

Several of the commenters in this proceeding have gone well beyond the bounds of the GAO report's recommendations, in some cases proposing "metrics" that are well outside of the RTO's control or that may not even be feasible. Further, some commenters sought to expedite the conclusion of this proceeding, noting that the result of these metrics should be drastic changes to RTOs and the markets they administer. However, it is important to both take the time to ensure that these metrics are appropriate measures of RTO performance and build a context by which such performance can be evaluated (including by establishing similar metrics for non-RTO regions at the same time).³ At base, the Commission's stated purpose in proposing these metrics was to follow the GAO's recommendations for specified additional steps to analyze RTOs.⁴ Thus, below EPSA contrasts the GAO report's recommendations with the much broader requests of certain commenters who wish to far exceed them.

I. REPLY COMMENTS

The Commission's request for comments on draft RTO performance metrics has wrought a vast array of input and suggestions, many of which are neither constructive nor practical. While EPSA supports this important effort by the Commission to quantify the performance of RTOs as market administrators, many of the comments would have the Commission expand the metrics far beyond the scope or the intent of the GAO's concept of standardized measurements. Much (if not all) of the necessary information is already collected and assessed by the RTOs, and then reported to the Commission in annual State of the Market reports prepared by independent market monitors. Many of

³ FERC's *Strategic Plan for FY 2009-2014* states that such an effort for the non-ISO/RTO markets is planned for 2011. 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>.

⁴ *Notice Requesting Comments on ISO/RTO Performance Metrics*, Docket No. AD10-5-000 (February 3, 2010), p. 1. ("February 3 Notice")

the metrics proposed by certain commenters would require the publication or disclosure of data that is competitively sensitive and could present numerous market concerns.

Additionally, the Commission's final metrics must focus on those forces that are not inordinately impacted, influenced or dictated by external factors in order to assess an RTO's performance rather than matters that reflect broader market dynamics.

Another factor that will assist in this evaluation is to undertake the same effort for the non-RTO markets *concurrently* in order to give context to the results of RTO metrics and analysis. This will allow the Commission to respond to the concern expressed in the GAO report that the Commission needs a standardized way to support its encouragement of the formation of ISOs and RTOs.⁵

A. INTENDED SCOPE OF THE RTO METRICS

Unfortunately, several entities are attempting to use this proceeding to obtain commercially sensitive market data in a collateral attack on the Commission's well-reasoned findings that market-based rates in RTOs are just and reasonable, contrary to appeals court precedents upholding the Commission's market-based rate policies.⁶

Therefore, it is instructive to take a step back and consider the GAO report's original and stated intent for encouraging the Commission to develop an annual RTO performance metrics assessment. Simply, the "GAO recommends that FERC develop an approach for regularly reviewing RTO budgets and annual financial reports, and

⁵ GAO Report, p. 60.

⁶ Most recently, the DC Circuit Court noted "We have never held that FERC must establish the competitiveness of an entire market before permitting any participant to charge market-based rates." See: *Richard Blumenthal v. FERC*, DC Cir. Opinion No. 07-1130 (January 23, 2009) citing *La. Energy & Power Auth. v. FERC*, 141 F.3d 364, 365 (D.C. Cir. 1998); *Consumers Energy Co. v. FERC*, 367 F.3d 915, 922– 23 (D.C. Cir. 2004); *Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 871 (D.C. Cir. 1993); *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990).; *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 128 S. Ct. 2733, 2738 (2008).; and *Lockyer v. FERC*, 383 F.3d 1006, 1014 (9th Cir. 2004).

develop and report on standardized measures that track RTOs' performance.”⁷ Much of the information the GAO report seeks to standardize as part of setting metrics and evaluating performance against those metrics is already reported to the Commission in one form or another; thus, this proceeding should remain focused on how to collate that information in a meaningful way and analyze it as a single set of standard metrics applicable to all RTOs, rather than as a launching pad for exploring broader purposes.

