UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Electricity Market Transparency Provisions of Section 220 of the Federal Power Act; Final Rule	)	Docket No. RM10-12-000

MOTION FOR PARTIAL STAY AND REQUEST FOR REHEARING AND CLARIFICATION OF THE EDISON ELECTRIC INSTITUTE AND ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rules 212 and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or the Commission), 18 C.F.R. §§ 385.212 and 385.713, the Edison Electric Institute (EEI) and Electric Power Supply Association (EPSA) hereby move for a partial stay and request rehearing and clarification of FERC's Final Rule, Order No. 768, issued in the above-captioned proceedings on September 21, 2012, and published at 77 Fed. Reg. 61895 on October 11, 2012 (Order 768). Order 768 modifies the Commission's Electric Quarterly Reports (EQRs) by adding a number of new data elements to the reports

EEI and EPSA appreciate many features of Order 768, including the Commission's decisions: to eliminate the EQR contract time zone and DUNS number data elements; not to require reporting of trade time and resales of financially traded rights; to allow general reporting of index publisher information in the Filer ID data section rather than for each transaction; not to require identification of brokers for each transaction; and to provide index-publisher and exchange pull-down screens. We support these provisions

of Order 768 as appropriate measures of relief from unnecessary reporting requirements and burden.

At the same time, EEI and EPSA have some concerns about certain other provisions of Order 768. As discussed in the remainder of this pleading, we encourage the Commission to reconsider one of those provisions – as to e-Tag identification (ID) information – in its entirety. To provide time for the Commission to reconsider that provision, we request that the Commission immediately grant a partial stay of the eTag ID provisions of Order 768, pending a technical conference and further study of those requirements. We also request clarifications as to several other points, including the responsibility of RTOs and ISOs to provide EQR data for RTO and ISO transactions and the timing of Order 768's implementation and requirements.

I. Overview of This Pleading

First, EEI and EPSA request that the Commission immediately stay the provision of Order 768 requiring market participants that must file EQRs to submit e-Tag ID information for each reported transaction. During the pendency of this stay, we request that the Commission promptly convene a technical conference to discuss our concerns with this and certain other provisions of Order 768, as discussed in the remainder of this filing. If in the wake of that conference, the Commission remains inclined to require reporting of the e-Tag ID information, EEI and EPSA further request that the Commission (with the partial stay still in place) undertake a small-area, limited-time study of the e-Tag ID data (e.g. focusing on a single balancing authority area for a single quarter) to get a better sense of the type of information that could be reported under the e-Tag ID

requirement, the actual value if any of that information, and the burden involved in reporting it.

EEI and EPSA are concerned by Order 768's requirement to report e-Tag ID information for each reported tagged transaction. We believe that the Commission has underestimated the burden involved in providing this type and level of information for each tagged transaction reported in the EQRs. We also believe that the Commission has unduly high expectations as to the value of the e-Tag ID information. By staying the requirement to provide the e-Tag ID information pending (1) a technical conference and (2) if after the conference the Commission is still inclined to retain the requirement a small-area, limited-time study, the Commission could ensure that the information provided will in fact be useful and worth the extensive burden involved in providing it before proceeding to impose this requirement.

Second, EEI and EPSA request that the Commission adopt the recommendations in EEI's June 28, 2011 comments in this proceeding (1) to have RTOs and ISOs file EQRs or provide EQR information directly for all reportable transactions undertaken via RTO and ISO markets, while ensuring that the RTOs and ISOs provide timely information other market participants need to file their own EQRs, and (2) to relieve market participants in those markets other than RTOs and ISOs from having to report the transactions separately while giving those other participants the option to do so. This would ensure that the information reported in the EQRs is filed or made available by the entities that are operating those markets – namely the RTOs and ISOs themselves. Otherwise, as at present, market participants must untangle often limited and confusing

information provided by the RTOs and ISOs in order to file their own individual EQRs. This improvement to the EQR reporting requirement would leave the market participants directly responsible for reporting only their own bilateral sales to counterparties other than the RTOs and ISOs, a much more manageable burden.

Third, EEI and EPSA request that the Commission provide several clarifications to Order 768, in particular as to : (1) trade date ; (2) rate type ; (3) standardized units; (4) customer name; and (5) the revised Data Dictionary.

Fourth, EEI and EPSA request that the Commission set the deadline for Order 768's requirements to be implemented as the 1st quarter 2014 EQR, or the first EQR that is due at least 12 months after the Commission completes work in response to this request for rehearing, whichever is later, rather than the 3rd quarter 2013 EQR. This will ensure that market participants have adequate time to adjust and to test their revised trade-capture systems and internal information collection and reporting software and systems before having to report the new information. Also, we request that the Commission clarify that Order 768's reporting requirements apply only prospectively, to transactions entered into after this implementation obligation commences (*i.e.*, after January 1, 2014, if the implementation deadline is the 1st quarter 2014 EQR), and that information such as trade date does not have to be researched and provided for transactions entered into and reported in EQRs submitted before this date. This will minimize the need for market participants to undertake extensive manual research to provide this information.

