UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes	**)** **)** **)**	**Docket No. RM16-17-000**

COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to the Notice issued in the Federal Register by the Federal Energy Regulatory Commission ("Commission" or "FERC") regarding the Notice of Proposed Rulemaking on Data Collection for Analytics and Surveillance and Market-Based Rate Purposes ("NOPR"),[1] the Electric Power Supply Association ("EPSA") submits the following comments.[2]

In its NOPR, the Commission proposes a series of changes intended to modernize its data collections based on current information requirements and needs, eliminate duplication, ease compliance burdens, and render information collected through its programs usable and accessible for the Commission and its staff. In furtherance of this approach, the Commission has concurrently withdrawn two other Notices of Proposed Rulemaking regarding Connected Entities in Docket No. RM15-23-000, and Ownership Information in Docket No. RM16-3-000.[3]

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[1] Notice of Proposed Rulemaking, Data Collection for Analytics and Surveillance and Market-Based Rate Purposes, 156 FERC ¶ 61,045 (July 21, 2016); 81 Fed. Reg. 51,726 (published Aug. 4, 2016)(to be codified at 18 C.F.R. Part 35). ["NOPR"].

[2] 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. This filing represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

[3] *See* Connected Entity NOPR, FERC Stats. & Regs. ¶ 32,711 (2015) ["Connected Entities NOPR"]; *see also* Ownership NOPR, FERC Stats. & Regs. ¶ 32,713 (2016) ["Ownership NOPR"].

The NOPR in essence streamlines these earlier proposals, and in one proposed rule modifies certain reporting requirements for Market-Based Rate Sellers ("MBR"), requires the submission of certain "Connected Entities" information by MBR sellers, and separately imposes new reporting obligations on entities that do not have MBR authority but which trade virtual products or hold financial transmission rights ("FTRs").[4] FERC thus proposes to amend its regulations to add a new Subpart K to Title 18 of the Code of Federal Regulations, which would include data collection requirements for MBR sellers and certain other participants in the organized wholesale electric markets subject to the FERC's jurisdiction, and, revise Part 35, Supbart H, governing MBR authorization for wholesale sales of electric energy, capacity, and ancillary services by public utilities.

EPSA commends the Commission for taking proactive steps to consolidate its various data collection and streamlining efforts and proposals, and thanks the Commission for its efforts to substantially revise the scope of potential new information and reporting requirements related to the Connected Entity filing as originally proposed. In the comments below, EPSA identifies several recommendations that are intended to enhance the efficiency of final rule implementation, create a reasonable process and timeline for moving MBR filing information to the XML framework suggested in the NOPR, and develop a workable definition of "Connected Entity" which serves the Commission's needs and interests in achieving a better view into market participants' legal and financial relationships as they relate to activities and transactions in the FERC-jurisdictional wholesale power markets.

[4] NOPR, at P 11.

Background and Summary of Recommendations

The NOPR provides several proposals that would migrate currently required MBR information and certain new information to be housed by FERC in a relational database, requiring MBR sellers to submit their compliance filings in an XML format. The NOPR suggests that these changes would create efficiencies and streamline MBR filings, and also satisfy the agency's data collection needs for analytics and surveillance purposes outside the MBR program. These changes include FERC's intent to: (i) revise the scope of ownership information that MBR sellers must provide, in lieu of changes earlier proposed in Docket No. RM16-3-000 ("Ownership NOPR"), (ii) reduce the information required to be filed in asset appendices, (iii) collect currently required MBR information and certain new information in a consolidated and streamlined manner, and (iv) eliminate the requirement that MBR sellers submit corporate organizational charts adopted in Order No. 816 in Docket No. RM14-14-000.

In order to more directly enhance surveillance functions, the NOPR proposes to collect "Connected Entity" data from MBR sellers and, separately, for traders in FTRs and virtual products to report the same Connected Entity information. Under these proposals, FERC seeks certain information from filers about their legal and financial connections to other entities based on "ownership" relationships, "trader" relationships, and "contract" relationships.

FERC proposes to collect all of the above-discussed information through a relational database reporting scheme ("RDB"), including a proposed Draft Data Dictionary which would require information filings in the RDB based on currently-defined and newly-defined terms. The NOPR provides that the RDB framework is intended to eliminate duplication and render information collected for FERC's MBR assessment and FERC's analytics and surveillance functions more usable and accessible by the agency. The NOPR also states that the goal of

the migration to XML filing format into the RDB framework is to streamline the collection of all programmatic information regarding MBR sellers, along with sellers of virtual products and holders of Financial Transmission Rights, in a "unified submission process" where possible.

As to the reporting of Connected Entity information by MBR Sellers, the Commission proposes that XML filings made to the RDB would indicate whether a particular piece of information is submitted for MBR purposes, such that undesignated information would be considered Connected Entity filing information.[5] The Commission also proposes as to existing MBR sellers that each seller would be required to make a baseline submission which includes both types of information, to be due within 90 days of official publication of a final rule.[6]

Additionally, the Commission has proposed "substantial outreach with the industry, including meetings and technical workshops on the data dictionary and the submittal process." The Commission anticipates that the data dictionary, the XML schema definition with appropriate validations, and a temporary test environment will be posted on the FERC website upon issuance of a final rule in this proceeding. The Commission proposes to also post, on an ongoing basis, any "minor and non-material changes to the data dictionary as necessary and alert relational database users via email" of such changes, noting that it would utilize the same procedures as set forth in its recent order addressing revisions to the EQR Data Dictionary.[7]

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[5] NOPR, at P 19. Note: The NOPR also states that it proposes coordinating the deadlines for reporting the two types of data wherever possible, thereby allowing entities that must submit data under both the MBR and CE categories to combine it in a single submission. The instructions as to specific formatting and other technical requirements for these submissions will be set out on FERC's website. The NOPR states that FERC intends to hold "substantial outreach meetings with members of the industry, to determine the most effective, expeditious, and cost-effective method of structuring these submissions." See NOPR, at P 55.

[6] NOPR, at P 61.

[7] NOPR, at P 15, n.23.

EPSA comments below offer the following recommendations:

- MBR Sellers require a minimum 360 Calendar Days to comply with extensive new obligations once format, filing and data definitions are set and the XML Portal is made available. Market participants should be required to incur the expense and burden associated with compliance only when FERC has posted the XML interface/portal required to feed this data to FERC, along with a clear data dictionary that provides the elements and descriptions of which lines of the report the data is to be inserted.

- Separate compliance periods are necessary for MBR baseline filings and new Connected Entity data submissions. EPSA proposes a 180-day initial period to prepare MBR baseline filings subsequent to the date that XML format and data dictionary terms have been finalized, with a subsequent 180-days to prepare and submit the new Connected Entity data. The second compliance period deadline should also be the due date for filers to replace their FERC-issued unique identifiers with Legal Entity Identifiers ("LEIs").

- All formatting instructions and technical guidance proposing changes to the Data Dictionary or submission process should be published in the docket with a comment period of no less than 15 days. Similarly, technical workshops should be followed by a minimum 15-Day comment period commencing on the date on which staff notes are published in the docket.

- All proposed thirty-day update timeframes should be replaced with quarterly timeframes for reporting.

