

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Availability of E-Tag Information to Commission Staff)))))	Docket No. RM11-12-000
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**MOTION FOR LEAVE TO FILE REPLY COMMENTS AND COMMENTS
OF THE NORTH AMERICAN MARKET MONITORS**

Pursuant to Rules 212 and 213 of the Commission’s Rules and Regulations, 18 CFR § 385.212 & 385.213 (2010), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM; Potomac Economics, Ltd., acting in its capacity as the Independent or External Market Monitor for the Midwest ISO, New York ISO, and ISO New England; the Internal Market Monitor, ISO-New England; Market Monitoring and Analysis, Southwest Power Pool, Inc.; Market Assessment and Compliance, Independent Electricity System Operator (Ontario, Canada);¹ and Market Surveillance Administrator (Alberta, Canada)² (collectively, the “North American Market Monitors”) moves for leave to file reply comments and files comments in response to pleadings filed in this proceeding on June 27, 2011, by PJM Interconnection, L.L.C. and Southwest Power Pool (“PJM/SPP”); the

¹ The Market Assessment and Compliance Division is a business unit within the Independent Electricity System Operator responsible to promote the fair, efficient and openly competitive operation of Ontario’s wholesale electricity markets and enforce compliance with NERC reliability standards, NPCC regional criteria and Ontario market rules.

² The Market Surveillance Administrator (“MSA”) is an independent enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta’s wholesale electricity markets and its retail electricity and natural gas markets. The MSA also works to ensure that market participants comply with the Alberta Reliability Standards and the Independent System Operator’s rules.

North American Reliability Corporation (“NERC”); the Western Electricity Coordinating Council (“WECC”); Southern Company Services; Electric Power Supply Association (“EPSA”); Powerex Corp.; the Trade Associations, including the American Public Power Association, Edison Electric Institute, the Large Public Power Council and National Rural Electric Cooperative Association; and Modesto Irrigation District (“MID”).

The North American Market Monitors file these comments primarily to indicate that they support access to e-Tag data by Reliability Coordinators comparable to that for Commission staff and market monitors and to emphasize that market monitors need data for the entire interconnected grid of which the RTO/ISO they monitor forms a part. Data limited to the portion of the grid operated directly by the RTO are insufficient to detect and deter manipulation and market power through transactions involving multiple RTO/ISOs and to address the market distorting impacts of unaddressed loop flows. This is an essential point. Loop flows are, by definition, a phenomenon that requires examination of transactions over a broader area than the directly monitored RTO. It is not possible to monitor loop flows without the data for the entire grid. The proposal to limit the data to the directly monitored RTO is equivalent to asserting that loop flows should not be monitored. The North American Market Monitors do not find persuasive arguments that the Commission lacks authorization under the Federal Power Act to implement the proposed rule or that technical impediments to the transfer of e-Tag data cannot be resolved in manner limiting the associated burdens for all involved.

I. ANSWER

A. Reliability Coordinators Should Also Have Access to E-Tag Data On a Confidential Basis.

PJM/SPP state (at 2): “access to complete e-Tags should be provided not only to the Commission Staff and market monitoring units (“MMUs”), but also to Reliability Coordinators, some of which are also Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”).” The California Independent System Operator (“CAISO”) and its internal market monitor (“CAISO”) have also requested such access (*passim*). PJM/SPP explain (at 4) that e-Tag data constitutes “valuable information that could assist RTOs, ISOs and other Reliability Coordinators in enhancing reliability and effective pricing and market operations.” Specifically, CAISO/SPP explain (at 5) that such data “would provide them with improved information to be able to visualize and analyze the remote sources of the energy flows that may impact the area of the interconnected system which they have direct responsibility to maintain reliably.” “ISOs, RTOs and Reliability Coordinators,” PJM/SPP explain (*Id.*), “could use this information to better predict and react to situations when system conditions result in transmission limitations impacted by flows to and from areas of the interconnection outside of their Control Areas.”

The North American Market Monitors agree that Reliability Coordinators should have access to e-Tag information on the same basis as Commission staff and the independent or internal market monitors. PJM/SPP offer a reliability justification that relates to the direct purpose for which e-Tag data is developed.³ RTOs/ISOs’ responsibility includes implementing interchange agreements that operate efficiently and address the

³ See PJM/SPP at 9–18.

market impacts of loop flows.⁴ E-tag data are a prerequisite for significant progress in addressing loop flows. If Market monitors find market design flaws or identify conduct issues using e-Tag information, it will be more helpful if they can share it with the RTO/ISO in order to develop and implement a solution. The RTOs/ISOs, rather than the market monitors, can take ameliorative actions or file under section 205 and implement rule changes. RTO/ISOs operate under similar or identical provisions protecting confidential information to market monitors, and, like market monitors, handle commercially sensitive information routinely and have effective safeguards in place. The North American Market Monitors recommend providing Reliability Coordinators with access to e-Tag data by rule and/or through the RTO tariffs.