II. EEI and EPSA Interest in this Proceeding

EEI and EPSA have participated in this proceeding by filing comments in response to the Commission's underlying notice of inquiry (NOI)[1] and notice of proposed rulemaking (NOPR)[2]. Rather than repeat information about our individual memberships and interests in this proceeding, we refer to our prior comments for such information. Together, our members comprise a large portion of the market participants who currently file EQRs and will be required by Order 768 to do so. Thus, as a group, we clearly have a direct interest in ensuring that the Commission's EQR reporting requirements are well founded and reasonable.

III. Statement of Issues and Specifications of Error

A. E-Tag ID Requirement

At pars. 156-167 and 178-182 of Order 768, the Commission has understated the burden involved in providing e-Tag ID information for each EQR-reported transaction and has overestimated the benefits of the information. As EEI, EPSA, and others noted in comments in response to the NOPR in this proceeding, and as the Commission recognized in Order 768: not every transaction has an e-Tag; a particular transaction or part of a transaction may have one or more e-Tags associated with it; the e-Tags may change over time as the generation and transmission used to supply particular load changes; and a given e-Tag can cover one or more transactions or parts of transactions.

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[1] *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Notice of Inquiry, 75 FR 4805 (Jan. 29, 2010), FERC Stats. & Regs. ¶ 35,565 (2010).

[2] *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Notice of Proposed Rule Making, FERC Stats. & Regs. ¶ 32,676 (2011).

Furthermore, the e-Tag information is not collected in the trade capture systems where most EQR data are captured.

As a result, the e-Tag ID information for each transaction is likely to be very burdensome to collect and to report. Providing e-Tag ID information for each transaction will require sorting scheduling information that is independent of transaction information for each transaction for each reporting period. Some or all of this work is likely to involve manual sorting and review, and automation to reduce the amount of such manual work promises to be quite expensive. Furthermore, the information is likely to be far more confusing than helpful to the Commission and the public in trying to understand market activities, despite the Commission's expectations to the contrary. Thus, the Commission has not adequately demonstrated that the benefit of collecting the information exceeds the burden, in keeping with the Paperwork Reduction Act and Executive Order No. 13563.

Furthermore, a stay of the e-Tag ID data reporting provisions of Order 768 is warranted pending rehearing because a large part of the cost of providing the information will be incurred up-front, in attempting to automate cross-references between trade-capture and scheduling systems that are fundamentally different and actually obtain the e-Tag ID data. A stay of the e-Tag ID provisions is necessary to avoid irreparable harm in the form of such sunk costs to the EQR filing community.

B. RTO-ISO Transaction Information

In Order 768, the Commission did not address EEI's recommendations: (1) to require RTOs and ISOs to provide the Commission and the public with EQR data

reflecting sales to the RTOs and ISOs, while ensuring that the RTOs and ISOs provide timely information other market participants need to file their own EQRs; and (2) to relieve other market participants from a responsibility to report the RTO/ISO sales transactions in their own EQRs while allowing the other participants the option to report the transactions. RTOs and ISOs are counterparties to the vast majority of transactions in their markets. But RTOs and ISOs currently do not provide EQR information for those transactions to FERC, and not all RTOs and ISOs provide clear information about those transactions for other market participants to use in compiling their own EQRs.

Requiring RTOs and ISOs to provide EQR information for transactions to which they are counterparties would ensure that the information is available from its primary source rather than placing the burden on other market participants that may not otherwise have sufficient information. In addition, relieving other market participants of responsibility for reporting on the RTO-ISO transactions would reduce inefficiency and unnecessary burden, in keeping with the Paperwork Reduction Act and Executive Order 13563. Also, addressing EEI's recommendation would comport with the notice-and-comment rulemaking provisions of the Administrative Procedure Act, Federal Power Act, and Executive Order 13563.

C. Clarifications and Corrections

In the interest of a clearer rule, EEI and EPSA request that the Commission: (1) provide certain clarifications as to the trade-date requirement at final rule pars. 90, 92, and 93; (2) provide certain clarifications as to rate type at final rule pars. 107 and

108; (3) provide certain clarifications as to standardized units at final rule pars. 116-118; (4) provide more flexibility as to reporting customer name at final rule par 171; and (5) in the revised Data Dictionary at final rule Attachment A, correct certain Field # references and provide certain clarifications regarding new Field #s 21, 33-36, 66-67, 69-70, and 74-77. These steps would help to improve implementation of Order 768 and to reduce regulatory burden in keeping with the Administrative Procedure Act, Paperwork Reduction Act, and Executive Order No. 13563.

