



Institute (“EEI”)<sup>5</sup>, Electricity Consumers Resource Council (“ELCON”)<sup>6</sup>, Electric Power Supply Association (“EPSA”)<sup>7</sup>, Independent Power Producers of New York, Inc. (“IPPNY”)<sup>8</sup>, Industrial Energy Consumers Group (“IECG”)<sup>9</sup>, International Energy Credit Association (“IECA”)<sup>10</sup> and the Retail Energy Supply Association (“RESA”)<sup>11</sup>

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<sup>5</sup> EEI is the national association of U.S. shareholder-owned electric utilities, their affiliates, and industry associates worldwide. Its members generate or provide electricity for 220 million Americans, operate in all fifty States and the District of Columbia, invest billions of dollars annually in electric grid generation and delivery infrastructure, and directly employ more than 500,000 workers. EEI members generate more than half of all electricity generated by electric companies, own more than half of all transmission facilities, and serve about seventy percent of all retail customers in the nation.

<sup>6</sup> ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all organized markets and other regions throughout the United States. Many ELCON members are market participants in the RTO/ISO markets.

<sup>7</sup> EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively 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

<sup>8</sup> IPPNY is a not-for-profit trade association representing the independent power industry in New York State. Its members include nearly 100 companies involved in the development and operation of electric generating facilities and the marketing and sale of electric power in New York. IPPNY’s members include suppliers and marketers that participate in the New York Independent System Operator Inc.’s energy and capacity markets. This pleading represents the position of IPPNY as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>9</sup> The Industrial Energy Consumer Group (“IECG”) is a non-profit Maine trade association formed for the purpose of representing the interests of industrial energy consumers before regulatory and legislative bodies. The members of the IECG are large consumers of electric energy and transmission and buy directly under the OATT pursuant to TSAs with their local utility. The IECG has participated in numerous Commission proceedings with respect to market design, transmission rates, RTO governance and wholesale rates for energy and capacity.

<sup>10</sup> The International Energy Credit Association (“IECA”) is an association of over 1,400 credit, risk management, legal and finance professionals that is dedicated to promoting the education and understanding of credit and other risk management-related issues in the energy industry. For over ninety years, IECA members have actively promoted the development of best and industry standard practices that reflect the unique needs and concerns of the energy industry. Following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and its amendments of the Commodity Exchange Act, the IECA has filed numerous comments with the Commodity Futures Trading Commission seeking to protect the rights and advance the interests of the commercial end-user community that makes up the majority of its membership. Many of the IECA’s members are representatives of commercial end-users with substantial physical energy businesses.

<sup>11</sup> Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas

(collectively, “Industry Groups”) on behalf of their members respectfully request that the Commission suspend the comment date established in its notice of proposed rulemaking (“NOPR”)<sup>12</sup> and extended by Technical Conference Order in the above-captioned proceeding<sup>13</sup> and either: (1) withdraw the NOPR and issue a new or revised NOPR; or (2) at a minimum, issue a supplemental NOPR that takes into consideration the discussion and clarifications discussed at the December 8, 2015 Technical Conference.<sup>14</sup>

The Industry Groups acknowledge and support the need for transparency in wholesale competitive electricity markets, and recognize the important role of the Commission’s oversight of those markets. The Industry Groups are not filing this motion to cause undue delay but rather to seek clarity on the Commission’s proposal so that they and their members are able to provide responsive and substantive comments. The NOPR raises important issues and imposes substantial new responsibilities which will impact members of the Industry Groups participating in the markets operated by Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”). As such, the Industry Groups have a material interest in this proceeding.

Due to the importance of ensuring that market participants have a clear understanding of the NOPR, on October 28, 2015, a diverse group of companies filed a motion requesting that the Commission convene a technical conference to address

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service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>12</sup> Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators, Notice of Proposed Rulemaking, Docket No. RM15-23-000, 80 Fed. Reg. 58382 (September 29, 2015) (“NOPR”).

<sup>13</sup> Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators, Order Granting Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM15-23-000 (November, 10 2015) (“Technical Conference Order”) at 3.