B. Section 215 Does Not Prohibit the Commission from Obtaining E-Tag Data from the NERC for Purposes Not Directly Related to Reliability.

NERC states (at 2) that the NERC's "reliability mandate under section 215 of the Federal Power Act ("FPA") does not include authority to monitor and enforce market-based issues." MID also worries (at 6) that the NOPR "would allow for the ERO to engage in a non-Reliability Standards activity, thereby stepping onto a slippery slope of later being tasked with other, potential activity outside of the ERO's statutory mandate." NERC states further that the NOPR's purpose, enhancing "efforts to monitor market developments and prevent market manipulation, assure just and reasonable rates, and in monitoring compliance with certain NAESB business practice standards" are "subjects ... outside the scope of section 215" and argues that "it is contrary to the section 215 for the Commission to make use of section 215 to pursue matters that are outside the scope of section 215." WECC

⁴ *Id.* at 16–18.

also questions (at 5–6) the use of e-Tag data “for purposes other than those authorized under Section 215,” and further, “recommends that the Commission instead seek the electronic tagging data directly from the individual market participants under its other authorities outside of Section 215.” Trade Associations make similar arguments (at 3–8).

Worries about distracting NERC with new responsibilities for market monitoring are misplaced. The NOPR plainly does not require the NERC to assume any role whatsoever in market monitoring. The NOPR instead would require the NERC to transfer data that it already collects to those who do have such responsibility. The North American Market Monitors see no reason for concern that the NERC will confuse its role simply because it transfers to Commission staff and those who assist it data that NERC already collects for its own purposes.

Arguments that the Commission has acted outside of the scope of section 215 of the Federal Power Act are misplaced. The NOPR does not rely upon or even cite section 215 of the Federal Power Act as a basis to implement the proposed rule. Rather, the NOPR relies (at PP 1, 9) upon section 307(a) of the Federal Power Act, which empowers the Commission, among other things, to “investigate any facts, conditions, practices or matters it may deem necessary or proper to determine ... to obtain information about wholesale power sales or the transmission of power in interstate commerce.”⁵ The Commission also cites section 309.⁶

⁵ 16 USC § 825f(a).

⁶ 16 USC § 825h (“The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act [16 USCS §§ 791a et seq.]. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this Act [16 USCS §§ 791a et seq.]; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall

No party has or could reasonably argue that e-Tag data are not “facts” and that the NERC is not a “person” within the scope of the meaning of those terms in the Federal Power Act.⁷

Trade Associations does argue (at 4–5) that section 309 is not self-effectuating (section 307(a) is not mentioned) and that actions taken under section 309 must also rely on other authority granted to the Commission elsewhere in the Federal Power Act. Support for the NOPR’s aim to “help the Commission to detect anti-competitive or manipulative behavior or ineffective market rules, monitor the efficiency of markets, and better inform Commission policies and decision-making” is found in sections including 205, 206, 222, among others.⁸

No party has or could argue that it is not “proper” for the Commission to obtain this information, or that it does not pertain to “wholesale power sales” or the “transmission of power in interstate commerce.” The Commission could have required access to this data for the purposes set forth in section 307(a) even if the Federal Power Act had not been amended to include section 215. Moreover, no party has identified any restriction on the Commission’s ability to share information collected in an ongoing investigation under section 307(a) with others that can assist its evaluation of that information.

contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.”).

⁷ See 16 USC § 796(4) (“‘person’ means an individual or a corporation”).

⁸ See 16 USC §§ 824d, 824e and 824v.

Section 215 does not include any provision that contradicts or limits of the scope of the authority of the Commission under section 307(a). No evidence has been offered that Congress intended section 215 to prevent efficient collection and dissemination of data or to prevent the information collected by NERC from being used in support of others performing functions other than reliability.

The NOPR rests squarely within the scope of the Commission's authority under the Federal Power Act and sections 307(a) and 309 upon which it relies.

