



The Commission also proposes to: (1) standardize the unit for reporting energy and capacity transactions; (2) omit the time zone from the contract section; and (3) eliminate the Data Universal Numbering System (DUNS) data requirement. EPSA filed comments on the 2010 EQR Notice of Inquiry (“NOI”)<sup>3</sup> and appreciates the opportunity to submit suggestions and seek clarification on the EQR NOPR.

As discussed in more detail herein, the Commission’s proposed rule will impose substantial additional costs on market participants without providing a corresponding benefit, and accordingly requires significant revision. Should the Commission none-the-less move forward with the proposed rule, it must clarify several requirements and terms used in the NOPR so that transactions can be appropriately classified and reported. Without further clarification the Commission risks unnecessarily increasing its data collection efforts without commensurate benefit. The Commission should convene a technical conference on the issues that need clarity so that implementation can occur in an efficient manner. The Commission also proposes to collect data on Brokers and e-Tags that, while providing little apparent transparency benefit, would be extraordinarily burdensome for EQR filers, and give rise to confidentiality concerns.

The proposed EQR changes are significant and will require extensive resources to implement the necessary Information Technology (“IT”) system changes. A technical conference would shed additional light on the system changes and coordination needed so that industry can assist the Commission in

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<sup>3</sup> See *Comments of the Electric Power Supply Association*, Docket No. RM10-12-000 (filed March 29, 2010) (“EPSA EQR NOI Comments”). Available at [www.epsa.org](http://www.epsa.org).

successfully achieving the transparency goals associated with the data collection effort.

## **I. COMMUNICATIONS**

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## **II. SUMMARY POINTS**

The following are summary points concerning EPSA's views on the EQR proposal:

1. The Commission's EQR reports are already the most extensive reporting requirement imposed on participants in the United States power and gas industries.
2. EQRs for some power suppliers include data on over 100,000 transactions per quarter, with some quarters reaching 200,000 transactions.
3. Some EPSA members already devote as much as one full-time employee ("FTE") to EQR preparation and submission. EPSA members contend that the current proposal would add two FTE at a minimum.
4. Power suppliers typically utilize transaction tracking systems that contain information on each transaction from the day it is executed, through the scheduling process, settlements, billing and into financial reporting and regulatory reporting. All the data currently required for EQR reporting can be extracted from those systems. Those systems typically do not contain information such as the time of a trade, an indication of whether a transaction was reported to index developers, the identity of the broker that may have been involved in a transaction, or e-Tag information.
5. Many of the changes proposed in the NOPR would require EQR filers to capture and retain information that they do not today, or report data that is not in their transaction tracking systems. In addition to the process changes necessary to capture information that is not collected or held for any business

purpose, these requirements would require very expensive system modifications if not entirely new systems, and/or manual processes to get the information in a form that can be reported. Accordingly, there would be both large one-time costs for systems changes, and significant on-going costs.

6. The proposal includes removing a few data elements that are currently required in the EQR. EPISA supports those changes; however, the cost savings resulting from those changes are minimal compared to the exorbitant new costs associated with the reporting the additional data elements included in the NOPR.
7. EPISA respectfully submits that the proposed changes in the EQR requirements conflict with the spirit and intent of the Obama Administration's recently announced proposals to reduce the burden of regulation on US industry and the economy.<sup>4</sup>
8. In sum, significant modifications to the proposed rule are necessary.

### **III. COMMENTS**

#### **A. Transaction Date and Time**

The Commission asserts that it often is “unable to determine from the EQR data when the price was set,” and that knowing when price is established will promote greater price transparency and confidence in electricity markets. Much as the Commission recounts in the NOPR, EPISA and others provided NOI comments that expressed concern with the inclusion of trade date noting that the date the parties agree to a price is not synonymous with the transaction date. The NOI comments were provided to better assist the Commission in its understanding of why it was sometimes unable to determine when the price was set from EQR data.

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<sup>4</sup> <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>. While this Executive Order does not apply to the Commission as an independent agency as it does to other federal agencies, its direction and principles for the U.S. regulatory system are clearly stated and understood and should therefore inform all agencies of the federal government in the development of new regulatory requirements or obligations.

