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## II. COMMENTS

### A. PROPOSALS TO AMEND EXISTING EQR REQUIREMENTS

- i. **QUESTION 7 – SHOULD THE EQR FILING REQUIREMENTS INCLUDE THE DATE ON WHICH PARTIES TO A REPORTED TRANSACTION AGREED UPON A PRICE (TRADE DATE) AND TYPE OF RATE BY WHICH THE PRICE WAS SET (I.E., FIXED PRICE, A FORMULA OR AN INDEX)? IF SO, HOW SHOULD THE TRADE DATE BE DEFINED AND ARE THERE ANY ISSUES IN DETERMINING THE TRADE DATE FOR SALES UNDER MASTER AGREEMENT OR EVERGREEN CONTRACTS?**

EPSA has several concerns regarding the inclusion of a trade date as a reporting requirement. Further, EPSA sees little value in the Commission's collection of that data. The first major concern EPSA has is that a trade date may be subject to multiple interpretations and may change based on the individual parties process and the deal that is being executed. The date that parties agree to a price is not necessarily the date of the transaction, nor does it mean the agreed-to price is final unless the deal is signed or confirmed. Parties may have an agreement in principle to a price, but then something may change and the price may be renegotiated. Until the deal is actually signed, the date that parties agree to the price is not set. Further, this date may be subject to differing interpretations by both sides of the deal.

EPSA's other major concern with this reporting requirement is timing. Any reporting requirement would have to be prospective only, as "trade date" is not currently a reporting requirement. Thus, there may be major software problems

created with the Commission's EQR program. If implemented by FERC without grandfathering preexisting transactions, there would be no way for reporting entities to differentiate new deals from old, and the old deals will not have a reported trade date. Thus, any analysis done with this newly reported data would have a field precluded from historic data. Any adjustments made to prior quarters' data presumably would need to include this information, which may be impossible to gather for preexisting transactions. EPSA is concerned that the Commission's EQR software would generate error messages for leaving the field blank. The NOI provides no discussion of these problems and the Commission should seriously consider these concerns before requiring that transaction dates be reported. In addition there is an overlap issue. If a deal is concluded in one quarter but goes to delivery in another quarter (or quarters), will it have to be reported in the quarter the transaction was concluded as well as the quarter(s) of delivery? What about any intervening quarters – will the entity have to report deals in some form of abeyance between conclusion and delivery?

More critical to the Commission's analysis, however, EPSA does not see any value in reporting this data point. Reporting entities already report price and transaction date, and the date on which the parties to a transaction agreed to the price does not appear material to any of the Commission's analyses or market monitoring functions.

However, in the event that the Commission does adopt this proposal, it must ensure that the term "Trade Date" is given a simple and straightforward meaning. EPSA members have reported that through custom and usage in the trading industry, the term "Trade Date" has developed the broadly understood

meaning of "the date upon which the parties agree upon the terms of, and enter, a Transaction." FERC suggests the term should be defined as the date on which the parties agree upon a price. This is not an appropriate definition. There are several elements, in addition to price, to any trade upon which the parties must reach agreement before they execute a trade. These terms include volumes, point of delivery, nature of firmness, credit terms, duration, enabling agreement status, and may include other specialized terms as well. As the parties negotiate a potential trade, although the parties may agree on price on Day 1 of negotiations, the deal may fall apart on Day 2 of negotiations because the parties were unable to agree on credit terms, or other provisions, or the parties may not reach final agreement on all relevant terms of a trade until Day 3 of negotiations. When the parties agree on all terms, and enter a confirmation of their transaction, that should be considered the Trade Date. This date may not be synonymous with the date on which the parties reached agreement on price terms. The Commission should give the term "Trade Date" the same meaning it generally has in the industry.

The Commission further asks whether it should require reporting of how the price was set, e.g. fixed price, formula rate, index. This requirement would pose significant compliance burdens on reporting entities, and it is not apparent to EPSCA that there is any benefit to the collection of this information. Some EPSCA member companies have reported that they could not currently comply with this requirement, as the companies do not track this data. Thus, if this proposal is adopted, market participants would need to make major system changes to be able to capture and report this data. If the Commission proceeds

down this route, it should allow a significant period of time for implementation before this aspect of a rule change became mandatory so that reporting parties could hire the necessary contractors, and have time to reconfigure data capture and reporting systems to collect this new data. Moreover, this “type of rate” information is already captured in the "contract" field. Identifying the type of rate in the transaction field would be a significant compliance burden, and because of the redundancy, would add little value. Ultimately, this data should not be required unless the Commission can determine that there are significant benefits associated with its collection in the transaction field of the EQR program.

**ii. QUESTION 8 – SHOULD THE COMMISSION COLLECT INFORMATION ABOUT THE RESALE OF FINANCIAL TRANSMISSION RIGHTS IN SECONDARY MARKETS? WOULD COLLECTING THIS INFORMATION ENHANCE MARKET TRANSPARENCY? IF SO, WHAT CURRENT EQR FILING REQUIRMENTS SHOULD BE IMPOSED ON THE RESALES OF FINANCIAL TRANSMISSION RIGHTS IN SECONDARY MARKETS?**

EPSA takes the position that FERC should not collect FTR data as part of this transparency effort as it would be unnecessary and duplicative. First, it is unclear how the Commission plans to use this information. FTRs by nature are purchased in order to hedge some physical transactions against congestion risks. To see isolated FTR data unconnected with any linked transaction or set of positions a party was attempting to hedge would not convey any helpful information. The number of FTRs a company sells in isolation is data that would not be useful.