At the time of the report's issuance, GAO received input from then FERC Chairman Joseph Kelliher, who noted that:

RTOs currently provide certain types of information in their annual reports on the “State of the Markets,” and this may be an appropriate vehicle for providing additional information to the public on RTO performance...[T]he Commission can work with RTOs and others to determine an appropriate interval for assessing performance and possible changes.⁸

As some commenters in this proceeding are attempting to reinvent the wheel when it comes to RTO reporting requirements and in some cases require vast amounts of new information to be reported, it should be noted that the final GAO report referenced and responded to Chairman Kelliher's comments on its draft report, agreeing with his suggestions on the use of existing RTO reports as the sources of the data for performance information:

Regarding reporting, the Chairman observed that RTO “State of the Market” annual reports may be a vehicle for providing data and additional information to the public on RTO performance. While we agree that these annual reports of data on RTOs could be helpful for providing the public with additional performance information, we urge the Commission to consider what role it can play in helping Congress, industry stakeholders, and the public interpret and evaluate data and

⁷ *Highlights of GAO-08-987*, a one page issuance issued concurrently with the full report (September 2008). Available here: <http://www.gao.gov/highlights/d08987high.pdf>.

⁸ GAO Report, [Appendix IX: Comments from FERC], p. 87.

other information from RTOs in order to draw conclusions about RTO performance and value. It is clear that electricity markets and RTO operations are complex. FERC's expertise and independence make it well positioned to help Congress and others assess RTO performance and net benefits, and its oversight authority gives it the ability to use this information to encourage continued improvement.⁹

The data necessary to complete GAO's intent in RTO performance metrics is already available; the Commission simply needs to bring the RTO information together in a format that allows for a broad review of the RTO markets and their many benefits. Further, the Commission should then develop independent evaluations of the reported information, per the GAO recommendations.¹⁰ As GAO states,

The RTOs themselves publish large volumes of data about market and operational performance in publicly available annual reports and other documents available on their Web sites; however, the large amount of information and, in some cases, its lack of standardization, make it difficult for the public or Congress to easily compare and interpret it. Moreover, FERC has not synthesized these data in a way that allows Congress and the public to draw conclusions about the benefits of RTOs and their effectiveness or discern whether RTOs and organized markets are in their best interest.¹¹

Several entities who filed comments with the Commission on March 5 included extensive lists of additional data they want the Commission to collect from the RTOs. However, as noted by EPSA's March 5 comments, by former FERC Chairman Kelliher in his correspondence with the GAO, and by other commenters in this proceeding, the data and much of the analysis that measures RTO performance and broader market

⁹ GAO report, p. 2. Other commenters agree, including NARUC, "The metrics compile information readily available and currently tracked by RTOs and ISOs."

¹⁰ GAO Report, p. 60. Due to resource issues, the extent and level of evaluation may vary year to year, though an annual report of the RTO metrics and data will be published. The GAO noted this concern expressed by Chairman Kelliher in his letter on the draft report, and responded in the final report "We recognize that FERC must balance numerous responsibilities and that the extent of its evaluation of RTO performance may vary from year to year."

¹¹ GAO Report, p. 56.

outcomes is already collected, assessed and reported by the RTOs. The ISO-New England internal market monitor notes,

The GAO report calls for the development of standardized measures of market performance and preparation of a report that interprets those measures. In fact, the GAO is suggesting that the Commission perform an analysis of the markets similar to that performed by the ISO/RTO market monitors each year. Accordingly, the approach and metrics used by the market monitors may be useful to the Commission.¹²

It is clear that the GAO report was not asking for excessive new reporting requirements that would burden RTOs and market participants, and in some cases compromise the confidentiality or structural integrity of the market. The GAO report simply sought metrics based on “budgets,” “financial reports” and “standardized measures” that could help analyze an RTO’s performance as a market administrator.¹³ More analysis of the information already available to the Commission and a standardization of the types of reports across various RTOs can bring meaningful comparison and will accomplish the goals set forth by the GAO report.