D. Timing Issues

Order 768 provides too little time for market participants to meet its new reporting requirements. As EEI noted in its June 28, 2011 comments, it takes utilities substantial time, resources, and efforts to make changes in their trade-capture and other information collection systems in order to obtain new information of the sort Order 768 requires. EEI and EPSA request that the Commission provide at least a full year for market participants to begin implementing Order 768 from when the rule takes effect, or better still from when the Commission acts on this and other requests for rehearing. Thus, at the earliest, Order 768's reporting requirements should apply to the 1st quarter 2014 EQR, information for which will have to be collected starting on January 1, 2014. Better yet, these requirements should apply to the first quarterly report one year after the Commission acts on this and other requests for rehearing. The Commission also should specify that the new reporting requirements apply prospectively, only to transactions entered into and reported starting after this

implementation date. This would help to reduce the regulatory burden, again in keeping with the Paperwork Reduction Act and Executive Order No. 13563.

IV. Supporting Arguments

A. The Commission Should Stay and Reconsider the e-Tag ID Reporting Requirement, Using a Technical Conference and Small-Area, Limited-Time Study.

EEI and EPSA are seeking rehearing of the Order 768 e-Tag ID provisions because we remain convinced that the e-Tag ID information that EQR filers would have to report under the order will be of limited value to the Commission, other market participants, and the public, but the information will come at a large cost to our industry and its customers.

In Order 768, the Commission has recognized a number of our industry's concerns about the e-Tag ID information, as expressed at the NOI and NOPR stages of this proceeding. However, the Commission has reached very different conclusions than the industry about the value of the eTag ID information and the cost and burden of providing the information.

To ensure that the e-Tag ID requirement will in fact produce useful information whose benefits are commensurate with its costs, we urge the Commission to stay the Order 768 e-Tag ID requirements pending: (1) a technical conference for Commission staff and the industry to discuss the requirements in more detail; and (2) if the Commission is still inclined to collect the information, a small-area, limited-time study (e.g. for a single balancing authority area for a single quarter) of e-Tag ID information that would be reported under the new requirement. The goal would be to ensure that

the Commission and industry more fully understand one another's perspectives and can reach a common understanding based on fact as to the actual likely benefits and costs of the information before the Commission imposes the e-Tag ID requirement.

In Order 768, the Commission already has committed to hold a technical conference to discuss issues stemming from the order, and Commission staff is hoping to hold one or more such conferences this fall. Committing to hold the conference and to undertake the aforementioned study before imposing the e-Tag ID reporting requirements, and providing adequate time after the conference and study for EQR filers to implement any e-Tag ID requirements that remain, would ensure that EQR filers do not incur the substantial costs of providing the e-Tag ID data unless and until industry concerns about providing the information have been more fully addressed.

On June 28, 2011, in response to the Commission's NOPR in this proceeding, EEI and EPSA filed individual comments, and EEI filed a third set of comments jointly with the American Public Power Association, Large Public Power Council, and National Rural Electric Cooperative Association. In those comments, we raised a number of concerns about the lack of benefits and the likely large cost of the Commission's proposal to collect the e-Tag ID information for each tagged transaction reported in each EQR. Rather than repeat those earlier comments, we incorporate them here by reference.

However, several points from those earlier comments bear repeating. Most power sales contracts do not specify source or sink information because this type of information is not an essential component of such agreements. Instead, power sales contracts typically specify points of receipt and delivery. As a result, source and sink

information typically is not collected in trade-capture systems. Such information is simply not needed for market participants to negotiate a transaction and to agree on its terms. Instead, points of receipt and delivery together with price and quantity are the essential elements of such agreements, and these data already are reported in the EQRs.

In addition, there is no simple one-to-one relationship between e-Tags and transactions. Many sales transactions do not have e-Tags, for example because they do not cross different balancing authority areas. For transactions that do have e-Tags, there often is not one electronic tag unique to each transaction. E-Tags are revised and replaced on a regular basis. There may be more than one sales transaction with the same e-Tag information – for instance, involving separate transactions with the same counterparty for the same delivery period but executed on different trade dates. And there may be more than one tag related to the same sale, especially if multiple balancing authorities are involved. Conversely, a single e-Tag can represent multiple transactions among numerous parties. And the energy "packet" listed on an e-Tag could very well (and often does) represent only a portion of a transaction because of the disaggregation and rerouting of transactions that routinely occur during the energy scheduling process. This complexity will make associating transactions with e-Tags via the e-Tag IDs a particularly painstaking and laborious process for EQR filers, because it involves a many-to-many relationship for which it will be difficult to construct a relational database. As such, matching of transactions and tags often may have to be done manually.

The complexity and cost of this matching exercise should not be underestimated. On a typical day, an individual large market participant's transactions may involve hundreds of e-Tags. One utility has estimated that to provide the proposed e-Tag ID data could require the company to hire two to three or more new full-time personnel to extract, review, and report the data, ultimately, at their customers' expense. Multiplied across many utilities, this could be a very labor and resource-intensive effort, outweighing the limited transparency benefits the Commission seeks to achieve in Order 768.