<sup>14</sup> *Id.*

questions regarding the NOPR.<sup>15</sup> Demonstrating the need for clarity on the NOPR, the undersigned Industry Groups, along with other organizations filed responses supporting the request for a Technical Conference and extension of the comment date.<sup>16</sup> In response to the requests, the Commission held a Technical Conference on December 8, 2015 and extended the comment date on the NOPR until January 22, 2016.<sup>17</sup> During the Technical Conference, Commission Staff addressed some of the questions submitted by interested entities in advance of the Technical Conference, provided background on the need for the information and other clarifications and heard from panelists.<sup>18</sup>

The Industry Groups appreciate the Commission convening the Technical Conference and providing additional information and guidance. Following the conference, the Industry Groups are concerned that the NOPR does not reflect either the many substantive clarifications that Commission Staff provided or the additional questions upon which the Commissioners and Commission Staff requested comment. Further, the NOPR does not memorialize the Commission's intent to support and accept

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<sup>15</sup> October 28 Motion.

<sup>16</sup> Answer of Trade Groups in Support of Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM15-23-000 (Oct. 30, 2015); Comments of the Commercial Energy Working Group in Support of Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM15-23-000 (Oct. 29, 2015); Comments of the American Gas Association in Support of Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM15-23-000 (Oct. 30, 2015); Comments of Independent Generation Owners & Representatives in Support of Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM15-23-000 (Nov. 4, 2015); Answer of International Energy Credit Association In Support Of Motion For Technical Conference and Request to Postpone Comment Deadline, Docket No. RM15-23-000 (Nov. 5, 2015).

<sup>17</sup> Technical Conference Order at 3.

<sup>18</sup> See Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators, Supplemental Notice of Technical Conference, Docket No. RM15-23-000 (November 30, 2015); Commission Staff Presentation, Notice of Proposed Rulemaking Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators (December 8, 2015) (“Staff Presentation”); Staff responses to definition questions at the Technical Conference on Connected Entity Data from the RTOs and ISOs (“hereafter Staff Response”).

comments on a proposal that is substantively different from the NOPR as published in the *Federal Register*. The following are some specific concerns raised by the Industry Groups' collective membership in this regard:

- First, Commission Staff did not address all of the questions submitted by market participants so substantial uncertainty remains as to aspects of the NOPR and the need for the data.<sup>19</sup>
- Second, the information provided by Commission Staff substantively changed the NOPR proposal. For example, the questions and answers posted by Commission Staff in the docket for this proceeding indicate that gas resources are not included within the scope of the NOPR.<sup>20</sup> This, however, is not stated in or cannot be inferred by simply reading the NOPR.
- Third, the guidance provided during the technical conference raised new questions. For example, Commission Staff indicated that the NOPR would apply to market participants in the RTO/ISO markets and that any entity that is a member of a RTO/ISO per the applicable RTO/ISO tariff must submit Connected Entity information to each RTO/ISO to which it is a member.<sup>21</sup> This response raises questions, as there are many entities that are members of a RTO/ISO as defined by the tariff but that are not participating in the market and there are entities participating, buying, and

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<sup>19</sup> Commission Staff indicated that they had received a number of questions and that they were only responding to questions that related to the definition of connected entity which constituted about half of the questions. The questions submitted to the Commission in advance of the technical conference have not been posted.

<sup>20</sup> See e.g. Staff Responses at 5.

<sup>21</sup> See e.g. Staff Presentation at 8.

selling in the RTO/ISO markets that are not formal “members” of the RTO/ISO markets or signatories to any sort of operating agreement.

- Fourth, the discussion between the panelists and the Commissioners and Commission Staff reflected concerns by Industry Group members and others as well as responses and guidance from Commission Staff.

However, none of these concerns or the responses thereto are reflected in the record for this NOPR and therefore cannot be accurately or consistently referenced in comments.