In the NOPR, the Commission proposes to require market participants to report the date on which parties to a reported transaction agreed upon a price and establish that as the trade date. In addition, the time of trade has been proposed as the time upon which parties agree upon the price of the transaction. Unfortunately, the inclusion of trade time will have many of the problems that are associated with trade date. The current definitions do not have the needed precision for the Commission to be able to achieve the NOPR's transparency goals. Requiring that the trade time be included only increases the concerns EPISA expressed in its NOI comments. Recording the timing of trades and then disassembling each trade and attempting to associate the trade with a specific physical flow of power are not processes companies have in place today.

The first major concern EPISA has is that the time that transactions are executed is not routinely captured in the transaction tracking systems of many market participants. Unlike the beginning and ending time for actual deliveries ("flow times"), there is not a business need for the time that a transaction is agreed upon to be tracked. In fact, it is not unusual for forward transactions to be entered into the transaction tracking systems at the end of the trading day. Further, many of the physical deals that would be reported as a result of the NOPR proposal occur during short periods of day-ahead procurement and during real time, both periods of intense activity. A new requirement to log times will inhibit desk personnel and frustrate liquid markets. Accordingly, in order to be able to report the time that a transaction is executed would require individual traders to record information that they do not record today, as well as the

modification of transaction tracking systems to accommodate that information. Likely impacts include requiring additional personnel on the desk, both a significant cost and logistical impact.

A second concern is that the “time of a transactions” may be subject to multiple interpretations and may be different based on the individual parties processes and the deal that is being executed.<sup>5</sup> Traders can agree to price and terms on the phone which would establish a transaction time and date. However, in an ISO/RTO market the price for parties is determined by the award date and time. While phone confirmation is immediate, award confirmation is a longer process. Consequently, EQR reporting entities would be unclear about how to settle on the time that would need to be reported. In addition, the Commission’s proposed solution to define the terms “trade date” and “time of trade” with the statement that both are the date/time “upon which the parties agree upon the price of a transaction” does not readily work for any transaction other than a next or same day bilateral trade.

As basic matter, the Commission needs to clarify whether ISO/RTO sales are included in the date/time reporting requirement as these transactions do not meet the Commission’s proposed definition of agreement of the parties upon a price. ISO/RTO mitigation schemes sometimes alter awarded prices, which are unknown to the market participant and are not received until substantially after

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<sup>5</sup> EPSA NOI EQR comments at P. 2. The date and time that parties agree to a price is not necessarily the date and time 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 and therefore the time that parties agree to the price is not set. Further, this date may be subject to differing interpretations by both sides of the deal.

the flow date. The Commission should clarify whether ISO/RTO sales are included in the date/time reporting requirement as these transactions do not meet the Commission's proposed definition of agreement of the parties upon a price.

A plethora of other elements that can make up a transaction must be agreed upon by the parties before a trade can be considered consummated and a trade date and time established. Consequently, requiring trade date and time reporting to rely only on price raises concerns for EPSA members. If the final rule makes time and date determinations based on the setting of price there will be a need to clearly explain how that is done for the many scenarios in the power business; only with this additional explanation can complying entities ensure that EQR data is not only transparent but useful. Price determines the trade date and in turn will have to be used as the time of the transaction. However, there are several elements, in addition to price, included in any trade upon which the parties must reach agreement before they execute that trade. These transaction terms include volumes, point of delivery, nature of firmness, credit terms, duration, enabling agreement status, and others.

EPSA provided an example of this concern in its NOI comments that is equally relevant for the NOPR regarding how negotiations of terms are often reached after price has been agreed upon.<sup>6</sup> By using price to determine trade date and time, the Commission risks undermining detection of behaviors outlined in the NOPR. From the NOPR:

It is possible for market participants to attempt to "direct" physical market pricing throughout the day in an effort to impact settlement pricing for another positions. This behavior may involve trading

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<sup>6</sup> EPSA EQR NOI comments at P. 4.

large volumes at the beginning of the trading day in order to “direct” pricing in subsequent hours or other strategies that concentrate trading in a narrow time window.

The concern the Commission expresses here is a function not only of price but more importantly time and volume. If price is agreed to on day 1 of negotiation but volume is reached 3 days later, then the trade date and volume reporting will not properly align in this instance using the definitions provided in the NOPR. Therefore, it is not clear how this transaction would be disassembled and interpreted so that it can then be reported. It is likely that when it would be reported none of the volume levels and directing of pricing would be identified in the appropriate time sequence. Hence, the Commission needs to refine the NOPR definition for trade date and time based solely on price agreement to also honor when a transaction is actually consummated.