We are unaware of any off-the-shelf software that could perform this function today. Contracting a software developer to develop such software will likely be a very expensive proposition because the developer will probably want its research and development costs funded up front. Furthermore, developing and testing such software is likely to take several years. The effort to develop, test, and implement the software needed to automate the provision of e-Tag ID information to the Commission in the EQRs would thus tie up substantial company time and resources that could be far better spent on more productive and cost-effective efforts.

Complicating the situation even further, even if the correspondence between a transaction and e-Tag information were correctly made through manual or automated processes, the MWh sum of the associated tags would not necessarily equal the size of the transaction because of scheduling adjustments for curtailments and the like. As a result, the Commission would probably have to discuss e-Tag ID information with EQR

filer personnel on an ongoing basis to understand the various mismatches between the transaction and e-Tag quantities.

In Order 768, the Commission posits as potential benefits of requiring reporting of e-Tag ID data that the Commission and others will be able to trace linked re-sales in chains of transactions, markups involved in such re-sales, the value of transmission involved in the sales, and loop flows. However, the EEI and EPSA question whether the e-Tag ID data will provide these benefits or other benefits the Commission may anticipate, especially as the e-Tag ID data are likely to be very convoluted and confusing. We would appreciate greater exploration and explanation of how including e-Tag ID data in EQRs will produce these anticipated benefits before the Commission retains the e-Tag ID data reporting requirement.

As we noted in our June 2011 comments, we question the benefits the Commission anticipates because sequential transactions of the sort mentioned by the Commission are not necessarily tied for marketing and sales purposes simply because they have the same e-Tag data. The scheduling and tagging process is normally separate from trading activity. Furthermore, one certainly does not need e-Tag data to know if there are persistent price differences between markets that are not consistent with transmission costs.

Just because multiple transactions are included on a single tag, it does not mean that the sales were in any way linked or contemplated concurrently by traders who executed the transactions. In many utilities, the employees who schedule transactions are different from those who execute the trades. Many marketers may have numerous

purchases and sales at a single point at any given time. Some of the transactions may be Purchases for Resale (PFRs, or "linked" as the Commission calls them in Order 768), and others may not. Many of those transactions will be booked out (thus, not requiring e-Tags because the power will not flow). Which transactions are booked out and which get tagged, and which of the transactions to be tagged are linked together on a single tag may have nothing to do with the intent of the trader at the time the deal was executed. For Commission staff to look at tag data and assume that the sales were intentionally linked, and that there is significance to the prices in the "linked" transactions would be erroneous, and could lead to inaccurate conclusions.

Scheduling is currently done ONLY using the aggregate volumes; it is not deal or price specific. When schedulers create e-Tags, they do not confirm with each counterparty which deal they are referencing when scheduling. They just schedule their net position with the counterparty. Marketers could potentially have more than fifteen trades with a counterparty on a daily basis where they have to decide which deals go physical and which deals get booked out. Those decisions are not based on the timing or intent of the transactions. The numerous positions with a counterparty that eventually get scheduled may be the product of multiple traders and multiple desks and not a unified strategy by one trader. Long term hedges will be optimized over time and some trades booked out and some will flow. Assigning, attributing, or assessing arbitrage by looking at e-Tag data is basically impossible. Thus, it is not clear how e-Tag data will assist in "facilitating price transparency."

The Commission also asserts that the public will be able to better understand the links and chains between transactions. However, EEI and EPSA see no use for these data. But in fact, the Commission and others may easily misinterpret e-Tag information because of the complexities of power scheduling. The e-Tags in and of themselves only provide information concerning the source of energy to its sink, including the firmness of the source generation project and the transmission path used, and the marketers that took title to the power along the way.

For example, assume a party has a contract to sell power out of a particular RTO or ISO at a particular hub and the transaction was put in place last year for delivery tomorrow, and the party also has a short-term purchase agreement from another party at the same hub for delivery to the same RTO or ISO tomorrow. Sometimes these schedules get booked-out and sometimes they do not. This could be misinterpreted as some sort of gaming practice by someone if they do not fully appreciate the complexities involved. Market participants should not be put in the position of constantly having to defend each and every transaction they report because of misunderstandings caused by the complexities of power scheduling reflected in the e-Tag ID data.

In addition, we remain concerned that Order 768 substantially understates the burden involved in providing the e-Tag ID data. First, it is unclear that providing the data can be automated. Providing e-Tag ID information for each transaction for which the information exists will require cross-referencing trade-capture and scheduling systems that are not configured to trace individual transactions in a comparable way.

Furthermore, e-Tags do not typically contain the e-Tag ID information in a straightforward format that can easily be extracted from the e-Tags for reporting in the EQR e-Tag ID field.

Even if automating this cross-reference function between the trade-capture and scheduling systems is possible, the process of automating the function cumulatively will be very expensive. A number of EEI and EPSA members have examined the likely up-front costs of trying to capture e-Tag ID information and have estimated the costs to run as high as a half million dollars per company, on top of additional costs to comply with other aspects of Order 768. Multiplied by the large number of EQR filers, these costs are substantial.