- Connected Entities based on "ownership" should be limited to ownership relationships in scope of the sale of energy in FERC-jurisdictional organized wholesale markets. The definition proposed should be revised to eliminate the use of "derivatives," to be replaced with terms describing specific financial transactions entered into pursuant to an ISO/RTO Tariff, eliminating "natural gas energy products" and "natural gas energy derivatives."

- The definition of a Connected Entity trader would include those persons managing and/or directing decisions for a trading desk or approving strategies for the trading desks of an MBR seller engaged in trading of physical or financial electricity or capacity products pursuant to an ISO/RTO tariff or protocol that has been approved or permitted to take effect by FERC.

- The definition of a Connected Entity by contract should be refined to include only those agreements which grant one of the parties the right to make trading decisions for an electric generation asset of another party or to offer an electric generation asset into the wholesale market. By example, the Commission could define "control" over a third-party's generation facilities to mean a contractual change of control approved by the Commission in a FPA Section 203 filing. This would streamline and link FERC's

process of approving changes in contractual control through the 203 filing process to a specific requirement to report that connection as a Connected Entity relationship.

- Contracts reportable on the Other Contracts table as “Connected Entity” contracts should only be those which are tied exclusively to the proposed definition in the NOPR and which convey control over generation. EPSA believes the Entity-Entity table is redundant as it is overbroad in scope of reportable relationships well beyond those which transfer control over affiliated assets. If this table is retained, it should be revised to reflect that the only entity-based relationships reportable are those in which either the filer or the Connected Entity controls the other’s generation assets in conjunction with offering those assets into the ISO/RTO markets.

- Legal Entity Identifiers should be reported in the Electric Quarterly Report “Company Information” section and FERC should concurrently eliminate long-term firm sales reporting in “Connected Entity” filings.

- Unit-Specific Unit Identifier information and Unit-Specific PPA information based on EIA nomenclature should not be required, and E-Tag requirements should be eliminated.

- The Commission should state in the final rule preamble and/or regulatory text that "errors discovered in good faith by a filing entity may be corrected in its next filing upon discovery post-filing either by the filer, its affiliate, or FERC staff, without incurring penalty for not having reported these minor errors to FERC Enforcement staff at an earlier date."

- EPSA requests that the Commission consider specific confidentiality protections which ensure that Connected Entity data information is sufficiently protected from availability or misuse outside of the context of an investigation.

- FERC should include a discussion of software costs, benefits, and burdens of internal development and vendor utilization at the next technical conference regarding the submission process. The recommendations arising out of this dialogue may inform a longer testing period and implementation timeline than even the 360 days suggested here for implementation.

Comments

I. Implementation Timeline and Process Recommendations

A. MBR Sellers Require a Minimum 360 Calendar Days to Comply with Extensive New Obligations Once Format, Filing and Data Definitions are Set and the XML Portal is Available.

The predominant implementation concern for EPSA members is that neither FERC nor the industry could be expected to implement the full scope of the NOPR (as to MBR filings,

EQR updates, and Connected Entities) within 90 days of publication of a final rule in the Federal Register. Thus, EPSA requests that FERC provide for MBR sellers to have no less than 360 calendar days to implement the various pieces of the rule, counted from the date on which FERC releases a final and definitive XML format for data submission, complete with defined data elements, and explicitly indicating in the data dictionary every field where nullable values are allowed and those fields where it is appropriate to assign a default value.[8]

Implementation process, clear instructions, and well-spaced compliance periods are critical principles to adhere to for an effective roll-out of this rulemaking: the compliance clock should only start when market participants know exactly which pieces of data need to be reported, and in what format those data can be submitted. Federal Register publication of a final rule very well may not be the date on which a finalized XML format with all above-noted specifications will be made available to market participants, so it should not be the triggering date for compliance timelines.

EPSA cautions that the sheer volume and complexity of this reporting exercise does not lend itself to a filing approach that calls upon market participants to submit baseline filings until the reporting system to receive the data is fully developed. For example, it does not appear feasible or cost-effective for filers to make paper submissions for baseline filings if the electronic system is not yet up and running or cannot accommodate certain filings or inputs. It inures to the benefit of all parties to ensure the compliance period commences only when the filing system can accommodate the full scope of information requested, accommodate it at the level of detail requested, and do so after official publication of all necessary data dictionary definitions. Additionally, EPSA is very concerned that market participants could be required to

[8] *See* Staff Notes on Technical Workshop on Draft Data Dictionary Attached to the Data Collection NOPR (RM16-17), August 11, 2016, at pp. 8 (discussing "Broad Scope" modifications). ["Staff Notes"].

build programs for compliance without knowing precisely what they are building to – unlike the current tools used by the industry, *e.g.*, reliance on outside vendors to make MBR or EQR filings, the tight reporting deadlines and broader swath of information requested by FERC in this NOPR will necessitate internal build of data systems reporting capability at an unprecedented level. Market participants should only be required to incur the expense and burden associated with compliance when FERC has posted the XML interface/portal required for feeding data to the Commission, along with a clear data dictionary that provides the elements and descriptions of which lines of the report the data is to be inserted in.

EPSA members also note the need for compliance periods that are separate as to preparing a new reporting format for prior-reported information – *i.e.* an initial period of time to review a final, definitive XML format with defined data terms, and apply it towards designing, building, testing, and trouble-shooting a new automated reporting system for currently-reported MBR data.[9] Thereafter, a separate period of time should be provided to on-board Connected Entity filing information. EPSA requests that a final rule include a subsequent 180-day deadline, following the MBR compliance deadline, to allow for MBR sellers to add Connected Entity information to their MBR submissions (through a second baseline filing only for Connected Entity information).

As the Commission proposes that Connected Entity information would simply be unmarked/undesignated information reported in the XML data tables to distinguish it from MBR

[9] By contrast, the NOPR calls for a Baseline Submission due within 90 days of publication in the Federal Register of a final rule, of all Connected Entity Ownership, Trader, and Contracts Information; MBR information as set forth in the data dictionary; LEIs; and MBR Ownership Information and Asset Appendix information as set forth in the data dictionary. The NOPR suggests that "MBR sellers should submit current information, even if different from information included in their most recent MBR filing with the Commission." *See* NOPR, at P 61.

information,[10] the 180-day period between the MBR baseline filing date and the Connected Entity filing date will permit market participants to parse and clarify which pieces of filing information should be designated as "MBR" inputs or left undesignated. In the same timeframe, FERC should create opportunities for market participants to share concerns about building a new nomenclature for Connected Entity inputs and ensure absolute clarity as to how the final rule's definitions of "Connected Entity" based on Ownership, Contracts, and Traders will be reflected in the data tables.

EPSA believes this phased compliance proposal is a substantial improvement on the NOPR's single-timeframe compliance date/unified baseline filing approach because it parses a logical process for companies to first migrate various "knowns" (the preexisting MBR reporting requirements) into the new reporting vehicle before migrating "unknowns" (the new Connected Entity requirements) to the RDB. This approach will also give FERC a distinct opportunity to focus its internal resources on:

- Improving its understanding of data it already collects under EQR and MBR requirements;
- Confirming that all MBR filers are consistently interpreting the revised definitions for reporting vertical assets and "ultimate affiliate owners," ensuring that the "right side" of the RDB – outputs like the organizational chart – are accurately generated;
- Tracking the interplay and overlaps of MBR company-specific information received from the new XML-based company-specific reporting program with EQRs, triennial filings, Section 556 filings, or Section 203 filings to ascertain if any of these other programs can be narrowed where duplicative filings are occurring.