## **B. Price Indices**

The Commission proposes to require that EQR filers should submit the names of index price publishers to which wholesale power sales are reported to ensure greater transparency. Currently, as required under Section 35.41 (c) of the Commission’s regulations,<sup>7</sup> companies submit notification to the Commission when they report transactions to electric and natural gas price publishers. Competitive suppliers understand that the NOPR proposes to now require them to specify in the EQR the particular electric or natural gas index publisher to which they report transactions.<sup>8</sup> The NOPR is not clear if this means companies

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<sup>7</sup> 18 CFR 35.41(c). Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, see Order Amending Market-Based Rate Tariffs and Authorizations, 105 FERC ¶ 61,218, at P 116-119 (2003).

<sup>8</sup> NOPR at Page 74.

would just report the names of publishers to whom they report *generally* or if they have to identify a publisher's name for each and every transaction that has been reported to an index publisher. If this reporting requirement is intended to apply on a transactional basis, this requirement will be difficult and expensive because transaction tracking systems do not capture or include any information on which transactions are associated with index publisher reporting. Therefore, to comply on a transactional basis, it would be necessary to manually match the transactions submitted to the index developers to those transactions being reported in the FERC EQR in order to provide the requested index identification data for the EQR. EPISA respectfully requests that the Commission provide clarification in the final rule that index publishers are not to be reported on a transaction-by-transaction basis. Failure to grant this clarification could result in sellers declining to report prices to index publishers due to the time and expense of implementing a new tracking system thereby leading to less market transparency.

### **C. Broker Reporting**

The NOPR proposes to have market participants file information regarding whether exchanges and brokers were used to consummate a transaction. First, EPISA is concerned how this requirement affects the confidentiality of client/broker commercial relationship. Depending on the contractual terms, market participants may not have the ability to disclose which transactions used a broker. While transactions that used an exchange may not have the same concerns, the confidentiality of whether and which brokers were used to

consummate a transaction is a contractual obligation that cannot and should not be dismissed.

Second, this requirement could pose significant data collection burdens on the Commission as the NOPR is not clear as to how this information would render any useful transparency benefits. EPSA member companies report that they could not currently comply with this requirement, as the companies' deal capture systems do not track the names of exchanges and brokers. Thus, if this proposal is adopted, market participants would need to make major system changes to be able to capture and report this data. Moreover, it would require manual manipulation of the data. If the Commission proceeds down this route, it should allow a significant period of time for implementation before this aspect of the proposed 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. Ultimately, this data element should not be included in the EQR requirements unless the Commission can specify a significant expected transparency benefit.

Finally, should the Commission decide to require filers to provide information on the use of brokers and exchanges, the Commission should provide clarity on what specifically constitutes "use." In the NOPR, "use" of a broker could be construed as specifically using a broker's index to set the price for a transaction. However, competitive suppliers can also use a broker without necessarily basing the price of the transaction on a broker index. This point

would need to be clarified in a final rule, otherwise the Commission will be burdened by inconsistent filings.

#### **D. Using the Natural Gas Form 552 Reporting Process as a Model for the Electric EQR**

Through Orders No. 704 A – C, the Commission has significant experience with the Natural Gas Market transaction collection for the purpose of gaining transparency.<sup>9</sup> Form No. 552 was developed to gather that information. Before the first data collection occurred the Commission held several technical conferences<sup>10</sup> over the 2008-10 period so that many of the definitions and transaction detail were clarified before the data collection could proceed. Moreover, the Commission had a Frequently Asked Questions (“FAQ”) section through which Form 552 respondents were able to submit questions to better understand what data needed to be submitted.<sup>11</sup> These answers also allowed Form 552 filers to revise their data systems accordingly with the new clarifications. Form 552 requires approximately 12 fields that show the aggregate of a year of individual transactions, compared to the EQR that requires at least a dozen data elements on tens of thousands of transactions a quarter. Given the effort the Commission put into the Form 552, EQR filers would require at least that level of deference and explanatory process, given the far more extensive requirements for the EQR. The EQR changes proposed will require at

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<sup>9</sup> Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704, FERC Stats. & Regs. 31,260 (2007) (Final Rule); Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704-A, FERC Stats. & Regs. 31,275 (2008); and Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704-B, 125 FERC 61,302 (2008).

<sup>10</sup> See: *Notice of Form No. 552 Technical Conference*, Docket No. RM07-10-002 (February 22, 201); and, *Second Notice and Agenda for Form No. 552 Technical Conference*, Docket No. RM07-10-000 (April 8, 2008).