Moreover there already is an abundance of information provided by ISOs/RTOs on FTR trading. ISOs/RTOs with FTR markets provide extensive data in their annual and monthly auctions including parties, prices and FTR

paths. There is little, if any, bilateral trading of FTRs. There is no need for the Commission to compile this information in addition to what MISO and PJM already provide. There is sufficient transparency in the market through what is already published.

**iii. QUESTION 9 – SHOULD THE COMMISSION REQUIRE MARKET PARTICIPANTS TO USE A STANDARDIZED UNIT FOR REPORTING ENERGY AND CAPACITY TRANSACTIONS (I.E. \$/MWH OR \$/MW MONTH FOR ENERGY AND \$/MW OR \$/KW FOR CAPACITY)? WOULD REQUIRING MARKET PARTICIPANTS TO USE A STANDARDIZED UNIT ENHANCE MARKET TRANSPARENCY?**

EPSA does not advocate standardizing units for reporting transactions. The Commission should allow parties to report Transactions on the basis under which the products have been sold in the individual trade. Energy is generally sold on a \$/MWh basis. Thus, EPSA member companies have noted that energy sales are generally reported on a \$/MWh basis. Capacity may be sold on a \$/MW-Day, \$/MW-Week, \$/KW-Day, \$/KW-Week, \$/KW-Month, or \$/KW-Year basis, and the parties should report those trades in accordance with the way the products were measured, priced and sold under the each transaction. This will reduce the possibility of errors in translating one unit to another.

**iv. QUESTION 10 – SHOULD THE COMMISSION ELIMINATE THE REQUIREMENT TO REPORT THE TIME ZONE IN THE CONTRACT SECTION OF THE EQR? WOULD DOING SO BE DETRIMENTAL TO THE MARKET AS A WHOLE?**

EPSA supports eliminating the requirement to report the time zone from the contract section of the EQR, so long as the Commission maintains the requirement to report the time zone in the transaction report. Many contracts do not specify a particular time zone. Moreover, a reporting entity that makes sales

in various time zones under one contract may find it difficult to identify one time zone for the entire contract. While current requirements permit the use of "N/A" in the time zone field of the contract report, it would be better to remove this requirement from the contract report altogether, while maintaining it in the transaction report, so that particular transactions can be correctly identified. Maintaining the requirement to report the time zone of a Transaction provides data that is useful in analyzing activity in the various regional markets.

## **B. POSSIBLE ELIMINATION OF DUNS NUMBERS AND OTHER MODIFICATIONS TO EQR REQUIREMENTS**

The NOI asks for comments on “what changes, if any, should be made to its regulations” concerning EQRs.<sup>3</sup> In fact, there are likely several items that could be modified in order to facilitate the burden of EQR filing requirements at little to no informational cost to the Commission. The Commission should explore all suggestions to streamline EQR requirements as this proceeding moves forward.

Though it was not specifically addressed in the NOI, EPSA agrees with Edison Electric Institute (EEI)<sup>4</sup> that the use of DUNS numbers is burdensome and may carry little benefit. EPSA members have reported that the requirement to use DUNS numbers is more of an administrative burden than a help. There seems to be little correlation between Dun and Bradstreet (a firm primarily concerned with credit) and EQR reporting. Additionally, the Commission’s EQR software generates an error message whenever a DUNS number cannot be obtained. EPSA members have reported that even though the Commission has

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<sup>3</sup> Transparency NOI at P. 2.

<sup>4</sup> EPSA understands that EEI will file comments in this proceeding tomorrow that will address the DUNS issue in more detail.

instructed a party to input a zero when a counterparty does not have a DUNS number, an error message still occurs. Further, the Commission considers how complete EQRs are when auditing entities, and without DUNS numbers, EQRs may be considered incomplete.

As this proceeding is only at the NOI stage, EPSA encourages the Commission to explore if DUNS numbers are truly necessary. While EPSA members agree with EEI that DUNS numbers are burdensome, some uniform nomenclature should be adopted to identify counterparties. EPSA does not advocate one particular course of action, but urges the Commission (possibly in the issuance of a NOPR in this proceeding) to investigate why DUNS numbers are necessary and possible alternatives to their use.

Beyond the DUNS numbers, EPSA would include other items for the Commission to consider modifying or eliminating. The EQR requires reporting of all transactions. This can include small transactions, often resulting from balancing of other transactions that are de minimus in nature. EPSA members have reported hundreds of transactions that are smaller than 1 MWh in size. In further stages of the proceeding, the Commission should explore establishing a cut-off whereby transactions under a certain size (say, 1 MWh) would not have to be reported.

In addition, the EQR requires reporting of transactions on an on-peak and off-peak basis. This is a major burden on reporters. Since various regions of the country have different standards for what is on- and off-peak, this can lead to confusion in the reporting. In further stages of this proceeding, the Commission should explore the requirement to provide on- and off-peak information, what

benefit the information offers to the Commission, how the requirement might be reformed to become less burdensome or eliminating the requirement all together.

There are also other possible reporting requirements that may be able to be eliminated to reduce the burden on the filer and to provide better information to the Commission. EPSA encourages the Commission to carefully consider all such suggestions made by filers.

### **III. CONCLUSION**

Wherefore, EPSA respectfully requests that the Commission consider the recommendations herein.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

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

Dated at Washington, D.C. March 29, 2010.

A handwritten signature in black ink, appearing to read "Nancy Bagot", written over a horizontal line.

Nancy Bagot, VP of Regulatory Affairs