- Fifth, since the guidance provided by Commission Staff is not specifically included in the NOPR, the NOPR is subject to a subjective reading by every entity that files comments with the Commission in response to the NOPR. Thus, the Commission runs the risk of receiving comments that are not responsive to the same NOPR. This could result in a final rule that is not responsive to the comments received, which will lead to additional uncertainty for Industry Group members.
- Sixth, without the NOPR being specifically revised to include the guidance provided by Commission Staff, interested entities will not be responding to the NOPR as proposed and issued by the Commission.

In order to address these concerns, all interested entities should have the opportunity to review and comment on any written documents that codify the clarifications provided by Commission Staff and the Commission, such as revised regulatory proposals and additional explanatory text. If the Commission fails to provide

such an opportunity, it runs the risk that it may receive inconsistent, incomplete and/or unclear data from entities subject to reporting.

The best means to ensure that clear, transparent requirements are adopted that satisfy the Commission goals and that are not burdensome for reporting parties is for the Commission to suspend the January 22, 2016 comment date and either withdraw the current NOPR or at a minimum, supplement the NOPR with the guidance provided during the Technical Conference. The Commission can, after suspending the comment date, reconsider what, if any, additional information is needed beyond that already available to the Commission for monitoring markets and market participants. In addition, the Commission can issue a new or supplemental NOPR that addresses the concerns provided to Commission Staff in connection with the December 8 Technical Conference and that codifies the clarifications and questions provided by Commission Staff and the Commission at the technical conference. This would give market participants an opportunity to provide more focused feedback on the specific reporting requirements that the Commission is proposing, in keeping with the open and fair rulemaking process anticipated by the Administrative Procedure Act (“APA”), 5 USC § 553.

Thus, the Industry Groups encourage the Commission not to directly proceed from the NOPR to a final rule because doing so could result in entities that are subject to the reporting requirements providing inconsistent, incomplete and/or unclear data that does not meet the needs of the Commission. Arguably, it would also fail to provide adequate notice of the Commission’s proposal and meaningful opportunity to comment, as required by the APA.

In developing the revised NOPR, the Industry Groups respectfully request that the Commission provide clarity around Commission Staff comments made at the technical conference as to the goals and need for the data. Some examples of needed clarity include:

- Is the requested data intended primarily for enhancement of Commission surveillance or for transfer to the RTO/ISOs or Market Monitoring Units?
- Is the proposed collection of information intended for real-time reporting or periodic reporting?
- Where does the Commission believe its proposal may overlap with, or otherwise supplant or replace, other reporting requirements?
- Is the collection limited in scope to RTO/ISO markets or could it apply more broadly, given technical conference discussions?

A revised NOPR should also specify what new questions the Commission would like commenters to address, and propose any new data collection mechanisms in a manner that poses minimal additional burdens to industry. The issuance of a revised or supplemental NOPR, with a new comment date and which reflects the intent of the full Commission, will allow market participants a meaningful opportunity for comment while also addressing the Commission's needs in issuing the NOPR.

The Industry Groups also request that the Commission provide an expedited response to this motion. Comments in response to the NOPR are due January 22, 2016. Absent prompt action by the Commission in response to this motion, the Industry Groups, its members and other interested entities will have to continue drafting comments addressing issues raised by the NOPR, despite substantial uncertainty about

the scope of the NOPR; how the guidance provided at the technical conference should be read into the NOPR, the scope of the data to be collected; the need for the data; and lack of clarity on questions posed to the Commission but not yet addressed in any format. This would be a waste of valuable time and effort by commenters and ultimately by the Commission and its staff as well.

Wherefore, the Industry Groups contend that it would be premature to finalize the NOPR at this time. Further dialogue among the Commission, staff, and regulated entities is needed to ensure that the NOPR and any final rule meets the needs of the Commission while not being unduly burdensome for market participants. As such, the Industry Groups respectfully request that the Commission (i) grant this expedited motion, (ii) suspend the January 22, 2016 comment date, and (iii) either withdraw and issue a new or revised NOPR, or supplement the existing NOPR such that it is fully reflective of the Commission's intended proposal, and (iv) establish a new comment date.

Respectfully Submitted,

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December 30, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, D.C., this 30<sup>th</sup> day of December, 2015.

*/s/ Lopa Parikh* \_\_\_\_\_

Lopa Parikh