An initial, separate process for MBR compliance will further help the Commission focus first on timely addressing market participant on-boarding and data conversion concerns such as the minutiae of reporting MBR data in a new XML submission format. A dedicated period of

[10] NOPR, at P 19 ("We propose to require that the XML filing indicate whether a particular piece of information is submitted for MBR purposes. Undesignated information would, therefore, be considered as provided pursuant to the Connected Entity requirements.").

review and improvement is certainly warranted so that MBR sellers can themselves address these technical questions, trouble-shoot, and cross-check their own filings and their affiliates' filings with information already reported in prior periods and with their internally developed records. In essence, this approach provides both FERC and industry an opportunity to verify consistency and accuracy of the data against prior records held within corporate structures and as reported prior to the regulator.

Once both FERC and industry have sufficient confidence that the new filing process is efficiently and correctly housing inputs and outputs of "known" information, then FERC should move forward with adding "unknown" (i.e., new) pieces like Connected Entity information. Without this separation, it is likely if not inevitable that migrating both "known" and "unknown" information at the same time will pose greater compliance and technical challenges. For example, output errors resulting from RDB-generated organizational charts would be much more difficult to correct if there is a question about whether entities were reported as "ultimate affiliate owners" under the revised MBR definition or as Connected Entities based on "Ownership." As compared to MBR reporting, neither FERC nor filing entities have the benefit in Connected Entity reporting of being able to rely on a prior-developed, controlling data set that could provide comparative analysis to ensure accuracy of submission and produced data outputs on Connected Entities. Therefore, it is critical that the RDB environment, as well as companies' comfort with new compliance vehicles, be as close to watertight as possible before FERC directs the inclusion of previously uncollected compliance information from all MBR sellers.

EPSA notes that these suggested timeframes are amenable to further breakdown – such as an earlier compliance date for first requiring LEI reporting in EQRs in 90 days, then

requiring the first-time baseline MBR filing in 180 days – to facilitate further efficiencies by reducing the extra step of each seller replacing FERC-generated unique IDs with LEIs. These opportunities should be explored in a technical workshop that focuses on submission issues, prior to the issuance of a final rule. Should the Commission find it unfeasible to implement this approach or develop an alternative approach, EPSA urges that at minimum filers be given at least 180 days to comply with any new requirements. As the Commission is aware, complex reporting programs have always necessitated substantial implementation periods. For example, the implementation dates for EQR filings involved multiple extensions which were not contemplated by staff at the outset or in the original final rule.[11]

Therefore, EPSA urges the Commission to adopt a more forward-looking approach in this instance to build in reasonable implementation timelines and also better set expectations for both the industry and the agency. It is important to note that even with just receiving LEI information for all MBR sellers as a first step, FERC would substantially improve its window into the regulated markets, given that new connections that can be established between EQR data, MBR data, and data collected by the CFTC or SEC. Therefore, in no respect does this approach lead to a delay in the Commission's ability to enhance its market surveillance efforts or better understand the information it already receives.

B. Complex Interrelationships Necessitate Docket Notices and a Minimum 15 Calendar Day Comment Period for all Staff Updates and Following Either a Technical Workshop or Staff Notes Published after a Workshop.

The NOPR describes a data dictionary development process wherein FERC would rely on website postings to update the technical framework for RDB users, including MBR sellers.

[11] *See, e.g.,* Order Extending Setting Deadlines to File Electric Quarterly Reports, 146 FERC 61,144 (Feb. 28, 2014).

The NOPR also indicates continued staff outreach and technical workshops on the submission process and the data dictionary. Staff has already held one workshop of this type on August 11, 2016, and published takeaways on issues in scope of the Data Dictionary proposal.[12] Given the interrelationship between Data Dictionary and Submission Process changes, and the regulatory obligations of filers, EPSA requests that FERC require docket notices and a minimum 15 calendar day comment period on each such notice, and 15 calendar days for comments following a technical workshop or the publication of workshop notes, whichever is later. This comment period should be provided for any changes to the data dictionary or submittal process that are not typographical errors or input/output generation errors.

These recommendations arise from deliberations at the August 11 Technical Workshop, where participants frequently raised aspects of the NOPR's substantive requirements together with questions regarding the technical semantics of the Data Dictionary. Although the Staff Notes summarize only the discussion of questions deemed within "scope" of the Data Dictionary, the workshop deliberations reveal that companies required to comply with many new elements will have to consider impact on compliance obligations well beyond the mere technicalities of preparing a filing.

EPSA has since given careful thought to an approach which is mindful of FERC's desire for a nimble, timely process for changes to the Data Dictionary and Submission Process, but also careful to avoid delays, confusion, extra steps, and inconsistency issues that arise even when changes are seemingly minor or ministerial, as has been attested to in other FERC data collection programs. In many past instances, a lack of *ex ante* process has meant inadequate notice of updated/new requirements which necessitated *ex post* clarifications in lengthy

[12] Staff Notes on Technical Workshop on Draft Data Dictionary Attached to the Data Collection NOPR (RM16-17), August 11, 2016 (Published September 9, 2016). ["Staff Notes"].

rehearing and contested proceedings. Many of these experiences revolve around disagreements that certain changes deemed to be "minor" are in fact a re-interpretation or expansion of a regulation or obligation.

EPSA believes the competing needs of expediency and providing adequate *ex ante* notice may be addressed harmoniously through expedited notice-and-comment periods whenever FERC believes that <u>any</u> changes should be made to the Data Dictionary which are not corrections of typographical errors, input/output conversion errors, or other ministerial corrections. Therefore, EPSA requests that all "formatting and technical requirements"[13] for either the Data Dictionary or the submission process occur through such comment periods.

<u>Recommendations</u>

- **All Formatting Instructions and Technical Guidance Proposing Changes to the Data Dictionary or Submission Process Should Be Published in the Docket with a Comment Period of No Less than 15 Days.**

  All Data Dictionary changes which the FERC staff considers to be "instructions on the specific formatting and other technical requirements for these submissions" should be noticed in the docket with expedited comment periods of no less than 15 days. In such an issuance, FERC staff should also include an opportunity for respondents to request a Technical Workshop or roundtable if respondents believe the subject changes are not merely procedural or technical in nature. Such changes should not be automatically posted to the website as suggested in the NOPR,[14] given that any number of these potential changes could affect substantive compliance obligations and further delay ultimate resolution of how that information can be reasonably and timely changed without harming market participants' expectations.

- **Technical Workshops Should be followed by a Minimum 15-Day Comment Period Commencing on the Date on Which Staff Notes are Published in the Docket.**

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13 NOPR, at P 55.

