

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. EPSA seeks to bring the benefits of competition to all power customers.

Many of EPSA's member companies are market participants and members of PJM. Further, EPSA and its members have been and continue to be active in many of the Commission's ongoing proceedings on PJM issues, and were also active parties in the stakeholder process leading to PJM's proposal in this proceeding. EPSA is also a party and has filed comments in the rulemaking proceeding under Docket No. RM10-13-000 in which the Commission considers revising its regulations to require each ISO/RTO to clarify that they are to become parties to market transactions. Accordingly, EPSA has a direct and substantial interest in the outcome of this proceeding that cannot be adequately represented by any other party. Therefore, allowing EPSA to actively participate in this proceeding would be in the public interest.

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

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II. COMMENTS

In filing its May 5 proposal, PJM:

emphasize[d] that its stakeholders developed this approach to counterparty clarification and credit risk management during the course of numerous stakeholder meetings and discussions over the past two years, well before the Commission's latest initiatives.⁴

The PJM May 5 proposal goes on to describe the stakeholder process, which included the identification of a problem and the resultant credit risk management initiative and counterparty clarity initiative. EPSA's comments do not consider the result of PJM's stakeholder process here and EPSA has no current bias for or against the PJM proposal. However, EPSA is concerned that the instant proceeding could become the basis for national precedent concerning ISOs/RTOs becoming central counterparties. EPSA urges the Commission to consider this case in isolation, as it is the product of an extensive regional stakeholder process undertaken solely at the behest of PJM and its stakeholders, not at the direction of or coordination with the Commission or other ISOs/RTOs. The Commission should not view the PJM proposal as a jumping-off point for a national mandate or policy on the role of ISOs/RTOs as counterparties to transactions.

In its filing, PJM notes that its proposal has been vetted by PJM stakeholders in order to "[make] adjustments to address unique concerns in the PJM region..."⁵ Additionally, PJM states, "There may be alternative ways to address these matters in other regions, but as evidenced by the strong support of

⁴ *PJM May 5 Proposal*, p. 2.

⁵ *Ibid.*

the PJM members, for PJM this proposal is ready for implementation."⁶ As concerns and questions raised during the ongoing credit reforms rulemaking proceeding similarly attest, there are numerous challenges related to the central counterparty question, some of which are impacted by regional market design elements and differences. Therefore, PJM's declaration that there may be alternative approaches appropriate in different regions is of particular importance — the PJM proposal should be considered within the context of the PJM market alone, and not viewed as establishing best practices, preferred approaches or precedent for markets outside of PJM.

Recently, entities involved in crafting the PJM May 5 Proposal have publicly noted that this solution is particular to PJM and may not be right for all markets. For example, at the Commission's May 11, 2010 technical conference Todd Brickhouse, speaking on behalf of Old Dominion Electric Cooperative (ODEC), noted that there were some complex tax issues associated with PJM becoming the counterparty to transactions with co-ops.⁷ Namely, a co-op needs to sell 85 percent of its power to its owners to maintain tax-exempt status. Were PJM the primary counterparty, the co-op might be considered as selling 100 percent of its power to PJM, a non-owner, and lose its tax-exempt status. This is just one of the many individual problems PJM worked through with stakeholders before filing the PJM May 5 Proposal with the Commission. ODEC's testimony at the May 11 Technical Conference was, in fact, aimed at illustrating for the

⁶ Ibid.

⁷ See: *Transcript of May 11, 2010 Technical Conference on Proposed Rulemaking on Credit Reforms in Organized Electric Markets*, Docket No. RM10-13-000, pp. 79-81.

Commission that the result of the PJM stakeholder process on this issue may not be appropriate in all ISOs/RTOs.

The main issue in both the PJM May 5 Proposal and the May 11 FERC technical conference was how to establish mutuality in the event of a catastrophic default in the market. EPSA asks the Commission to make clear in its ruling that neither the PJM May 5 Proposal, nor any other proposals submitted by other ISOs/RTOs addressing the mutuality question in other ISOs/RTOs, will establish the direction of national policy questions raised in the Credit NOPR proceeding.

III. CONCLUSION

WHEREFORE, EPSA respectfully requests that the Commission grant its motion for leave to intervene and consider the comments herein.

Respectfully submitted,



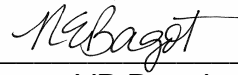
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May 26, 2010

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., May 26, 2010.



Nancy Bagot, VP Regulatory Affairs