



## I. COMMENTS

EPSA appreciates any proposal that seeks to make the markets more transparent or prevent market manipulation. However, the premise of the NOPR – that NERC collects e-Tag data on a systematic and nationwide basis – is incorrect. Further, market participants do not collect this data for reporting or archival purposes either. To ask for the data from either NERC or market participants would require a massive overhaul of data collection systems.<sup>3</sup> While EPSA is not necessarily opposed to FERC getting the raw e-Tag data from sources other than market participants,<sup>4</sup> the NOPR asks misdirected questions and seeks to obtain the data from the wrong entities. Two basic flaws have contributed to the general confusion surrounding the NOPR: (1) market participants are unclear how FERC seeks to specifically use the data; and, (2) the NOPR errs in assuming that NERC has the data readily available. If the Commission could articulate a clearer rationale for needing the data, perhaps industry could offer a constructive way of providing FERC with useful information; however, without knowing what FERC seeks to accomplish it, is difficult to offer constructive alternative solutions. Therefore, EPSA suggests a technical conference or an NOI to explore the basics of how e-Tag information is

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<sup>3</sup> Note that while the NOPR proposes not to burden market participants by getting the information directly from NERC, in the related EQR NOPR published on April 21, 2011 in Docket No. RM10-12-000, FERC proposes to require e-Tag IDs to be reported. Those IDs are not currently collected or retained. That request represents a significant reporting burden and the proposal to collect e-Tag IDs should not go forward in that related proceeding without action first in this proceeding.

<sup>4</sup> EPSA's lack of opposition to the NOPR should not be misconstrued by the Commission as support in any way, shape or form. As noted in the following comments, the NOPR suffers from fundamental misconceptions that may not be capable of being remedied without stepping back to a technical conference or NOI stage in this proceeding.

generated and collected, as well as how the Commission plans to use the data for market oversight purposes.

#### **A. HOW E-TAG INFORMATION IS GENERATED AND COLLECTED**

The NOPR presents an overly simplistic picture of how e-Tag information is generated and collected. As stated above, EPSA is not necessarily opposed to the Commission obtaining the information for market monitoring purposes from sources other than market participants. However, it is essential that FERC and industry come to a common understanding of what exactly e-Tag information is and how it is collected. Out of that common understanding, the Commission and industry may also agree on the least burdensome way to collect that or other useful information.

The NOPR describes e-Tags as tools “used to schedule interchange transactions in wholesale markets.”<sup>5</sup> Further, the NOPR states that “NERC and/or Regional Entities (such as WECC) collect all e-Tag data in near real-time.”<sup>6</sup> While the NOPR has gotten the purpose of e-Tags correct, NERC does not, in fact, “collect all e-Tag data.”<sup>7</sup> Building an e-Tag for a transaction is actually a distributed system wherein one of the purchasing entities (usually the load serving entity) writes the tag, but each party to the transaction must approve or deny the tag, which is all done via the “tag authority” or sink balancing authority. In general, third party vendors such as OATI provide services to accomplish the creation and collection of e-Tag data. In many cases, market participants do not have the data, but instead have access to a system owned by a third party vendor that provides a customized view of the data. The entities do

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<sup>5</sup> e-Tag NOPR at P 6.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

not collect the tags or the IDs for reporting purposes, nor does NERC. In fact, the only entity that collects and retains the confidential e-Tag information on the large scale basis that the NOPR seeks is a third party contractor (in most cases OATI).

## **B. MISCONCEPTIONS IN THE NOPR**

The NOPR fails to acknowledge that e-Tag data is not reported to NERC, but collected by an outside vendor.<sup>8</sup> NERC simply runs the interchange distribution calculations in many cases but does not receive e-Tag data as a reporting requirement from jurisdictional entities. The NOPR would have e-Tag information:

aid the Commission in market monitoring and prevent market manipulation, help assure just and reasonable rates, and aid in monitoring compliance with certain business practice standards.<sup>9</sup>

Any information that contributes to the Commission's market monitoring and enforcement programs should present a complete market snapshot. The information FERC seeks to collect from NERC may therefore be either incomplete or not collected by NERC at all, but a third party vendor who then works with NERC to provide inputs to NERC's congestion management tools. Hence, there is concern data presenting a partial picture of the market should not be the basis for any type of market monitoring or compliance intelligence.

Additionally, NERC does not formally collect e-Tag data from market participants

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<sup>8</sup> In most cases, this vendor is OATI. See: *NERC's Transmission Availability Data System Data Reporting Instruction Manual*, Section 1.9 "WebTADS Data Entry and Analysis Software" (September 29, 2009). Available here:

[http://www.nerc.com/docs/pc/tadswg/Data\\_Reporting\\_Instr\\_Manual\\_09-29-09.pdf](http://www.nerc.com/docs/pc/tadswg/Data_Reporting_Instr_Manual_09-29-09.pdf)

In this section, NERC relates that it has contracted with OATI for several purposes including data management and analysis/reporting functions. OATI has discreet contracts with its consumers and extracting commercially sensitive information from OATI has not been proposed here.