In addition, providing e-Tag ID data is likely to involve significant manual data recovery, analysis, and entry into the EQR forms. If the effort of automating the cross-reference does not succeed, or succeeds only in part, providing the e-Tag ID data will involve ongoing manual data recovery from the scheduling data bases and entry into the EQRs. And even if the effort of automating the cross-reference function does succeed, providing the e-Tag ID data will require significant ongoing review of the data to address anomalies that are almost certain to occur because of the attempt to cross reference fundamentally different data tracking systems that focus on independent issues of trades and scheduling. These burdens will be especially pronounced in areas of the country, such as the Western Interconnection, where transactions frequently cross over multiple balancing authority areas.

For all the above reasons, the EEI and EPSA encourage the Commission not to require EQR filers to submit e-Tag IDs and supporting information, nor to require NERC to provide e-Tag information to the Commission for all transactions. At a minimum, the Commission should stay the Order 768 e-Tag ID requirements pending the following steps.

First, the Commission should convene a technical conference to discuss: the need for the information; other potential avenues to obtain it; whether the information should continue to be obtained only in individual cases when and if needed (the current practice) rather than on an across-the-board basis; and if the information is needed, the most efficient and least burdensome way to obtain it.

Second, if following that technical conference the Commission is still inclined to impose the EQR e-Tag ID reporting requirements, we encourage the Commission before doing so to undertake a small-area, limited-time study (e.g., focusing on a single balancing authority area and single quarter) to explore further the types of information the requirement would produce, whether that information in fact has the value the Commission anticipates, the burden that will be involved in providing the information, and more efficient approaches to obtaining the information, ideally case-by-case as needed in the context of one or more particular transactions or markets that the Commission or its staff want to explore further.

B. The Commission Should Require RTOs and ISOs to File or to Provide EQR Data for RTO and ISO Market Transactions, Relieving Other Market Participants of This Burden.

In EEI's June 28, 2011 comments on the NOPR in this proceeding, at section V.A at pages 19-24, EEI requested that the Commission require RTOs and ISOs either to file with the Commission data reflecting all sales to them (RTO/ISO sales) each quarter or to make the data available to the Commission and the public in a way that meets the transparency requirements of Order 2001 and any final rule issued in this docket. EEI also encouraged the Commission to relieve market participants other than the RTOs and ISOs from responsibility for filing duplicative information on the RTO/ISO sales in their own EQRs, though individual market participants should still be allowed to do so, if they so choose. Instead, EEI asked the Commission to specify that market participants other than RTOs and ISOs are required to submit EQRs to the Commission showing only their bilateral sales to counterparties other than RTOs and ISOs.

However, in Order 768, the Commission has not addressed these requests. We are reiterating the requests here because we believe that the measures requested would improve the accuracy of information currently reported in the EQRs and would substantially reduce the overall burden of providing the information.

Rather than restating the requests in their entirety, we incorporate EEI's June 28, 2011 comments, in particular section V.A of the comments, here by reference. We ask the Commission to adopt the recommendations set out in that section of the earlier comments in the Commission's order on rehearing and clarification of Order 768, while also ensuring that the RTOs and ISOs provide timely information that other market

participants need to file their own EQRs. At a minimum, the Commission should clearly require all RTOs and ISOs to provide complete data for all RTO and ISO market transactions, including data that other market participants need to prepare their own EQRs, consistent with the requirements and implementation dates of Order 768 and earlier EQR orders, and in a format that allows easy importation of the data to each filer's EQR.

As noted in the June 2011 comments, since the inception of the EQR, reporting RTO and ISO sales has been a challenging part of filing transaction data for both utilities and Commission EQR staff. In many cases, the effort by utility EQR staffs to compile RTO/ISO sales data has far outweighed the effort required to compile non-RTO/ISO sales data. There is more confusion in the industry about the proper reporting of these data than about any almost other aspect of the EQR filing process.

Some RTOs and ISOs have developed reports that they provide to their members to assist with the members' EQR reporting obligations. However, the reports are inconsistent between and among the RTOs and ISOs, even though the RTOs and ISOs have worked with Commission staff to develop the reports. As a result, it is hard for RTO and ISO members to determine exactly how to file these data properly. In addition, some of those members have found the reports of certain RTOs and ISOs to be unreliable, so the members have had to prepare their EQR data from their own internal systems. Other RTOs and ISOs do not provide their members with such reports. For example, the California ISO does not provide such a report, so its members are left to decipher their invoices and report their transactions. The result of this confusion is

inconsistent and incomplete RTO and ISO data, which surely is not what the Commission desires.

By having RTOs and ISOs report RTO/ISO sales data directly, the Commission would ensure that the data are reported consistently, completely, and correctly. RTOs and ISOs are the primary source of such information and are in a best position to provide it to the Commission.