14 *Id.*

> FERC has stated in the NOPR that it will continue to hold technical workshops regarding submission requirements as they develop.[15] Staff has also confirmed that, moving forward, there are likely to be additional workshops scheduled that occur after the formal rulemaking comment period closes. Therefore, it is necessary and appropriate that FERC provide a reasonable opportunity for written comments – 15 days – on all future technical workshop deliberations, after such events have occurred. If Staff plans on issuing formal notes as occurred after the August 11 Technical Workshop, then the 15 day period should commence as of the date such Notes are released.[16] EPSA urges that these steps be formalized in the regulatory Preamble of the final rule: these are critical pieces to ensuring that both FERC and industry can work together collaboratively to improve the MBR filing process and better synchronize requirements across various reporting programs. EPSA also thanks the Commission Staff for providing such notes, because it is very important to ensure that the dialogue between staff and filing entities is objectively captured somewhere in a narrative fashion, independent of formal rulemaking records. EPSA suggests that a separate sub-docket be created to formally house the August 11 Workshop Staff Notes as well as subsequent issuances of a similar nature.

Based on experience from previous delays and stalled implementation schedules in several FERC reporting programs (*e.g.*, EQRs, E-Tag for EQRs, FERC Form 552, FERC eTariff), it is clear that reporting entities should be given a meaningful opportunity to voice their concerns in advance of staff's proposed changes, in part as such changes may be understood by industry to represent major changes to their compliance obligations, or, may have the effect of re-interpreting a regulation. Thus, although these recommendations may in some respect "delay" what might be a faster *ex ante* process of simply posting to the FERC website, a 15-day comment period represents an expeditious approach if it precludes the need for lengthy subsequent formal rulemaking and rehearing proceedings which would otherwise become

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[15] *Id.*

[16] Note: Although the most recent Workshop was on August 11, 2016, the Staff Notes were published on September 9, 2016. This gave the public 10 calendar days (inclusive of two weekends, meaning only 6 business days) to review the notes and provide comments. In the Staff Notes, staff concluded that certain items discussed at the Workshop were "beyond scope" of the Data Dictionary requirements. Under EPSA's suggested approach, market participants would be given 15 calendar days, or until Monday September 26, such that they would have 12 business days to review and provide feedback on all discussion items.

filing entities' only avenue to seek clarifications and voice concerns about the reporting program.

Prior experience also shows that companies need adequate time to analyze the information gleaned from technical workshops and associated publications or guidance. The mere fact of attending a technical workshop does not account for the days-long process of digesting and sharing this information across internal teams within a corporate footprint, including database managers and IT staff, back office and front office staff, and advisory or legal teams assisting with compliance. Internal analysis of workshop deliberations is absolutely necessary for companies to determine whether or not those changes will have real impacts on their regulatory compliance or amount to a re-interpretation of regulatory text for filers who may be external entities hired by the company (such as a law firm). Without ample time for this review process, there is little expectation that FERC staff will receive complete and meaningful feedback on its proposed changes. In fact, there is a higher chance that some of those changes will be disputed after-the-fact or held up at a future stage of program implementation because there are practical or feasibility issues which filers did not have an opportunity to identify at an earlier stage.

C. Legal Entity Identifiers Should be Reportable within One Year from Publication of a Final Rule.

As discussed in more detail below, EPSA supports FERC's proposed approach requiring MBR filers to report their LEIs in their EQR filings (in the Company Information Section only). EPSA requests that reporting companies be permitted to self-identify with their unique FERC-generated ID numbers in EQR filings until they have obtained an LEI as part of the CICI process and, further, be given 180 days following the initial MBR baseline filing date suggested above as the deadline for obtaining and reporting LEIs.

It is important to provide ample time for market participants to obtain LEIs because these identifiers will need to be acquired by all individual entities participating as MBR filers within a corporate entity – not just the business units that engage in financial swaps reportable to the CFTC or other regulators. In the interim period, all EQR filers who are MBR sellers would continue to be identifiable by their FERC-assigned unique identifiers. As entities which do not have LEIs currently do not undertake financial market transactions subject to swaps regulation (and thus LEIs serve no cross-market "Connected Entity" surveillance function for those entities), it is reasonable to permit unique identifiers reporting in lieu of LEIs and still achieve its regulatory objective of identifying all physical market sellers, until LEIs can be universally obtained by the ultimate date triggering Connected Entity compliance, 180 days following the initial MBR baseline filing date suggested above.

EPSA also notes that, in general, physical market participants are being required under this NOPR to obtain identifiers that have been designed to meet a gap in standard identification systems for financial counterparties. Thus, requiring LEIs for non-swaps participants will be an added cost for each filer that only participates in physical sales but does not have any swaps activity. Additionally, as noted in EPSA's prior comments in RM15-23-000, changes in the LEI fee structure are beyond the control of the Commission or Market Participants: LEI costs are currently an initial registration fee of $200 per LEI and annual fees of $100 per LEI. Fee increases are beyond the control of U.S. regulators or market participants and many FERC-regulated entities simply do not have LEIs for their physical business units. Another issue to consider is that the global LEI system transition is still well underway – necessitating as recent as July 18, 2016, for example, that the CFTC continue extending its interim approval of the U.S. LEI provider DTCC-SWIFT as the issuing repository

for LEIs.[17] EPSA thus requests that the Commission carefully consider the ongoing costs (current estimates and future estimates) for obtaining LEIs and any uncertainties or delays associated with how market participants may obtain LEIs in the future during the global transition. EPSA recommends that staff consider options for physical market-only sellers to rely on FERC-generated unique IDs in lieu of reporting LEIs should there be significant changes outside FERC"s regulatory landscape to the costs, processes, or sources for obtaining Global LEIs. We believe this is a helpful topic to cover in a workshop following publication of a final rule, so that staff can assess whether or not physical market participants have had any issues timely obtaining these identifiers and replacing FERC-issued unique identifiers in their systems.

D. All Proposed Thirty-Day Update Timeframes should be Replaced with Quarterly Timeframes for Reporting to the Relational Database.

EPSA requests that the required timing for the filing of XML submissions be quarterly, to coincide with the timing of MBR Sellers' EQR filings, in lieu of requiring these updates every 30 days. EPSA thus proposes that instead of requiring updates to XML information on the timeline for filing notices of change in status under 18 C.F.R. § 35.42, the XML updates timing would coincide with the timing of MBR sellers' filing of post-transaction EQRs per 18 C.F.R. § 35.10b. Since sellers must file EQRs each quarter even if the seller has no sales to report for that quarter, quarterly submission for both programs is a naturally aligned timeline which helps companies prepare filings efficiently on both fronts. Further, as there are some overlaps between information filed for EQRs and XML filings, concurrent quarterly filing will also help

[17] *See* "CFTC Extends Designation of DTCC-SWIFT as LEI Provider: One-Year Extension Allows More Time for Global LEI System Transition," issued July 18, 2016, at http://www.cftc.gov/PressRoom/PressReleases/pr7408-16.

companies ascertain which data elements are needed to populate one or both of these filings and internally deploy the data to the necessary reporting conduits in one streamlined process.

EPSA also urges the Commission to continue outreach during these phased compliance periods to understand any compliance challenges, trouble-shoot, and consider opportunities to reduce burden, such as an ultimate narrowing of triennial filing or other filing requirements given the possibility of significant duplication with filing of MBR and Connected Entity information through the RDB submission process.