<sup>11</sup> <http://www.ferc.gov/docs-filing/forms/form-552/form-552-faq.pdf>

a minimum a similar process, and that the Commission should convene a technical conference on the proposal before it goes to a final rule.

#### **E. Dodd-Frank Impacts and CFTC Data Collection Requirements**

On July 21, 2010, The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) was enacted and the Commodity Futures Trading Commission (“CFTC”) is currently developing implementing regulations. On June 17, 2011, the CFTC proposed to delay its compliance date to December 31, 2011. It is apparent that the transactions being considered currently by CFTC in a NOPR process of its own to adhere with Sections 723 and 729 of the Dodd-Frank Act could impact the same data capture systems that are used for EQR data; however, how Dodd-Frank will require changes to data capture systems is not yet known. Until the CFTC issues a final rule delineating the details associated with reporting for historical swaps to that agency, filing entities cannot know what changes will be required to either processes or IT systems to capture the required data correctly.

Because there are potential system changes needed to comply with proposed EQR changes and these same systems could be significantly impacted by CFTC requirements in development, EPSA urges the two agencies to collaborate on their needs so that the system changes can be met in an efficient manner, only once, by filers. It may well be necessary to develop consistent conventions such as data elements and definitions so that each agency can collect what it requires while allowing companies to develop or modify systems that capture data for both. The collaboration effort also must recognize the

importance of implementation dates regarding information system changes that will be required to meet the data collection needs. The Commission can utilize a technical conference to better understand extent of the EQR changes and how Dodd-Frank Act requirements impact the EQR requirements and changes to company systems, software and processes to best establish a reasonable implementation schedule.

#### **F. E-Tag Information as Part of EQR Reporting Requirements**

In the instant NOPR, the Commission proposes to require that entities “report electronic tag (e-Tag) ID data in EQRs.” This proposal is seemingly at odds with the e-Tag proposal published in Docket No. RM11-12-000 on the same day the instant NOPR was issued. In that proceeding, the Commission proposes “to avoid burdening market participants with a requirement to file the same data with both NERC and the Commission.”<sup>12</sup> However, as EPSA notes in its e-Tag comments, the information is not collected for reporting purposes by NERC or market participants. Indeed, as EPSA noted in its comments yesterday in RM11-12-000, one of the purchasing entities usually writes the e-Tag; thus, in many cases, the seller does not have direct access to the data because the seller is not involved in scheduling. FERC’s proposal assumes that a seller will always have access to e-Tag data related to its transactions, but that is not always the case. Market participants and NERC contract with third-party vendors (in the Eastern Interconnect almost all of those contracts are with OATI, though there are some OATI competitors in the west) to collect and retain the e-Tags. Therefore, the e-

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<sup>12</sup> *Availability of E-Tag Information to Commission Staff*, 135 FERC ¶ 61, 052, Docket No. RM11-12-000 (April 21, 2011) (“E-Tag NOPR”).

Tag ID information the Commission requests is collected and retained by third-party vendors and subject to confidentiality contracts with market participants. Much as EPSA commented in the e-Tag NOPR proceeding, the complications associated with the e-Tag collection must be sorted out before the value and ability of any collection by the Commission might be assessed. EPSA suggests that the Commission combine this part of the proposal with the e-Tag proceeding so that all e-Tag related information disclosure issues are in one docket.

In considering collection of e-Tag ID information in the EQR, the Commission should be aware of the significant complications and massive costs associated with that requirement. The e-Tag data requested in the instant proceeding consists of a four-tiered component identification, which raises concerns for EPSA members because they do not currently track the associated e-Tag for each transaction. In the NOPR the Commission states, “to schedule physical interchange transactions market participants submit e-Tags to transmission system operators.”<sup>13</sup> This general statement summarizes a more complex process and could be made more precise by stating that purchasing entities engaging in interchange transactions where the power sinks typically report the e-Tag ID to the BA where the power sinks.

E-Tags are only used for BA to BA interchange transactions and were created for and used to facilitate system operations and power movement rather than financial settlement. Only after agreement has been reached are e-Tag packages submitted to the sink BA. In other words, e-Tags are not used by market participants to make financial decisions. Therefore, market participants

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<sup>13</sup> NOPR at Page 14.

do not use e-Tag information to inform whether or not to enter into a transaction. Consequently, implementing the e-Tag EQR requirement will present an extensive change, creating a new transaction tracking requirement with related system modifications for market participants as well as the Commission (as the ultimate recipient of the EQR e-Tag data). The Commission characterizes the EQR e-Tag proposal as taking data from existing systems. This is not the case because the existing systems were developed for a different purpose than stated in the NOPR, and so this data is not collected or held by market participants. E-tag data facilitates real-time system operations, not historical transaction tracking.