B. PROPOSALS FROM COMMENTERS THAT EXCEED THE INTENDED SCOPE OF THE RTO METRICS

The Midwest ISO comments perhaps summarized best why certain proposals for RTO metrics would be ineffective – either the proposed metric is outside the control of the RTO or the metric may be irrelevant to whether the RTO is providing benefits.¹⁴ While there were several constructive suggestions that the Commission should seriously consider, there were also a number of proposals for RTO metrics that would be unnecessary, irrelevant and burdensome. Some, indeed, may even be harmful to

¹² *Comments of the Internal Market Monitor of ISO New England Inc.*, Docket No. AD10-5-000, (filed March 3, 2010), p. 9. (“Comments of IMM ISO NE”)

¹³ GAO Report, p. 2.

¹⁴ *Comments of the Midwest Independent Transmission System Operator*, Docket No. AD10-5-000 (filed March 3, 2010).

the marketplace in demanding commercially sensitive information with no evident commensurate benefit. In terms of falling outside of the RTO's control, commenters have focused inordinately on price as a metric, even after the GAO report cautioned against it, as documented below. On the subject of irrelevance, some commenters have used this proceeding in an attempt to get volumes of generator-specific data with little to no explanation as to how that data will aid in assessing the RTO's performance.

i. PRICE

EPSA agrees with the GAO report that there are:

A number of other factors outside an RTO's control, such as regulatory decisions about what transmission and distribution rates to approve and whether to implement price caps, also influence the prices consumers pay for electricity. Prices are also highly dependent on the cost of fuel used to generate electricity.¹⁵

While EPSA's initial comments in this proceeding warned against metrics relying too heavily on prices as they are largely outside of the RTO's control, APPA, ELCON and others pushed for new metrics heavily focused on price. For example, the APPA/ELCON pleading asked that a metric be based on "The actual variable cost of the marginal price-setting unit for each hour, a comparison of this cost to the actual LMP for that hour, and an average of this differential for on and off-peak hours for each month, and each pricing zone."¹⁶ The metric proposed by APPA and ELCON is untenable and EPSA has proposed an alternative based on how often market prices are flagged by the ISO/RTO for possible mistakes that is more appropriate.

¹⁵ GAO Report, p. 14.

¹⁶ *Initial Comments of the American Public Power Association and the Electric Consumers Resource Council*, Docket No. AD10-5-000 (filed March 5, 2010), p. 14. ("APPA/ELCON Initial Comments") Other comments mentioning some variation of this cost/revenue metric: Consumer Commenters (RPM Buyers); TAPS; MISO and PJM industrials; Steel producers; PA commissioner Tyrone Christy (PAPUC did not reference); Maryland PSC (as 'wholesale prices relative to marginal costs').

EPSA is concerned that should price become an ultimate indicator of RTO performance, RTO administrators would then have an undue incentive to distort competitive market prices by actively influencing the direction of wholesale power prices. This would taint the ISO/RTO's neutral role as system operator and create unintended consequences adversely affecting generation dispatch, investment and reliability. EPSA does not wish to reiterate its original arguments against using price as a metric in these reply comments, but rather provide a couple of more recent examples that prove price is out of the RTO's control and should therefore be avoided as a performance metric.

Prices can fluctuate due to a host of reasons, including fuel costs, differing regional peak demand needs and even state taxes. For example, just last week on March 11, 2010, the New York ISO (NYISO) reported that record setting low power prices were offset by New York state's high taxes on the electric industry. According to a NYISO press release, average 2009 wholesale power prices in New York reached their lowest level in ten years, dropping 48% from 2008 levels.¹⁷ However, NYISO went on to explain that increased taxes, fees and assessments on electricity in New York (recently found to levy the highest taxes in the U.S. on the industry) negate the lower wholesale prices. In fact, taxes and other fees in the state make up an average of 25 percent of a consumer's electric bill.¹⁸

¹⁷ NYISO goes on to note that this number was 2.54% lower than the previously recorded low price in 2002 and "Since 2000, competitive markets in New York have contributed to an 18 percent reduction in fuel-adjusted wholesale power costs." See: NYISO news release, "NYISO: Wholesale Power Prices Dropped to Historic Low in 2009," issued on March 11, 2010. Available at: http://www.nyiso.com/public/webdocs/newsroom/press_releases/2010/New_York_Wholesale_Prices_Historic_Low_031110.pdf.