II. Recommendations Regarding "Connected Entity" Reporting

EPSA appreciates that the Commission has eliminated all proposals to require reporting of debt instrument-based relationships as Connected Entity ownership relationships. EPSA supports the Commission's intent to align the ownership test by limiting it to "affiliate" ownership as is already reported to the FERC for the purposes of MBR compliance.

A. Connected Entities Based on "Ownership" Should Only Concern Ownership Relationships in Scope of the Sale of Energy in FERC-Jurisdictional Wholesale Markets.

The NOPR proposes a definition of Connected Entity ownership information that is the same as "affiliates" as defined in the MBR regulations at § 35.36(a)(9) of FERC's regulations, which are either "(i) an "ultimate affiliate owner" of the entity as defined in the regulations at 35.37(a)(2), (ii) an entity that participates in FERC-jurisdictional organized wholesale electric markets, or (iii) an entity that purchases or sells financial natural gas or electricity energy derivative products that settle off the price of physical electric or natural gas energy products."[18] EPSA requests that FERC narrow the third prong of this proposed definition to

[18] *See* Prop. Reg. § 35.49(d)(1), NOPR, at pp. 64.

only include financial transactions occurring in an ISO/RTO market pursuant to a FERC-approved tariff as they relate to the financial settlement associated with the physical delivery of electric energy and capacity in the ISO/RTO markets. EPSA also requests that FERC strike all references to "financial natural gas" and "natural gas energy products," and substitute the term "derivative products" with "financial transmission or congestion rights or contracts" or "financial transactions that represent a transfer of financial liabilities without intent or prospect of a physical transfer of electric energy." EPSA elaborates on these recommendations below.

Recommendations for Defining "Ownership"-Based Connected Entities

- ***Eliminate "Natural Gas Energy Products" and "Natural Gas Energy Derivatives"*:** Natural gas trading is a widely-used hedging mechanism used by MBR sellers and their U.S.-based and foreign affiliates well outside the scope of their sale and purchase of electric energy and capacity products in the FERC-jurisdictional wholesale markets. The instant NOPR does not provide persuasive legal or policy reasoning which supports collecting new information regarding financial or physical natural gas products. EPSA notes that to the extent the Commission seeks a view into ISO/RTO market participants' extra-jurisdictional activities in financial derivatives in natural gas, natural gas liquids, or other cross-market hedging activities, the collection of LEI information already reported to financial regulators like the CFTC should provide FERC a window into how jurisdictional MBR sellers and Virtual/FTR participants are utilizing cross-market hedging strategies. This information is freely exchanged between the FERC and the CFTC at a granular level, obviating the need to collect such information directly from FERC participants in its regulated physical energy markets.

- ***Eliminate the Use of "Derivatives" and Replace with Terms Describing Specific Financial Transactions Entering Into Pursuant to an ISO/RTO Tariff:*** This nomenclature change should be made to avoid serious jurisdictional confusion as between the financial derivatives traded off of energy and capacity products and which are within the exclusive jurisdiction of the CFTC, and those financial products which are authorized by an ISO/RTO tariff and settle financially but are not considered in scope of CFTC jurisdiction. Importantly, Part § 35.49(a) of the FERC's proposed definition as to "Virtual/FTR Participant" does not use the word "derivative" in order to be specific that the contracts in question are those involving "virtual instruments or financial transmission or congestion rights or contracts" generally held in "organized wholesale electric markets." Similar terms should be used in scope of MBR sellers whom FERC deems to have reportable connected entities based on sellers' "Ownership" connection with persons/entities that trade in such financial products pursuant to organized wholesale market rules and tariffs. EPSA

also suggests that the Commission look to its own recent orders that define the scope of "financial" transactions occurring in an ISO/RTO as it has distinguished such contracts from CFTC-regulated derivatives,[19] and look to the CFTC's exemptive order that lists specific "FTRs," "energy transactions," "forward capacity transactions" and "reserve or regulation transactions" "that are offered or sold in a market administered by [***]RTOs or ISOs pursuant to a tariff or protocol that has been approved or permitted to take effect by FERC."[20]

B. "Connected Entities" that are "Traders" Should Be Narrowly Construed to Include Desk Heads and Managers Exercising Actual Discretionary Control over Trading Activities in an ISO/RTO.

The NOPR proposes to require reporting the names of "traders" as "Connected Entities," defined in Prop. Reg. § 35.49(d)(2) as any employee or contractor "who makes, or participates in, decisions and/or devises strategies for buying and selling physical or financial electric or physical natural gas energy products."[21] This is a proposed filing requirement that does not appear currently in FERC regulations, and FERC proposes that this information would be subject to the 30-day status change timeframe to be synchronized with the 30-day MBR status change regulatory requirements.

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[19] *See, e.g.*, DC Energy, LLC v. PJM, 138 FERC ¶ 61,165 at P 66-67 (2012) (finding that "IBTs [Internal Bilateral Transactions] must have the potential for a physical transfer of energy to offset the deviation created by transactions in the day-ahead market" and that DC Energy's "IBTs merely represent a transfer of financial liabilities, with no intent or prospect of a physical transfer of electric energy, notwithstanding their use of the ISDA Master Agreement and Power Annex"). *See also* Order Denying Rehearing, DC Energy, LLC v. PJM, 144 FERC ¶ 61,024 at P 95 (2013)("Finally, we disagree with Complainants' assertion that rejecting their IBTs creates jurisdictional issues; Complainants assert that, since an IBT is the only way a forward transaction can physically be undertaken in an RTO and it now appears that Western Hub forwards cannot be scheduled as IBTs, then such a transaction cannot exist as a Commission-jurisdictional forward sale. We disagree and reiterate our finding that PJM's characterization of Complainants' IBTs as "financial swaps" is not determinative of their regulatory status. As discussed above, the Commission also made no finding that hub IBTs cannot be eScheduled. Furthermore, and importantly, section 1.7.10 does not prohibit parties from engaging in financial IBTs. It merely prohibits such parties from reporting their financial IBTs to PJM via eSchedules, and then from using them to offset deviation charges")(citing Complaint Order, 138 FERC ¶ 61,165 at P 74 ("Complainants take issue with PJM's reference to their IBTs as "purely financial swap transactions," arguing that, if they were swap transactions, this would create regulatory uncertainty as between this Commission and the Commodity Futures Trading Commission. PJM's characterization of Complainants' IBTs as "financial swaps" is not determinative of their regulatory status.")).

[20] *See* Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, RIN3038-AE02, 78 Fed. Reg. 19880 (April 2, 2013).

[21] NOPR, at P 17.

EPSA opposes the request for trader information at this level of granularity because it is tantamount to a request for individual traders (irrespective of their activities in FERC-jurisdictional wholesale electric markets) to be registered with the Commission on a name-basis, without any distinction as to which persons within a filing company exercise meaningful, strategic, and definitive day-to-day control over company strategies. Such information is also very problematic to collect and update on a company-wide level and yet does not seem to provide additional benefit to FERC's efforts to collect better information about a specific company's employee participation in a specific trading activity or market event.