C. Issues Pertaining to the Transfer of E-Tag Data Can Be Satisfactorily Resolved.

NERC, WECC, EPSA and Trade Associations raise some technical issues about their own respective access to e-Tag data, and NERC and Trade Associations request a technical conference to explore the issue.⁹ EPSA shares some of the technical concerns, but believes that through a Technical Conference, "perhaps industry and FERC could develop an efficient, non-burdensome way of collecting e-Tag information."¹⁰ The North American Markets Monitors are confident that these technical and legal issues can be resolved in a manner that does not impose significant burdens on either entity and do not oppose a technical conference or other approach that the Commission may adopt to determine the precise arrangements pursuant to which the data in question can be transferred.

In contrast, adopting an approach, as some have suggested, of gathering data from individual market participants that is already collected by the NERC would impose an unnecessary and wasteful burden on the industry. The need to keep identical data sets in

⁹ NERC at 4-7; WECC at 5-7; EPSA *passim*; Trade Associations at 8-9.

¹⁰ EPSA at 1.

separate “silos,” one for the important mission to preserve reliability and the other for the important mission to preserve market integrity has not been explained. If anything, more attention should be paid to coordinating the needs for a reliable system and efficient and competitive markets.

D. Market Monitors Need E-Tag Data for the Entire Interconnection Where They are Located in Order to Adequately Monitor the Performance of the Particular Markets for Which They Have Responsibility.

Southern Company Services argues (at 2), “E-Tag data should not be made available to MMUs” (emphasis in original).” Southern Company Services opines (*Id.*) that market monitors have no use for the information and indicates its concern that such information is proprietary. Powerex Corp. argues that “MMUs should only have access to confidential information that directly relates to the market they are tasked with monitoring and should not have unfettered access to e-Tag data relating to transactions outside that market.”¹¹ MID wonders (at 8–9) “whether e-Tag information outside of the market monitoring unit’s market would be necessary, or even helpful.” Southern Company Services also objects to Commission enforcement staff having general and regular access to the information and requests (at 2) withdrawal of the NOPR.

The North American Market Monitors, PJM, SPP, the CAISO and its internal market monitor, and the Commission in the NOPR itself, have all indicated multiple and specific reasons sufficient to demonstrate a need to access e-Tag data that do not need repetition here. Southern Company Services’ only objection is that the information is “proprietary,”

¹¹ Powerex Corp. at 10–11; *see also* Southern Company Services at 2.

but the NOPR recognizes that the data is confidential and indicates that confidential treatment will be accorded to e-Tag data.

The Western Interconnection and the Eastern Interconnection each constitutes a single interconnected system and supports a bulk power market that cannot be understood and evaluated with fragmentary and sporadic data. Each North American Market Monitor needs e-Tag data for the entire interconnection in which its RTO/ISO is located in order to adequately fulfill their roles with respect to each RTO/ISO for which it is responsible.

Market monitors need e-Tag data to address specific issues and problems. The Commission has recognized that seams issues and loop flow issues have important impacts on market efficiency.¹² The Commission already has confronted issues of manipulation and market power that involved transaction over multiple RTOs and control areas.¹³ If the rule does not make available to market monitors e-Tag data for the entire interconnection in which the market is located, the rule will not serve its intended purpose and will not meaningfully add to the pool of information to which market monitors already have access.

II. MOTION FOR LEAVE TO FILE REPLY COMMENTS

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answer to answers or protests unless otherwise ordered by the decisional authority.

The Commission has made exceptions, however, where an answer clarifies the issues,

¹² See, e.g., *Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and All Transmission Owners, et al.*, 104 FERC ¶61,105 at P 9 (2003) (“The Commission found that the proposed RTO choices and resulting configuration, without conditions, would frustrate the realization of the goals of RTO formation such as resolution of loop flow issues, effective management of congestion, and enhanced reliability and efficiency.”).

¹³ See *New York Independent System Operator, Inc.*, 128 FERC ¶61,049 (1009).

assists the decision-making process, or contributes to a complete record.¹⁴ In this answer, the North American Market Monitors provide the Commission with information useful to the Commission's decision-making process and that contributes to a complete record. Accordingly, the North American Market Monitors respectfully request that these reply comments be permitted.

III. CONCLUSION

The North American Market Monitors respectfully request that the Commission afford due consideration to these reply comments as it resolves the issues raised in this proceeding.

¹⁴ See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process); *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted ... decision-making process"); *California Independent System Operator Corporation*, 110 FERC ¶61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); *Tennessee Gas Pipeline Co.*, 92 FERC ¶61,009, at 61,016 (2000) (allowing an answer to a request for rehearing and a response to the answer because they helped the Commission understand the issues raised in the request for rehearing and helped ensure a full and complete record).

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Dated: July 13, 2011

CERTIFICATE OF SERVICE

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

Dated at Eagleville, Pennsylvania,
this 13th day of July, 2011.



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