¹⁸ *Public Policy Institute Report*, "Short-circuiting New York's Recovery - How Energy Taxes Contribute to High Electric Rates in New York," issued on March 2010. Available at: <http://www.ppiny.org/reports/2010/ShortCircuitingNewYorksRecovery.pdf>.

On the same day that NYISO announced record low prices offset by state taxes, PJM's market monitor published PJM's 740-page 2009 State of the Market Report. Here also the PJM market monitor reported that prices in 2009 were lower than those in 2008, noting that "Fuel costs and lower loads in 2009 contributed to downward pressure on [the locational marginal price]."¹⁹ Note that both fuel costs and lower loads are out of the control of PJM, just as higher fuel costs and higher loads were in previous years when wholesale power prices were higher. Though the 2009 PJM State of the Market Report realizes that "price is a key outcome of markets," it concludes that "individual prices are not always easy to interpret" and "the number of factors influencing the overall level of prices means it must be analyzed carefully."²⁰

Perhaps the most compelling arguments against excessive focus on price (and especially LMPs) as a direct RTO market metric come from the initial comments submitted by ISO-NE's independent market monitor (IMM) in this proceeding. "Price alone is not a measure of market performance and, if it were used for that purpose, could easily lead to misleading or incorrect conclusions about market performance," the IMM notes.²¹ Those comments go on to explain that whether LMPs in a market are higher or lower is not driven by "market performance" but by many other factors that are extremely difficult to adjust for. Further, the IMM explains that high or low prices in several areas can reflect vastly different causations. For example, high transmission costs can simply indicate that there is a lot of new building in the area, which has been added to relieve constraints or address reliability issues. EPSA refers the Commission

¹⁹ 2009 PJM State of the Market Report, prepared by Monitoring Analytics, p. 16. Available at: http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2009.shtml. ("2009 PJM SOM")

²⁰ 2009 PJM State of the Market Report, prepared by Monitoring Analytics (March 11, 2009), pp. 16, 18. Available here: <http://www.pjm.com/documents/reports/~media/documents/reports/state-of-market/2009/2009-som-pjm-volume1.ashx>.

²¹ Comments of IMM ISO NE, p. 3.

to the ISO New England IMM's comments in this proceeding, as it includes detailed technical analysis as to why price is not a good indicator of an RTO's performance.

EPSA continues to advocate that a more appropriate metric 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 #2²² and would be a more appropriate indicator of ISO/RTO performance than absolute or relative LMP prices. EPSA therefore urges the Commission to include such a performance metric in lieu of the proposal to use LMPs. The Commission should not go in the opposite direction, as APPA and ELCON have suggested, and collect the variable cost of the marginal price-setting unit for every hour and compare that cost to the actual LMP for that hour.

ii. OTHER GENERATOR-SPECIFIC INFORMATION

Several commenters asserted that there is a need for various types of generator-specific information to be collected as part of the effort to assess RTO performance. Again, the comments from APPA and ELCON were most specific as to the influx of generator information they wished to make public. While spread throughout their comments, a full list of generator information they requested is

²² *FERC Draft ISO/RTO Performance Metrics on Reliability, Markets Organizational Effectiveness*, Docket No. AD10-5-000 (February 3, 2010), p. 6. ("Draft Metrics")

instructive in demonstrating how far afield from the GAO's recommendations APPA and ELCON have strayed:

- For each individual generating plant selling into the RTO's centralized markets, the following data should be provided for each year:
 - Revenue from all wholesale markets and payments, including, at a minimum: energy, capacity, ancillary services, reliability-must-run contracts, uplift payments, bilateral contract payments and other sources of revenue. The data should also indicate whether the plant made offers in any markets that were mitigated by the RTO or its market monitor, presenting both pre and post mitigation offer data.
 - Actual operating, maintenance and fuel costs.
 - Contributions to capital cost in that year, including annual depreciation, and the net profit after coverage of debt cost; or an allocation of total company annualized capital costs to the plant.
 - A subtraction of the costs (b and c) from the revenue (a) to reveal the net income earned by the plant.
 - The inframarginal revenue. Inframarginal revenue is equal to the difference between the revenue received from the energy market, collected as part of (a), minus the actual operating, maintenance and fuel costs under part (b).
 - An assessment of the improvements or declines in the efficiency of the market as measured by the trend in the inframarginal revenue calculated in (e) above for each plant and for the RTO in total.
 - An aggregation of all data calculated in (a) through (d) above by the plant owner.
 - The actual variable cost of the marginal price-setting unit for each hour, a comparison of this cost to the actual LMP for that hour, and an average of this differential for on and off-peak hours for each month, and each pricing zone.
- For each generation plant completed and put into service in the prior year:
 - Generating technology, fuel and heat rate.
 - Capacity factor.
 - Nameplate capacity (MW).
 - Name and category of owner (independent power producer, affiliate of investor-owned utility, public power, investor-owned utility, electric cooperative, or other), and whether plant output will be sold under market-based or cost-based rates.
 - A list and percentage breakdown of all data in part 1 for all generation plants retired in the past year.
 - An assessment of how these additions and retirements affect the fuel diversity as demonstrated by the percentage of total capacity attributable to each fuel.
 - The capacity and generation technology for each generation plant currently in the interconnection queue.
 - The capacity and generation technology for each generation plant previously in the queue but removed in the past year.

- LMP and ancillary service price volatility for each month, season and for the entire year, calculated as the minimum and maximum prices, range and standard deviation of these prices.
- For the RTO as a whole and for each constrained zone, the average, minimum and the HHI for off and on-peak hours, for baseload, intermediate and peaking plants in the energy, capacity and ancillary services markets.
- For each generation unit receiving payments from the capacity market (if relevant for the RTO), the annual capacity factor, total number and duration of unscheduled outages, and number of hours that bids were submitted that exceeded the clearing price.
- For each Demand Response resource receiving capacity market payments (if relevant for the RTO), the number of times and hours the resource was called upon and the number of times and total hours demand was reduced in response.
- For virtual transactions, the identities of virtual traders participating in each RTO-run centralized market, the percentage of revenue in each such market flowing to virtual trades, and the average monthly earnings from such virtual purchases and sales between the day-ahead and real time markets.
- The identities of financial institutions and other entities that do not own/control generation or serve load that participate in FTR auctions/allocations, the percentage of congestion revenues in the relevant period(s) paid out to such entities on their FTR holdings, and the revenues paid by them to secure such FTRs.

What the list of desired generator information *did not include* was an explanation of how, if at all, these pieces of information could help the Commission assesses the performance of an RTO. Again, the GAO did not publish its report so that the Commission could collect and make public a new litany of information (especially one that is slanted towards drawing information from one particular industry sector). The GAO report asks the Commission to analyze largely existing information across all RTOs in order to assess performance and document the benefits of RTO markets.

The reams of information requested by commenters, assumingly made available publicly, are inappropriate and unnecessary. Additionally, EPSA restates its concerns that the extent of generator price and revenue data requested will result in monopsony power concerns. In fact, as several of the entities seeking such generator information

manufacture commodities that are purchased from them by generators for power plant construction and maintenance (steel and concrete, for example), the disclosure of such specific information would be anti-competitive and anti-consumer due to direct or indirect dealings through vendors and contractors. This proceeding should be restricted to RTO metrics only, and should not be used as a front for other sectors of the industry to gain sensitive competitive market information from generators.