Moreover, having RTOs and ISOs provide the information would help reduce the EQR reporting burden. The Paperwork Reduction Act[3] calls on the agencies such as the Commission to minimize the reporting burden of information collections such as the EQR. EEI and EPSA members spend a lot of time compiling, reviewing, verifying, and submitting EQR information about their RTO/ISO sales. Also, many of our members selling into RTOs and ISOs have to refile their data each quarter because RTO/ISO sales data for the last month of the quarter have not been fully settled by the filing deadline, and resettlements of earlier months frequently result in revised data. By requiring RTOs and ISOs to provide the information, and ideally by eliminating the requirement for each market participant other than RTOs and ISOs to file RTO/ISO sales data, the Commission would substantially reduce the burden on market participants other than RTOs and ISOs.

As EEI noted in the June 2011 comments, we recommend that the Commission convene a technical conference with representatives from the industry and each of the

[3] 44 U.S.C. sec. 3506(b)(1)(A).

RTOs and ISOs, to address a number of issues related to the RTO/ISO sales data, including:

- Developing consistent reporting practices among the RTOs and ISOs;
- Ensuring that RTO/ISO sales data are reported correctly;
- Addressing the issue of how best to file underlying contract information;
- Adopting company-naming conventions for RTO and ISO members, consistent with the names used by those members in their own EQRs;
- Ensuring that, where scheduling agents transact on behalf of several RTO and ISO members, each member's sales are properly recognized by the RTO and ISO; and
- Addressing such other implementation issues as may be identified before or during the conference.

The Commission should grant individual RTO and ISO members a "safe harbor" from any penalties if the sales data filed by the RTOs and ISOs are incorrect for a given member. At the same time, the Commission should also establish a period of time after the RTOs and ISOs have filed their EQR data (or posted it on their websites) during which market participants have the option to review the data to check for errors, and should allow market participants the option if they so choose to include the RTO/ISO sales data in their own EQRs.

C. The Commission Would Help With Implementation of Order 768 by Providing Certain Clarifications.

1. Trade Date

The Trade Date provisions of Order 768 raise several questions and concerns.

First, Order 768 par. 90 defines the Trade Date as: "The date upon which the parties made the legally binding agreement on the price of a transaction." Order 768

par. 92 goes on to state that "in cases where pricing detail is provided in the contract description, the Contract Execution Date should be considered the trade date. Where applicable, this clarification will virtually eliminate any additional burden associated with this field by allowing the filer to complete the trade date field for each transaction by using a date (Contract Execution Date in the contracts section) already provided in the filing."

EEI and EPSA appreciate and support this effort to relieve EQR filers of the burden of having to research trade date in greater detail for each transaction. We request that the Commission confirm that the Contract Execution Date can be used as Trade Date even if a contract is subsequently amended to change the price after the initial execution date.

Second, final rule par. 93 says: "In response to EPSA, we clarify that RTO and ISO transactions do, in fact, reflect an agreement of the parties upon a price. Parties are legally bound by the terms of the relevant RTO or ISO tariff and sellers agree to sell a product at the price at which their offer is awarded. Although the price may be altered after it is awarded due to the application of mitigation or other RTO or ISO market rules, we clarify that the trade date should reflect the price at the time of the initial award. RTOs and ISOs operate a number of different markets where similar products are offered. For example, energy can be offered day-ahead or real-time. Capacity is offered monthly, annually and several years in advance."

EEI and EPSA request confirmation that the proper Trade Date for a sale to an ISO/RTO is when the markets clear. Therefore, normally the correct Trade Date for a

Day-Ahead Energy sale to an ISO is the day before the power flowed, and the proper Trade Date for a Real-Time Energy sale is the day the power flowed. Additionally, the EEI and EPSA requests clarification of what the appropriate Trade Date would be for ISO or RTO products other than Energy or Capacity, such as Uplift.

Third, there is a substantial burden associated with gathering the trade-date data that is not recognized in Order 768. As noted above, Order 768 par. 92 asserts that use of the Contract Execution Date as trade date will "virtually eliminate any additional burden associated with this field." But capturing the Execution Date and putting it in the Transaction data will require significant computer programming work, assuming that the Execution Date is stored electronically and it is possible to automate that function. Otherwise, providing the trade date will require manual data entry each quarter.

For example, many longer term contracts are not captured in utilities' trade-capture systems, and there may be no automated way to capture the Execution Date for those contracts. This means that every quarter, this information will have to be manually added to the Transaction data. The transactions affected could include sales made under long-term requirements contracts, shorter term contracts resulting from state-mandated auctions held to provide power to a utility so it can supply its retail customers, and other long-term agreements that are frequently not maintained in trade-capture systems.

To help address this concern, EEI and EPSA request the relief discussed in section IV.D of this pleading, by having the trade-date requirement apply only prospectively to

transactions entered into during or after the first quarterly reporting period when Order 768's provisions must be implemented.

2. Rate Type

The Rate Type provisions of Order 768 raise a number of questions and concerns.

