does not relay useful information about the ISO/RTO or its planning process. Facilities may be approved for numerous reasons, and approval rates may vary year to year. It is unclear what, if any, context would make this data useful in measuring the performance of the ISO/RTO. Measuring only reliability upgrades does not reflect the full context of system planning, since often economic upgrades eventually – sometimes soon – contribute to the overall reliability of the system. Additionally, for specific metric #D2, whether approved projects are completed or stay on schedule is fully outside of the control of the ISO/RTO. While an ISO/RTO may order projects to be built as part of the reliability plan, it cannot override impediments or the exercise of control over siting and construction by state authorities. Hence, this data does not shed any light on the operations or abilities of the ISO/RTO.

iv. Existing Metric E: Long-term Reliability Planning -- Generation

For metric E, an additional metric should be included to show whether the markets are working as intended to ensure generation reliability. The following specific metric is proposed:

- Number of generating facilities and megawatt capability of units retained under “reliability must run” contracts or tariffs with the ISO/RTO/ISOs, or retained by the ISO/RTO under other special arrangements or reliability requirements.

D. Section 2 – Additional Information

i. Proposed A: “Infrastructure Investment – Interconnection and Transmission Process”

Measurement of the completion rate of feasibility and system impact studies is an important indicator of the how well the transmission planning and interconnection process operates. Therefore, this information should be considered as a metric, not simply as an area for additional information.

ii. Proposed B: “Special Protection Schemes (SPSs)”

EPISA supports the application of a category of metrics relating to the ISO/RTO use of Special Protection Scheme (SPS) metrics as identified in Section 2. The use of SPS in ISOs/RTOs has a significant impact on dispatch and pricing within the ISO/RTO system. Transparency in the use and application of SPS would facilitate fuel purchases and commitment decisions increasing the efficiency of the ISO/RTO system. Metrics that reflect the transparent application of SPS provide a useful performance indicator that would help measure how effectively the ISO/RTO system is used. In particular, EPISA supports the metric that identifies the activation of SPSs when not appropriate (B.3.) and proposes an additional metric that would measure the transparent and timely disclosure of SPS activations to market participants.

iii. Proposed F: “Fuel Diversity”

Additional Information item F proposes to include information on “fuel diversity in terms of energy, installed capacity and actual production.” As discussed above, it is important to reflect the full scope of supply and demand resources, which may allow for comparisons and tracking over time as that mix may change to meet policy and reliability goals, rather than measuring either renewable or demand resources by MW or percentage in an ISO/RTO as is currently proposed under in the draft metrics.

E. Additional Suggestions

As noted above, at least two of the additional suggestions should be codified as specific metrics, as they offer more useful and robust information by which to measure ISO/RTO performance. This includes #1, the total number of offers mitigated over the course of a year; and #2, the number of times prices are flagged and checked, including the number and size of necessary market price corrections.

Conversely, #7 measuring reliability fines in dollars is duplicative of the reliability metric A, and the metric as stated there more directly and accurately reflects actual RTO/ISO performance. Of note, it is regulators who assess fine levels, so this data is out of the control or influence of the ISO/RTO as system operator.

III. CONCLUSION

EPSA fully supports the Commission in its efforts to work with the ISOs/RTOs to develop an acceptable and informative set of ISO/RTO performance measures. Additionally, the inclusion of a formal stakeholder comment period is commendable and should assist the Commission in approving metrics that are based on useful and relevant information, therefore shedding light on the performance of the ISOs/RTOs as system operators, and soon on all electricity markets across the nation. EPSA looks forward to the issuance of the first ISO/RTO metrics annual report, and in particular tracking the progress of these markets over time as assessed by those reports.

Respectfully submitted,



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March 5, 2010

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C. March 5, 2010.

A handwritten signature in cursive script that reads "Nancy Bagot".

Nancy Bagot, VP of Regulatory Affairs