While the Commission outlines what is included in the e-Tag identifier, it has not also looked at the Transaction Types that can be used for an e-Tag, which are normal, dynamic, emergency, loss supply and capacity. Because several e-Tag types are based on system operations that support reliability, they do not require reservations or detail power flows. For example, the energy transfer for dynamic transaction types is determined in a separate communication that is external to the e-Tag system. Therefore, even if the Purchasing-Selling Entity (“PSE”) could get the e-Tag information from the sink BA and report it to the Commission, it would not contain the energy transfer, diminishing its value to the Commission.

Competitive suppliers would need to design an entirely new system to capture this data, which would take significant time and resources because reporting e-Tags for every transaction is far more complex than it might appear.

As an example, assume a supplier enters into a transaction to sell whatever volumes of energy that a load serving entity (“LSE”) calls on up to 100 MW each hour for one calendar month, sourced from Plant A. On Day 1, the LSE calls for the supplier to deliver different amounts for each hour of the 24 hour period. That represents 24 e-Tags to cover the separate quantities called for each hour. Theoretically the supplier would be required to report 744 E-Tags for that transaction in order to capture volume and supply source variations for each hour of the month of that transaction. Assuming that the transaction calls for a uniform price and the same delivery point for the entire month, the transaction could be reported as a single line item under the current EQR system.

The power business is dynamic and the operational needs of e-Tags cause them to being revised, replaced or cancelled on a regular basis. Using the same example as above, further assume that in mid-afternoon Plant A trips or the transmission provider declares a TLR and interrupts transmission affecting the Supplier’s afternoon e-Tags. The e-Tags for the period of outage must be cut as to transmission from Plant A. However, if the supplier can do so, it may source the LSE’s transaction from replacement supplies at Plant B, or from bulk purchases outside the LSE’s balancing authority. Replacement e-Tags are submitted for the LSE’s replacement supply. These transactions could also include book outs as part of the chain. In any event, in order to report e-Tags for a month long transaction for supply to the LSE, the EQR filing supplier would have to report voluminous lines of data per transaction. This volume of data for only one generating unit and one customer will involve many e-Tags that never

resulted in an actual physical flow. Hence eliminating the e-Tags not associated with a consummated transaction will be a significant task. Additionally, few, if any EQR filers capture e-Tag data in their transaction tracking systems used to generate EQRs today. Therefore, the requirement to report e-Tag data in the EQR will require significant if not exorbitant system modifications, including additional very time-consuming manual work rounds and quality control processes. EPSA members have reported that at a minimum this may require hiring two or more full time employees to properly compile e-Tag data. The reporting of e-Tag information also raises commercial confidentiality concerns. Once the data is public in the EQR, a competitor would be able to trace which supply sources are used for specific customers, and use that information in attempts to lure the LSE away from the supplier. While the Commission's goal in obtaining the e-Tag IDs is to prevent market abuse and ensure competitive markets, the exposure of competitive data risks undermining competition. These confidentiality concerns are therefore not incidental, but fundamental to the operation and functionality of a fair, competitive market. Further, as the e-Tag data typically includes multiple counterparties, e-Tag data not only is commercially sensitive, but most contracts do not allow the release of data regarding counterparties.

#### **IV. CONCLUSION**

Wherefore, EPSA respectfully requests that the Commission reconsider the proposed changes to the EQR requirements as contemplated herein. In addition to changing the physical processes associated with executing energy

transactions, the proposals would greatly increase the already significant costs associated with EQR preparation and submission. EPSA asserts that these increased costs are not balanced by any articulated commensurate benefit. Additionally, the broker and e-tag information should not be required on the basis of confidentiality. Moreover, the proposed changes to the EQR requirements do not align with the intent of President's recently announced initiative to streamline regulations by utilizing the least burdensome tools for achieving regulatory ends which take into account benefits and costs, both quantitative and qualitative. At a minimum, the Commission should convene a technical conference to address numerous outstanding questions and implementation concerns before proceeding any further with this proposed rule.

Respectfully Submitted,



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June 28, 2011

**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 28, 2011.

  
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Nancy Bagot, VP of Regulatory Affairs