UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Shell Energy North America (US), L.P.	**)** **)** **)**	**Docket Nos. EL20-49-000**

COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

In accordance with the June 1, 2020, and June 11, 2020 notices issued by the Federal Energy Regulatory Commission (the "Commission") in the above-captioned proceeding, the Electric Power Supply Association ("EPSA")[1] hereby comments in support of the Petition for Declaratory Order (Petition) filed on May 29, 2020, by Shell Energy North America (US), L.P. ("Petitioner" or "Shell N.A."). The Petition raises issues regarding the PJM Interconnection, L.L.C. ("PJM") Open Access Transmission Tariff ("Tariff") and provisions therein regarding bilateral transfers of Financial Transmission Rights ("FTRs") and PJM's FTR Center, the platform for reporting FTR transfers to PJM as the system operator. The Petition also addresses certain issues raised by and related to ongoing litigation in Texas state court over contractual claims related to bilateral FTR transfer contracts between Shell N.A. and GreenHat Energy, LLC ("GreenHat") in PJM. EPSA takes no position on the latter issues but agrees with Shell N.A. that data entered into the PJM FTR Center should not be construed as creating new binding contracts or as superseding the terms and conditions of written bilateral contracts between the FTR Holders.

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[1] EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization but not necessarily the views of any particular member with respect to any issue.

EPSA filed a doc-less Motion to Intervene in this proceeding on June 3, 2020.

I. CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications related to this proceeding should be addressed to the following individuals:

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II. COMMENTS

Shell N.A. explains in its Petition that the PJM Tariff governs the rights and obligations of FTR Holders and the use of FTRs on the PJM system, which includes provisions related to the transfer of FTRs between market participants using PJM's FTR Center. While the PJM Tariff provides means for reporting transfers of FTRs between market participants, it does not purport to provide, and does not provide, a mechanism through which market participants agree on the terms and conditions of such transfers. Rather, the terms and conditions are established outside the FTR Center through the bilateral agreements between parties.[2] Entry into the FTR reporting mechanism merely serves to facilitate PJM's ability to settle with the FTR Holder and to confirm that FTR obligations can be performed under the transfer.[3] As PJM stated when it proposed the provisions of the PJM Tariff governing the FTR Center, this mechanism plays no role beyond its function as a reporting mechanism:

> [W]hile these [FTR] transactions…must be reported and coordinated with PJM in order that a record of title can be properly maintained, they are not "pool" transactions…[FTR Center] serve[s] as a reporting mechanism only,

[2] PJM Tariff Attachment K at 5.2.2(d), "Market Participants may enter into bilateral agreements to transfer [FTRs]," and FTRs "may be sold or otherwise transferred … by bilateral agreement."

[3] *See* Petition at pp 6-7 explaining the process of FTR transfers, the role of the FTR Center, and PJM's oversight of FTR transfers.

and the original bilateral counterparties remain solely responsible for performance under the bilateral.[4]

There is no basis for GreenHat's claims in court proceedings that this reporting mechanism operates as some sort of an exchange for the trading of FTRs between parties such that reporting to the FTR Center creates a separate, standalone contract with its own set of terms and conditions, apart and distinct from the terms and conditions of the parties' underlying bilateral agreement. Such an extravagant interpretation would have the absurd result of binding a party to an agreement with terms, conditions, obligations, rights, and payments to which it is not privy. Further, under GreenHat's interpretation, this newly created phantom contract would supersede and override the underlying written bilateral agreement reached and committed to by the two market participants establishing the FTR transfer transaction. According to GreenHat, all this is created when contracting parties enter data info FTR Center to report a transfer, thereby establishing a new transfer contract unknown to one of the parties.

To be clear, EPSA does not have a view on the transactions at issue in the litigation or ongoing disputes between GreenHat and Shell N.A. But EPSA does strongly disagree with GreenHat's contention that entering data into the FTR Center creates a new contract, whose terms and conditions override those of the parties' written bilateral agreement. In this regard, the Petition highlights a risk that EPSA members did not believe existed prior to the GreenHat claim in Texas; that is, that the risk that the PJM FTR Center could be misconstrued as having functioned as an exchange that reflects execution of actual transactions. Prior to this claim, it was EPSA's understanding that,

[4] *PJM Interconnection, L.L.C.*, Revised Tariff Sheets of the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement, Docket No. ER10-1003-000, (April 1, 2010), p 4.

consistent with PJM's characterization of the FTR Center, the platform is used only for the purpose of recording FTR transactions so that PJM knows whom to settle with when bilateral transactions occur. Anything more would require parties that recorded bilateral transfers on the platform to assess whether they have any legal or contractual exposure for transactions between each other that they assumed were completed.

The Commission's clarification on this very narrow Tariff interpretation is reasonable and necessary in light of the current confusion. Parties that participate in PJM's markets require certainty that they are adhering to its Tariff in their dealings with PJM and with other market participants and that the mere reporting of data into the FTR Center is not disturbing the terms of their written bilateral contracts. If the questions presented about the meaning of Tariff provisions establishing the FTR Center are left unresolved, the lack of clarity – or misleading claims – over the terms, responsibilities, and obligations of bilateral FTR transfers will chill participation in the use or trading of FTRs in PJM. Without clarification, parties could be subject to unknown or unforeseeable contractual arrangements or payments with other FTR Holders. Therefore, the Commission should clearly state that bilateral transfer data entered into the FTR Center *does not* create an additional or superseding contractual arrangement between the parties. Those parties have entered into a written bilateral contractual arrangement outside of the PJM market environment. Information regarding that arrangement is submitted to PJM because it is the system operator and therefore needs information on the use of FTRs and the performance under FTR transfers that will or may occur on the system.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, EPSA requests that the Commission take these comments into account in considering action on Shell N.A.'s Petition for Declaratory Order as it pertains to the function of PJM's FTR Center pursuant to its Tariff. The requested Tariff interpretation is necessary to provide market certainty for all PJM participants.

Respectfully submitted,

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Dated: July 14, 2020

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 DC, this 14th day of July, 2020.

/s/ J. Jordan
Jeffrey Jordan
Electric Power Supply Association