UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Promoting a Competitive Market for Capacity Reassignments	))))	Docket No. RM10-22-000

COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

The Electric Power Supply Association[1] ("EPSA") hereby submits comments on the notice of proposed rulemaking issued by the Federal Energy Regulatory Commission ("FERC" or "the Commission") in the above-captioned proceeding on April 29, 2010.[2] In the NOPR, the Commission proposes to lift the price cap for all transmission customers reassigning transmission capacity beyond October 1, 2010, to develop of a market for capacity reassignment as a competitive alternative to primary transmission capacity in the wholesale electric market. The proposal is based on the Commission's experience with reassignment to date outlined in a two-year Staff study issued on April 15, 2010.[3] From this experience, the Commission finds that there is significant potential for growth in the reassignment of capacity in the electric market. Further, the Commission finds no significant market power concerns, nor evidence of affiliate

[1] 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. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.
[2] Promoting a Competitive Market for Capacity Reassignments, Notice of Proposed Rulemaking, 131 FERC 61,081, (April 29, 2010) (NOPR).

[3] FERC Staff, Staff Findings on Capacity Reassignment (2010), available at: http://www.ferc.gov (Staff Report).

abuse. In the NOPR the Commission seeks comment on possible market reforms necessary to move forward, possibly informed by the natural gas markets' experience with capacity release.

EPSA applauds the Commission's decision to lift the price cap for reassigned capacity and increase competitive opportunities for capacity reassignment. The Commission's experience with pipeline capacity release provides guidance for next steps in developing the capacity reassignment market, which should continue to be monitored by the Commission to ensure against market power concerns or potential affiliate abuse. Accordingly herein EPSA provides comments on the Commission's NOPR.

I. COMMUNICATIONS

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

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II. COMMENTS

The Commission began the movement to a more robust market for reassigned capacity in the wholesale electric market when it lifted the price cap in Order No. 890. The Commission wisely opted to establish a pilot period to collect information on the change to gain a better understanding of any market impact while continuing to ensure against market power or affiliate abuses.

By promoting a market for capacity reassignment the Commission will foster a more competitive secondary market for capacity which will allow more efficient use of firm transmission capacity. This efficiency will be further bolstered by the modified requirements of the Order No. 890 Open Access Transmission Tariff (OATT) that ensure that reassignments of capacity are conducted in a transparent and not unduly discriminatory manner.

The Staff Report highlights areas for data review, further examination and monitoring for improving the capacity reassignment program as it evolves. Similar to the 1999 natural gas capacity release program data collection effort that the Commission used to evaluate that program, the Commission is urged to continue to study and report on the capacity assignment program as it progresses. By tracking and monitoring the capacity assignment program as it matures, the Commission will be informed and therefore able to require changes to the program, as it did with the liberalizations made to the natural gas capacity release program that resulted in Order No. 712 which has served to increase the efficiency and competition in the pipeline capacity release program.

While the Staff Report on Capacity Reassignment serves to establish some initial findings, the Report also shows some gaps that will require further analysis in order to provide the necessary refinements for more meaningful future reports. Staff was directed by the Commission to look at four areas: the number of reassignments, price of reassignments, the term of reassignments and the relationship of resale prices to energy prices. Assessing the four areas would rely on accurate, credible reporting by transmission providers. However, as the report notes in footnote 5:

> The results held in this report may be influenced by any remaining unidentified filing inaccuracies as of April 12, 2010 by transmission providers.[4]

The transactions included in the report from both Central Vermont Public Service ("CVPS") and the Bonneville Power Administration ("BPA") would seem to represent potential inaccuracies described in the footnote, and the Report notes that both amounts are attributed to how the data was reported. The unusual reporting by these two transmission providers needs to be resolved and more accurately tracked so that industry and policy makers can better assess the ongoing capacity assignment results. The fact that these two transmission providers at different ends of the country – one noted for the high volume of power moved over its system (BPA), the other not (CVPS) -- make up 96 percent of the reported transactions raises concerns about the reliability of the data. The data from Bonneville and CVPS tend to taint the results for two of the Commissions four question areas -- number of transactions and duration.

EPSA also has questions about what was not reported. If only 26 transmission providers reported reassignments,[5] how will the Commission or other policy makers determine why reassignments do not occur on numerous other transmission provider's systems? The Report concludes that this is best explained by the differences among organized markets and non RTO/ISO regions; however this is seemingly contradicted by the conclusion that the most active markets are in the Western United States (a non-RTO/ISO region) and the

[4] Staff Report, Page 2, Footnote 5.
[5] Staff Report, Page 2.

Northeast (a RTO/ISO region).[6] The Commission needs to collect qualitative research in addition to the quantitative results from the transmission provider data. Further investigation could provide answers that might better guide future Commission actions to promote a more robust competitive reassignment market.

Despite the need for more consistent data in the transmission provider reports, the NOPR's conclusions about the magnitude and variability of the resales do not suggest that there is a basis for the Commission not to permanently lift the price cap. Because few of the reported transactions exceeded the price cap there is little reason for concern that the lifted cap has provided resellers an opportunity to charge excessively for reassigned capacity. Additionally the data clearly shows that the secondary market has grown; the Commission should support further growth and competition in the secondary market.

EPSA would encourage the Commission to look at ways of increasing transparency for transmission capacity available for reassignments as a way of promoting the secondary market for reassignment. While competitive suppliers support the current requirement to post reassigned transactions prior to the commencement of the transaction, measures that would improve the posting of capacity available for reassignment would also help promote the reassignment market.

Currently, competitive suppliers find access to information about the ability to reassign and the process makes them dependent on the OASIS sites of transmission providers outside of organized markets. For a supplier seeking to

[6] Staff Report, Page 3.

make capacity available for reassignment they can only reassign capacity with market participants who have active umbrella agreements with the transmission provider. Consequently, the reassignment market can be better facilitated if transmission providers have consistent rules about posting the entities and market participants that have active umbrella agreements with the transmission provider. Such postings would give competitive suppliers transparent knowledge about which market participants have the ability to purchase reassigned transmission capacity.

III. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission move forward with its proposal to lift permanently any price cap for reassigned capacity and continue to monitor the reassignment market, refining transparency provisions as possible.

Respectfully Submitted,

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July 6, 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., July 6, 2010.

NEBagot

Nancy Bagot, VP of Regulatory Affairs