First, regarding Rate Type Field # 54, final rule par. 107 says: "To provide clarification, the following description will be referenced in the EQR Data Dictionary." But the revised Data Dictionary at final rule Attachment A does not reflect the description at pars. 107-108. It should.

Second, par. 107 states, "If the price is the result of an RTO/ISO market **and** the sale is made to the RTO/ISO, its rate type is "RTO/ISO" (emphasis added). The Data Dictionary defines RTO/ISO Rate Type as "A rate that is based on an RTO/ISO published price or formula that contains an RTO/ISO price component." EEI and EPSA request clarification that the word "and" in the preamble should be "or."

Third, par. 107 cites an example raised by EEI of a formula that is tied to an RTO price, such as the greater of the RTO price or the contract price, but does not specifically say what the Type of Rate would be in this scenario. EEI and EPSA request clarification of what the appropriate Type of Rate should be.

Fourth, par. 108 states "If the transaction uses an electric-based index in any way, either as a base price or as a means to determine a basis, it should be identified as an 'electric index.' This represents a clarification from the NOPR, which included the broader rate type 'index.'" In the revised Data Dictionary at final rule Attachment A, the

definition of Electric Index Rate Type is, "A calculation of a rate based upon an index or a formula that contains an index component." But there is no mention of Electric Index, and "Electric Index" is not defined, in par. 108 where it is discussed. We believe that an Electric Index is an index published by an Index Publisher, such as those required to be listed in Field 72. If there are other examples of Electric Indices, EEI and EPSA request clarification of what they are.

Fifth, again, there is a burden associated with gathering the rate-type data that is not recognized in Order 768. While some trade-capture systems contain data related to Type of Rate, it is most unlikely that the rate types captured in those systems line up exactly with the FERC EQR Data Dictionary definitions. Therefore, it will take time and money to reprogram utilities' trade-capture systems either to include these data at all (if they are not currently captured) or to refine the current options in the existing systems to match the Types of Rate defined in the EQR Data Dictionary. There will also be training required to ensure that the traders (or whoever enters data into the systems) understand the definitions the Commission is using so they use the correct term when entering data into the Type of Rate field. Only then will the data downloaded from the trade-capture system conform to the Commission's requirements. This burden will be substantially compounded to the extent the rate-type requirement applies retroactively. For these reasons, EEI and EPSA request partial relief by applying the rate-type provision only prospectively as discussed in section IV.D of this filing.

3. Standardized Units

In regard to final rule pars. 116-118, EEI and EPSA request clarification that a Capacity Rate that is based on a MW-YR basis can be divided by 12 to get the MW-MO rate, regardless of the number of days in the month. Again, there is a burden associated with gathering this data that is not recognized in Order 768, and EEI and EPSA request the prospective only relief discussed in section IV.D of this filing.

4. Customer Company Name

At final rule par. 171, the Commission adopts Entergy's suggestion to require reporting of the name of the customer as it appears on the reported contract in both the contract and transaction sections. The Commission should provide more flexibility in this area.

The name on the "reported contract" may not be the name of the counterparty today, because the contract may have been assigned to another entity, or the counterparty may have had a name change in the interim, which may be many years. It would not be helpful and it would be inconsistent with guidance previously provided by FERC EQR staff to continue listing the original counterparty as the customer company name, when the current counterparty may be an entirely different company or at a minimum, a renamed entity.

Also, a single customer may list its name differently on different contracts. Even slight differences in abbreviations would cause multiple contracts with a single counterparty to appear inconsistently in the EQR. FERC audit staff has previously cited reporting counterparty names inconsistently as a violation of the EQR requirements.

Finally, since this requirement has not previously been articulated, to comply with it would require a review of each contract reported in the EQR to see if the Customer Company Name is exactly as it appears on each contract, which is a significant burden. For the reasons cited above, EEI and EPSA request rehearing of this issue.

5. Data Dictionary

In the Data Dictionary, Contract Data section, new Field 21, the Definition should be corrected to read[4]:

> The date the terms of the contract reported in fields 17, 22 and 24 through 43 (as defined in the data dictionary) became effective. If those terms became effective on multiple dates (i.e.: due to one or more amendments), the date to be reported in this field is the date the most recent amendment became effective. If the contract or the most recent reported amendment does not have an effective date, the date when service began pursuant to the contract or most recent reported amendment may be used. If the terms reported in fields 17, 22 and 24 through 43 have not been amended since January 1, 2009, the initial date the contract became effective (or absent an effective date the initial date when service began) may be used.

In the Data Dictionary, Contract Data section, new Fields 33, 34, 35, and 36, the "Required" column entries should be corrected to read: "One of four rate fields (33, 34, 35, or 36) must be included."

In the Data Dictionary, Transaction Data section, new Field 66, the Definition should be revised to read:

> For product names energy, capacity, and booked out power only. Specify the quantity in MWh if the product is energy or booked out power and specify the quantity in MW-month if the product is capacity or booked out power.