<sup>9</sup> e-Tag NOPR, p. 1 (included in "Summary")

and to do so would require an extensive change in NERC policy. Further, this “new” information FERC would be using to monitor the market may be incomplete.

Market participants do not currently collect this data for reporting purposes either. One of the major reasons cited in the NOPR for obtaining that information from NERC was “to avoid burdening market participants with a requirement to file the same data with both NERC and the Commission.”<sup>10</sup> However, EPSA members have reported that even the simple requirement proposed in the EQR NOPR to report e-Tag identification numbers may be particularly burdensome as e-Tag data is not currently tracked for each physical transaction for EQR reporting purposes. Neither NERC nor market participants are equipped to provide the Commission with the information it wants pursuant to the instant NOPR. Even if FERC were to require the market participants to give the information via a reporting requirement, it would not be complete. As explained above, each market participant has its own snapshot of how its e-Tags fit into market-to-market transactions. Each BA, in turn has its own snapshot. No single FERC-jurisdictional entity collects the information en masse for a complete market snapshot.

The entities that actually collect and retain this information are third party vendors specializing in e-Tag data. As, explained above, e-Tags are complex. A single transaction may have several e-Tags with which it is associated. Thus, market participants enter into contracts with third-party vendors to collect, retain and disseminate that information to NERC when necessary (in the Eastern

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<sup>10</sup> e-Tag NOPR at P 10.

Interconnect almost all of those contracts are with OATI, though there are some OATI competitors in the West).

**C. A TECHNICAL CONFERENCE OR AN NOI IS NECESSARY IN ORDER TO REACH A BETTER COMMON UNDERSTANDING OF E-TAG DATA**

The entities that actually collect the data that the Commission seeks in the NOPR are third-party vendors. This likely presents several legal issues associated with abstracting the information from those vendors. Namely, because the information is commercially sensitive,<sup>11</sup> vendors have confidentiality contracts with market participants. Thus, if the Commission finds e-Tag data absolutely necessary to its market monitoring and enforcement efforts, it will be necessary to take a step back and explore the legal proprietary issues associated with getting the information from third party vendors like OATI.

EPSA suggests an initial technical conference to ensure that the Commission, NERC and industry can clear up any confusion on how e-Tags are generated and collected, as well as how they might be used in a market monitoring or enforcement context. At such a technical conference, NERC could explain its role, and the third-party aggregators of e-Tag information could explain their role. Further, various transmission providers could explain how the

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<sup>11</sup> EPSPA has great concerns about the commercially sensitive nature of e-Tag information. The NOPR proposes to get the e-Tag information on a confidential basis (NOPR at P 9). However, in another NOPR published on the same day as the e-Tag NOPR, the Commission proposed to make certain e-Tag data part of EQR reporting requirements. EQRs are public. As EPSPA will note in its comments on the EQR NOPR, there should be no public disclosure of e-Tag information because it concerns transactional data that could be harmful to the market if made public and paired with physical data (which may be easier to construct in the context of an EQR). Further, EPSPA is concerned about the question of more widely disseminating the information to the RTOs and market monitors who are subject to information requests from states and other parties. If there is a reason that RTOs or the market monitors need this data and will use it for a specific purpose, EPSPA would be pleased to comment on such a proposal. However, as the instant NOPR has not constructed a full proposal for the further dissemination of this commercially-sensitive information, EPSPA opposes RTOs and market monitors having access to e-Tag data at this time.

tags are implemented, and what use the transmission provider makes of them. Finally, industry could ask questions to FERC staff in an open forum to better understand what the data represents and the limits of the data. Such a discussion on the record could only serve to aid the Commission in better determining how much data, if any, it really needed concerning e-Tags.

In addition, an NOI may be helpful in this docket to explore legal questions concerning the confidentiality contracts between the third party vendors and market participants. Further, e-Tag information has a certain value associated with its proprietary nature. The NOI could explore that value and weigh the costs and benefits associated with the Commission's need for the information.

EPSA would be pleased to participate in such a technical conference or comment on the NOI described above. However, the instant NOPR is untenable and breeds confusion. It incorrectly assumes that all e-Tag information is collected in real-time by NERC. The Commission should not act as a result of this NOPR alone, and any accompanying e-Tag information requested in the EQR context should not be explored until this docket is resolved.

## **II. 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. June 27, 2011.

Handwritten signature of Nancy Bagot in cursive script.

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Nancy Bagot, VP of Regulatory Affairs