First, the proposed definition of "traders" is too broad in that it seeks the names of a vast swath of individuals who may have no real connection to those who have made trading decisions that are of concern to the FERC or the company – inclusive of advisory functions, desk heads, supervisory functions, outside and in-house legal functions, and cross-team officers and advisors who are merely participants to a meeting in which they "make or participate" in decisions regarding certain energy products. As written, this definition in fact has the ability to mask potential "bad actors" within a company by seeking too much information about persons who only have general compliance responsibilities and no meaningful interface with trading screens or daily strategy calls.

EPSA recommends that the Commission refine the definition of a covered "trader" to be specific to persons managing and/or directing decisions for a trading desk, such as the director of an ISO trading desk. To arrive at a workable definition which can be clearly understood and applied broadly across a variety of corporate employment structures, EPSA requests that the Commission specifically enumerate in a final rule which job <u>functions</u> (as opposed to job titles) are excluded from Connected Entities:

- *Persons with executive or risk management oversight functions*
- *Persons who perform transaction origination and trade origination functions (noting many companies draw a distinction between sales transactions and trading)*
- *Persons engaged in accounting, credit management, settlement analysis, tax department functions*
- *Persons with internal or external legal, analytical or post-trade support functions*
- *Persons with scheduling functions whose duties are limited to placing trades at the instruction of others*
- *Persons trading physical or financial natural gas products, i.e.*, *in products not pursuant to a tariff or protocol of an ISO/RTO that has been approved or permitting to take effect by FERC*

Assuming the exclusion of these persons, the definition of a Connected Entity trader would include those persons managing and/or directing decisions for a trading desk or approving strategies for the trading desks of an MBR seller engaged in trading of physical or financial electricity or capacity products in the organized wholesale electric markets pursuant to a tariff or protocol of an ISO/RTO that has been approved or permitted to take effect by FERC.

Second, even with a revised definition which appropriately captures trading persons associated with an MBR seller's jurisdictional purchases and sales strategies, EPSA members have serious concerns that the collection of this information produces an individual licensure regime beyond the scope the NOPR. EPSA understands the plain language of the NOPR to intend the capture of external-facing legal and financial connections which influence a jurisdictional MBR seller's behavior in the ISO/RTO markets, and a re-configuration of how FERC collects currently reported information to achieve programmatic efficiency and better insight into its markets and market activity. By contrast, FERC's proposed "Traders" definition would establish an inward-looking reporting program which does not impact how the MBR

seller participates in FERC's markets in connection with either its affiliates or its legally or financially "Connected Entities."

EPSA believes this is a critical distinction not only because of the burdens that the requirement poses for the industry, but because the requirement does not appear to add any new, identifiable value to the Commission's surveillance program. As the Commission is aware, information about individual traders or any other staff member in relation to an informal or formal investigative query is readily provided by entities that receive such requests for information from FERC staff. Even as the NOPR explains how the proposals for non-MBR Seller trader registration and for new requirements like LEIs would substantially expand the depth of FERC's surveillance program, no similar explanation is provided as to why internal trading staff reporting will add value to understanding MBR Sellers' relationships with other entities through legal and financial interests.

It is thus very concerning to EPSA members that the Commission is asking for individualized information about internal employees and contracted persons within an MBR seller's corporate walls. Members express particular concerns about the outsized burdens for documenting and monitoring for these "traders" for regular updated reporting. These burdens include: (i) the need to create costly, new systems designed to scan for and capture name changes associated with individual trading activities within every 30 days in perpetuity, (ii) regulatory exposure for failing to timely update those rosters or report changes in desk staff (front-office, back-office), (iii) competitive harm to companies based on potential disclosure of their individual employees, and (iv) competitive harm to companies' ability to retain and expand their talent pool given that name-based reporting to regulatory authorities is tantamount to

individual licensing and transfers regulatory exposure from the filing entities to individuals within those entities.

EPSA respectfully contends that the individual trader reporting program does not add value to the Commission's stated mission of identifying connections of financial and legal interest, nor does it arise from any discussion in the NOPR that this information would enhance FERC's surveillance efforts over MBR Sellers' activities in connection with their legal or financial relationships in FERC or CFTC-regulated markets. Meanwhile, other aspects of the NOPR – like requiring LEIs – adds at least some new capability for FERC staff to enhance precision and timeliness around identifying potential "bad actors" which may be linked to filing entities.

For these reasons, EPSA urges the Commission to reconsider a requirement for reporting of employees or contracted persons on an individual name-basis, and not adopt such a requirement in the final rule. In the alternative, EPSA requests that the Commission narrowly construe the definition of a "covered" trader based on the recommendations above, and limit the inclusion of covered traders to traders in physical or financial Commission-jurisdictional electric products. EPSA also requests that the Commission articulate a confidentiality standard which ensures that trader names would not be disclosed under any circumstances in RDB outputs likely publicly-available organizational charts, and that trader name updates be reportable only on a quarterly basis, as opposed to every 30 days.

Should the Commission choose to retain any trader reporting requirement, the Commission should specify a means for an MBR seller to include information in narrative filings to explain why the filer has specifically included certain types of employee/contractors and excluded others based on their specific job functions. Such a filing should have the effect

of explaining to FERC staff that the filer has actively reviewed and attempted to comply in light of the filer's corporate structure providing for differing job titles and designations which may or may not fit the plain language of the definition promulgated in a final rule. Lastly, a final rule should clarify that reportable traders would only include those traders associated with the Filer and would not extend to traders of its domestic or foreign affiliates. Related guidance in the Data Dictionary should be clear that each MBR seller would separately report its own employed or contractually engaged traders.

C. Connected Entity "Contracts" Category Appears Duplicative of Other Filed Data.

The final prong of the NOPR's proposed Connected Entities definition is based on "Contracts," which would include a contract as between only those entities that have entered into an agreement with a submitting entity which "confers control over an electric generation asset that is used in, or offered into, wholesale electric markets. Agreements that confer control should be specifically defined in a final rule as contracts which grant one of the parties the right to make trading decisions for an electric generation asset of another party or to offer an electric generation asset into the wholesale market."[22] By example, the Commission could define "control" over a third-party's generation facilities to mean a contractual change of control approved by the Commission in a FPA Section 203 filing. This would streamline and link FERC's process of approving changes in contractual control through the 203 filing process, to a specific requirement to report that connection as a Connected Entity relationship.

EPSA has concerns that the proposed scope of contractual control is overbroad in that it would be based on a party's "right to make trading decisions" for another party's asset, or the right to "offer" that asset into the wholesale market – both descriptions being vague as to

[22] Prop. Reg. § 35.49(d)(3), NOPR, at pp. 65.

transfers of "control" as currently defined in FERC regulations. Additionally, when comparing the proposed definition to the reportable elements in the proposed Data Dictionary, the Data Dictionary requirement appears to capture relationships in the Entity-to-Entity table which are well beyond those relationships which MBR sellers document in Asset Appendix filings as to contracts which provide them control over unowned assets.