C. THE NEED FOR EXPEDITION VS. CONTEXT IN THIS PROCEEDING

APPA and ELCON assert that “the Commission’s proposed timeline for achieving full reporting and evaluation of metrics is completely inadequate.”²³ EPSCA strongly disagrees. In fact, the Commission’s timetable for developing, implementing and making changes based on the results of the metrics is responsible and measured. FERC’s 2009-2014 Strategic Plan seeks to establish appropriate metrics for RTO regions as well as non-RTO regions before evaluating the performance of the markets and seeking necessary changes. This is important for several reasons. As stated in the GAO report, one of the primary purposes for developing metrics is to “help FERC address the divisions among experts and industry participants about the benefits of RTOs.” The report also notes that “some believe that these benefits could have been achieved without RTOs.”²⁴ It would be impossible to achieve that purpose without also evaluating non-RTO markets in order to give context to the results of RTO performance metrics. There was agreement among several commenters in this proceeding that the Commission should take the time to contextualize RTO metrics with non-RTO areas. Most notably, the National Association of Regulatory Utility Commissioners (NARUC) “urge[d] FERC, as soon as possible, to develop some sort of a baseline by which to

²³ APPA/ELCON Initial Comments, p. 8.

²⁴ GAO Report, pp. 7-8.

compare the RTOs and ISOs to regions outside of these organized markets.” NARUC concluded that, “[w]ithout such a baseline it will be difficult to analyze RTO/ISO benefits.”

FERC has wisely laid out a timeline by which no changes will be made to market structures until it can obtain a full and measured picture of both RTO and non-RTO areas. Further, the GAO report asserts that it is extremely difficult to get an unbiased picture of the merits of RTOs because of the nature of electricity prices and clamoring from various regional interest groups.²⁵ It is therefore imperative that these metrics not be unduly influenced by fluctuating prices or specific interest groups. The timeline the Commission has laid out in its 2009-2014 Strategic Plan allows enough time for both proper context to be constructed and measured analysis to occur.

APPA and ELCON complained that they are “disappointed by both the process used to date to develop these metrics and the limited scope and off-the-shelf nature of the proposed metrics themselves.”²⁶ The APPA/ELCON pleading further asserts that neither enough time was spent nor enough effort expended reaching out to all interested stakeholders. However, the same pleading seeks to expedite the proceeding, complaining that FERC’s timeline for completion is “completely inadequate.”²⁷ It cannot be both ways – either FERC expedites the proceeding, not listening to interested stakeholders and develops a quickly-patched together set of metrics for implementation next year or the Commission takes the time to listen to stakeholders and put together measured, meaningful metrics. EPSA prefers the latter approach and commends the Commission for doing so. The Commission should take

²⁵ Id., p. 58.

²⁶ APPA/ELCON Initial Comments, p. 5.

²⁷ Id., p. 8.

the time necessary to develop reasoned and meaningful metrics for both RTO and non-RTO areas. Only then can the results of the metrics be properly placed in context to form the basis for action in the RTO and non-RTO regions as appropriate.

II. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission consider the comments herein and adhere closely to the GAO report's recommendations to FERC that gave rise to this proceeding. For the most part, the information required to fulfill the GAO recommendations is already being reported to the Commission in the RTOs' annual state of the markets reports. Forming metrics should simply require additional analysis and coordination across markets based on data already reported.

Commenters requests to exceed the scope of this proceeding in asking for burdensome, generator-specific information with no valid basis in assessing RTO market performance should be rejected. Finally, while EPSA prefers that the Commission develop and apply metrics for RTOs and non-RTO regions concurrently, EPSA agrees with the Commission's 2009-2014 Strategic Plan that contemplates having metrics applied to both RTO and non-RTO areas before evaluating performance and seeking changes as necessary.

Respectfully submitted,



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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 19, 2010.



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