[4] These Data Dictionary corrections largely correct errors in Field # references.

In the Data Dictionary, Transaction Data section, new Field 67, the Definition should be revised to read:

> For product names energy, capacity, and booked out power only. Specify the price in $/MWh if the product is energy or booked out power and specify the price in $/MW-month if the product is capacity or booked out power.

In the Data Dictionary, Transaction Data section, new Field 69, the Definition should be revised to read:

> Transaction Quantity (Field 63) times Price (Field 64) plus Total Transmission Charge (Field 68).

In the Data Dictionary, e-Tag Data section, new Field 74, the Definition should be revised to read:

> The e-Tag ID contains: The Source Balancing Authority Entity Code where the generation is located; The Purchasing-Selling Entity Code; the e-Tag Code; and the Sink Balancing Authority Entity Code. [See final rule par. 156.]

In the Data Dictionary, e-Tag Data section, new Field 75, the Definition should be revised to read:

> The first date the transaction is scheduled using the e-Tag ID reported in Field Number 74. Begin Date must not be before the Transaction Begin Date specified in Field Number 50 and must be reported in the same time zone specified in Field Number 55.

In the Data Dictionary, e-Tag Data section, new Field 76, the Definition should be revised to read:

> The last date the transaction is scheduled using the e-Tag ID reported in Field Number 74. End Date must not be after the Transaction End Date specified in Field Number 51 and must be reported in the same time zone specified in Field Number 55.

Also, regarding new Fields 75 and 76, the e-Tag begin date (Field 75) may be before the Transaction Begin Date (Field 50) and the e-Tag end date (Field 76) may be after Transaction End Date (Field 51) because the Transaction Begin Dates and Transaction End Dates reported are what is sold in the reporting quarter and an e-Tag may be created for the entire transaction, which may start before and/or end after the quarters. EEI and EPSA request clarification that in such circumstances, EQR filers should nonetheless use the Transaction Begin Date and Transaction End Date as the e-Tag Begin and e-Tag End Dates in Fields 75 and 76, respectively, if the transaction's e-Tag goes beyond the quarter.

In the Data Dictionary, e-Tag Data section, new Field 77, the Definition should be revised to read:

> Unique reference number assigned by the seller for each transaction that must be the same as reported in Field Number 49.

D. The Commission Should Provide at Least a Full Year for Implementation of Order 768 and Clarify that the Rule Applies Only Prospectively.

The Commission should provide at a minimum a full year for EQR filers to be able to change their internal procedures, protocols, staffing, and software in order to collect the new information required by Order 768. Order 768 currently requires compliance with its reporting requirements starting with the 3rd quarter 2013 EQR. But information for that EQR has to be collected starting July 1, 2013, less than 9.5 months from when Order 768 was issued and less than 7 months from when Order 768 will take effect on December 10, 2012. Furthermore, several significant issues remain to be addressed on rehearing, as described above. EEI and EPSA encourage the Commission to have the

new reporting requirements take effect no sooner than the 1st quarter 2014 EQR, to give EQR filers at least a full year from the effective date of the rule. Ideally, the Commission should give a full year from the date the Commission acts on this request for rehearing, including the technical conference we have requested, if that is later than the 1st quarter 2014 EQR.

We also request that the Commission clarify that Order 768's new reporting requirements, including in particular the trade–date and rate-type requirements, apply only prospectively for transactions entered during quarters where the new reporting requirements apply. As discussed in section IV.C of this filing, without this relief, EQR filers will face substantial burden of trying to recapture historical information that may not be readily available and that if available is likely to require manual data recovery and entry. Such pre-rule information should simply be reported in future EQRs as "pre-rule."

Thus, for example, for transactions entered into prior to Order 768, whether an agreement is cost-based, a long-term market-based rate service agreement, or a confirmation under the EEI Master Agreement, the Commission should allow such pre-final rule trade dates to be reported simply as "pre-rule."

V. Conclusion, Contact Information

In closing, EEI and EPSA request that the Commission stay the e-Tag ID data provisions of Order 768, promptly convene a technical conference to discuss concerns we have raised in this rehearing request about the e-Tag ID data and other provisions, and if still inclined to require reporting of e-Tag ID data, undertake a small-area, limited-time study to explore the real usefulness of the resulting information and the difficulty

providing it. We also request that the Commission require RTOs and ISOs, rather than other market participants, to file or to provide EQR data for RTO and ISO market transactions, while allowing other market participants to correct errors or to include RTO/ISO sales in their own EQRs. We request that the Commission address the various clarification issues raised in section IV.C of this pleading. Lastly, we request that the Commission provide at a minimum a full year for Order 768 to be implemented, and clarify that Order 768 applies only prospectively to transactions entered into during quarters starting with the first quarter to which the requirements apply.

If the Commission has any questions about this motion for partial stay and request for rehearing and clarification, or needs additional information, please contact any of the following signatories.

Respectfully submitted,

- signature -

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