Concerns about the scope of the "Contracts" definition hearkens to similar concerns noted above regarding the scope of a Connected Entity "Traders" definition. First, the suggestion that contracts involving a right to "*make* trading decisions for an electric generation asset" (emphasis added) should be clarified. Specifically, trading activity which amounts to scheduling an asset, managing an asset as a managed service provider, executing sales of the uncommitted portion of plant production on behalf of an owner, or acting as an agent in the marketplace pursuant to an operating or service agreement, should not be deemed activity which confers decisional control over the asset under a "Connected Entity" contract. Second, the proposed definition's usage of the terms "using" or "offering" an asset into the electric markets for another entity, without distinguishing those activities which constitute discretionary control and those which do not, should also be clarified. Above, EPSA noted similar concerns about the "Trader" definition, which contemplates reporting persons who "participate" or "make" some decisions involving energy trades without distinguishing decisions that do and do not have strategic significance or which signify day-to-day control over trading strategies.

EPSA also notes that the Data Dictionary Entity-to-Entity table should be revised to reflect that the only entity-based relationships reportable are those in which either the filer or the Connected Entity controls the other's generation assets in conjunction with offering those assets into the wholesale markets. Likewise, as to the Data Dictionary Other Contracts table,

these fields suggest that all contracts which are not PPAs (reported on a separate table) are reportable, beyond those which would grant either the filing entity or its connected entity rights to assume control of the asset for participation in the wholesale markets.

EPSA requests that FERC clarify these issues: as staff noted at the Technical Workshop, contracts reportable on the Other Contracts table as "Connected Entity" contracts should only be those which are tied exclusively to the proposed definition in the NOPR and which convey control over generation. In this sense, EPSA believes the Entity-Entity table is redundant as it is also overbroad in scope of reportable relationships well beyond those which transfer control over affiliated assets. As to the elements that should be reportable for such contracts, including specific dates, date of last change in control, LEI of counterparty (none of which are requirements proposed in the NOPR), EPSA requests that FERC use the suggested implementation timeframes to ensure ample opportunity to discuss what elements are practicable and not unduly burdensome for market participants to file as to such contracts. Per our recommendations in Section I above, these determinations should be subject to docket notice and comment periods.

For these reasons, EPSA requests that the Commission clarify its "Contracts" category to ensure that the definition of "control" is limited to contracts conveying control in situations where an MBR seller or its counterparty does not own but controls the other entity's generation asset. In addition to making the conforming changes to the Data Dictionary table, EPSA suggests that it is advisable to provide guidance in a final rule that the reportable "Other Contracts" table would include only those contracts which convey "control" over a generation asset. EPSA also requests that FERC hold a subsequent technical workshop and open a

related written comment period to clarify the extent of how such generation control relationships should be reported and what fields are feasible to report.

III. Recommendations on New Requirements for Identifier Information

A. Legal Entity Identifiers Should Be Reported in the Electric Quarterly Report "Company Information" Section and Long-Term Firm Sales Reporting Should be Eliminated in "Connected Entity" Filings.

EPSA supports FERC's proposed approach of relying on long-term firm sales data in EQR filings in lieu of requiring long-term firm sales reporting in scope of this NOPR.[23] Accordingly, EPSA requests that FERC eliminate the "Contracts" Tables from the scope of the final rule as it would require separate reporting of long-term firm sales of capacity or energy. MBR filers would thus only file information regarding long-term firm purchases and regarding assets that are owned and controlled by their affiliates who do not have MBR authority, and would only report their own Legal Entity Identifiers (and not LEIs of contractual counterparties, irrespective of whether they have MBR authority) in their EQR filing Company Information section.

This approach adequately addresses staff's need to ascertain both sides of a contract to respective entities' LEIs.[24] It also obviates the inherent data quality inconsistency already documented in the Staff Notes, that "there is not a perfect overlap with the universe of contracts and the information required to be reported between the proposed rule and what is currently required under EQR."[25] Third, FERC will be able to more quickly and accurately utilize information about reported sales and purchases if the data set it is looking at captures

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23 NOPR, at P 36.

24 Staff Notes, at pp. 5.

25 *Id.*

more “known” information in new ways (internal cross-checking of preexisting data through LEI matching) rather than seeking more long-term sales information in a new filing that is partially redundant with a data set FERC already receives in EQRs.

B. Unit-Specific Unit Identifier Information and Unit-Specific PPA Information based on EIA Nomenclature Should Not Be Required.

The NOPR proposes that in lieu of reporting generation on a facility-wide basis as is currently done in the current asset appendix filing, MBR sellers would report generation units separately for purposes of the RDB and also report the Plant Name, Plant Code, Generator ID, and Unit Code (if applicable) information from the Energy Information Administration Form EIA-860 database. The NOPR notes that obtaining this granular information will enable the RDB to identify when information is being provided about a unit that is already part of the RDB, and thus reduce data duplication. It further notes that better tracking of which MBR seller owns or controls specific units will improve the FERC’s ability to assess sellers’ market power, particularly in cases where various units at a single facility may be owned or controlled by more than one seller. Further, the NOPR states that this change would also align FERC’s nomenclature with that already used by EIA, thus simplifying regulatory requirements.[26]

EPSA has concerns with this proposal primarily because the NOPR is not a proposed amendment to the rules governing market power analysis, as most recently modified in FERC Orders regarding policies and procedures for the analysis and authorization of market-based rates.[27] However, the NOPR states that this proposal is in aid of assessing market power of

[26] NOPR, at P 35.

[27] *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 80 Fed. Reg. 67,056 (Oct. 30, 2015), FERC Stats. & Regs. ¶ 31,374 (2015), *order on reh’g*, Order No. 816-A, 81 Fed. Reg. 33,375 (May 26, 2016), FERC Stats. & Regs. ¶ 31,382 (2016).

individual sellers, which is in fact a proposed rule change impacting market power analysis. EPSA requests that the Commission eliminate this proposal from the scope of the instant rulemaking.

Further, EIA nomenclature is simply impracticable to collect for the purposes of achieving a consistent, granular view into the asset mix represented in each MBR seller's filings. The Technical Workshop discussions addressed several of these concerns, elaborated below in relation to the Staff Notes document:

- EPSA agrees with workshop participant comments that "[b]ecause EIA only collects information on generators with 1MW or greater capacity, some generators participating in an ISO may not meet the reporting threshold and therefore lack an EIA number." This results in inconsistencies which obviate the stated goal in the NOPR of aligning FERC nomenclature with that already used by EIA – the data sets are not identical or represented the same way. For example, EPSA members note that wind units held by MBR sellers do not have Unit Codes under EIA nomenclature because each wind turbine is technically its own "unit" but the EIA plant codes naturally do not apply individually to each turbine. Instead, an entire facility or wind farm is identified under a single ID without distinction of individual turbines with their own plant names or plant codes. Additionally, there are some exceptions to this rule (where EIA has required a Generator ID for a renewable generation facility, and individual plant codes for turbines) which renders it more difficult to demonstrate consistent nomenclature even in identifying "units" associated with one type of renewable generation.

- EPSA agrees with Participants' comments regarding the "concerns over and benefits of reconciling EIA data and FERC reported data where there are variances" because EIA data does not provide useful tracking information regarding which entities control specific "units" within a facility. For example, a series of wind farm units can have several PPAs and correspondingly more than one off-taker, without any further granularity as to which PPAs and off-takers are tied to specific units within the facility as identified by the EIA plant code. Additionally, individual plants within a singularly-identified facility may be subject to Joint Venture agreements with entities that are not MBR sellers filing this information from their own end (e.g., with investor-owned utilities that do not make MBR filings).[28]

- EPSA agrees with Participants' comments regarding confusion about geographic region for generation units that serve multiple regions, given that the data dictionary permits multiple entries. A specific facility may be physically located within a specific

[28] Staff Notes, at pp.3.

> geographic region but pseudo-tied as a certain percentage of total production to another region – individual plants within the facility may or may not be part of the capacity that is pseudo-tied as such, but all the plants are represented together under one facility-wide EIA plant code and do not necessarily have individual "Generator IDs" as discussed above. It is thus impossible in this case to break down unit commitments at a more granular level using EIA nomenclature.

These examples demonstrate that as EIA codes are used in a non-standardized fashion by different types of generation resources, they are not likely to provide FERC an opportunity to see uniformly more granularity in filers' controlling relationships on a plant-specific level. EPSA thus requests that FERC eliminate this requirement from a final rule.

Similar to the proposal for reporting individual generating units, FERC proposes that for unit-specific power purchase agreements, MBR sellers provide the associated Plant Code and Generator ID from the Form EIA-860 database, which will provide the unique identifier for that unit.[29] For all the reasons set forth, EPSA contends this proposal does not provide FERC with useful information. For some companies, for a certain PPA to be "unit specific," those PPAs would be tied to a specific generating facility. For other units that have more than one PPA and more than one off-taker (like a wind-farm facility with multiple turbine "units"), all potential off-takers simply share the energy produced by the entire facility and the contractual arrangement; agreements accordingly do not state purchase terms by linkage to specific turbines in the facility. In other instances, sales contracts may identify that a specific off-taker has rights to the output of certain identified turbines, but that is by no means a general rule of contracting. Further, EIA data is not be granular enough to tie to all specific "units" involved within a facility to specific PPAs. Accordingly, EPSA requests that FERC not include such a requirement in the final rule.

[29] NOPR, at P 38.

C. E-Tag Requirements Should Be Eliminated.

FERC also proposes to require MBR sellers to provide their PSE (Purchase Seller Entity) NAESB/OATI webRegistry Codes, if available, as part of the Connected Entity submission, as this is an entity identifier that appears in the contract/market paths field of an e-Tag.[30] EPSA believes this is an unworkable proposal because FERC no longer requires submission of e-Tag information. EPSA suggests in the alternative that as PSE IDs are unique to the filing company, FERC may simply require listing every NAES/OATI PSE ID the filing entity has ever had, and delete fields requiring the listing of any dates or years associated with those IDs. Therefore, each filer would submit a one-time report in the baseline filing of all associated IDs, with no ongoing compliance obligation except that any errors discovered by the filing entity with respect to such IDs would be reportable within 30 days of discovering such errors.

IV. Other Recommendations

A. Confidentiality and Due Diligence Recommendations.

Participants at the Technical Workshop noted the overarching concern that commonly reported information by multiple parties can lead to a higher incidence of minor errors in multiple cross-referenced filings. Given that this rulemaking will generate a large amount of new information, in addition to changing how affiliated entities report one another's information within their own filings, EPSA requests that the Commission clearly state in the final rule preamble and/or regulatory text that errors discovered in good faith by a filing entity may be corrected in its next filing upon discovery post-filing either by the filer, its affiliate, or FERC

30 NOPR, at P 54

staff, without incurring penalty for not having reported these minor errors to FERC Enforcement staff at an earlier date.

The NOPR states that Connected Entity information will be granted non-public status unless it is authorized to be released under the provisions of Part 1b of the Commission's regulations. EPSA believes that this provision of its rules may not work to safeguard the information requested in the NOPR. This rule focuses on the protection of confidential non-public data under Commission investigations. Given that that the information is not being sought in the context of a pending investigation, it does not seem like it will provide the protection contemplated in the NOPR. As an alternative, it is suggested that filers could request protection from public disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. Section 522. However, the protections are not as robust because these protections are subject to third-party disputes, potentially requiring filers to participate in disputes about the continued applicability of the exemption even as the information was confidentially submitted at the outset. Given the extreme sensitivity of the data provided, as well as the competitively damaging impact of its potential exposure, more protection is required to ensure that this information is protected in the context of an investigation and remains non-public. EPSA requests that the Commission consider specific protections which ensures this information is protected when it is being sought outside of the context of an investigation.

B. Costs and Burdens Associated with MBR and XML Filings are Substantial and Necessitate a Careful, Phased Rule Implementation Process.

Several EPSA members have reported that their MBR filing entities will need to contract with external vendors to develop software required for migrating their current Excel filings to XML, dramatically increasing budget overhead for facilitating ongoing reporting. Companies typically make these filings through outside counsel for similar reasons, with a view to internal

overhead associated with training internal staff to update these filings. From a cost perspective, a shift to heavier reliance on outside vendors will be several times more costly, and potentially necessitate that companies undertake internal software development to build out this infrastructure internally.

Therefore, as EPSA noted in Section I, the need for adequate time to develop internal software capability should account for the fact that companies may need well over 180 days from the date of a finalized XML format's publication, to develop cost-effective, internal-facing software tools to capture the necessary information, rather than relying solely on a series of vendor solutions.

EPSA urges the Commission to include a discussion of software costs and the benefits of burdens of internal development and vendor utilization at the next technical conference regarding the submission process. EPSA hopes that the recommendations arising out of this dialogue would help inform a longer testing period and implementation timeline. While it has not been feasible at this time to predict all costs given the uncertainty of how the Commission will structure these filing requirements, an estimate could be derived from how costs would increase if FERC just expanded EQR filing requirements to add a few data fields – *e.g.*, fields for reporting virtual traders, FTRs, TCRs, and so forth. For example, one EPSA member with a power marketing entity and affiliated plant facilities participating in ISO/RTO markets estimates needing 180 days to model new data elements for making these limited changes to EQR reporting: costing between $220,000 and $240,000 and 700 man hours to redesign the system to collect and feed the new data into the expanded EQR reports. For each additional MBR seller (individual reporting plant units) which is also required to make its own quarterly EQR filing, a group of approximately 15 plant entities filing EQRs individually would incur about

the same number of dollar and man hours as a collective group– between $220,000 and $240,000 and 700 additional man hours. Seeing as these estimates alone indicate the need for a total of 1400 man hours, EPSA believes the implementation timelines noted above in Section I are certainly a bare minimum estimate of the compliance phase-in periods that market participants should be afforded to implement the XML component of the rule, the EQR changes required, and the Connected Entity changes required to be filed.

V. Conclusion

Wherefore, EPSA respectfully requests that the Commission adopt the above-proposed changes and specifications to the substantive reporting requirements for "Connected Entities" and provide for adequate implementation flexibility and compliance timelines as discussed herein. EPSA further supports the Commission's withdrawal of its Ownership NOPR in Docket No. RM16-3-000 and Connected Entity NOPR in Docket No. RM15-23-000, and supports the Commission's proposal to withdraw the existing requirement that MBR sellers submit corporate organizational charts adopted in Order No. 816 in Docket No. RM14-14-000.

Respectfully Submitted,

_____/s/_____

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served via electronic transmission the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 19th day of September, 2016.

_____/s/_____
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