UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

COMMENTS OF THE TRANSMISSION ACCESS POLICY STUDY GROUP

The Transmission Access Policy Study Group (TAPS) supports improving the transparency of wholesale electricity markets, and supports implementation of FPA section 220 (16 U.S.C. § 824t) as a tool to enhance that transparency. TAPS also supports the implementation of section 220's *de minimis* exemption through the selection of a 4 million MWh annual wholesale sales threshold. TAPS opposes several other aspects of the Commission's proposed regulations, however, because they are neither necessary nor appropriate to the implementation of section 220. Specifically:

1. The proposed regulations inappropriately impose reporting requirements on certain entities with a *de minimis* market presence: balancing authorities that sell as few as 1 million MWh of electricity at wholesale annually on average. Imposing electronic quarterly reporting (EQR) requirements on such entities is unduly discriminatory and contrary to Congress's exemption of entities with a *de minimis* wholesale market presence.

2. The proposed regulations impose unnecessary and inappropriate requirements that joint action agencies (JAAs) and generation-and-transmission cooperatives (G&T coops) report their cost-based sales to their members. Such requirements are misdirected because intra-JAA/coop transactions do not reflect the terms on which the JAA/coop would sell or members could purchase from other entities. Reporting those transactions contributes little (if anything) to market transparency. The requirements also are unduly discriminatory, because intra-JAA/coop transactions are analogous to internal self-supply by vertically-integrated public utilities to their captive retail load, which does not get reported.

3. The NOPR[1] proposes to require the submission of E-Tag ID data for interchange transactions which are scheduled using E-Tags. Many transactions are not scheduled using E-Tags, however. The submission of E-Tag ID data for a subset of transactions is likely to be more confusing than helpful, and will not materially promote market transparency. That is particularly true where JAAs or G&T coops are using network transmission service or secondary network transmision service to deliver power to dispersed network loads.

4. The proposed regulations establish unnecessary requirements and needless risks of mistakes, contrary to section 220's intent, insofar as they require non-public utilities to report their ISO/RTO-settled transactions. The ISOs/RTOs are better positioned to provide that data, and any reporting requirements imposed on non-public utilities transacting in organized markets should be limited to the reporting of information not in the ISO/RTO's possession, such as information on bilateral transactions.

I. INTERESTS OF TAPS

TAPS is an association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.[2] TAPS members depend not only on non-discriminatory transmission access but, also, on well-functioning wholesale markets in order to meet their load-serving obligations at reasonable cost. TAPS has long promoted increased transparency in wholesale electricity markets, and supported Congress's enactment of FPA section 220 as part of the Energy Policy Act of 2005 (EPAct 2005). Most TAPS members are section 201(f) entities, which are non-jurisdictional for most purposes but potentially subject to requirements promulgated by the Commission under FPA section 220. Accordingly, TAPS has a direct and substantial interest in the outcome of this proceeding.

[1] Electricity Market Transparency Provisions of Section 220 of the Federal Power Act, 76 Fed. Reg. 24,188 (proposed Apr. 29, 2011), FERC Stats. & Regs. ¶ 32,676 (proposed 2011). (NOPR).

[2] Tom Heller, Missouri River Energy Services, chairs the TAPS Board. Cindy Holman, Oklahoma Municipal Power Authority, is Vice Chair.

II. COMMUNICATIONS

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III. COMMENTS

TAPS has long supported steps to increase wholesale market transparency.[3] For example, TAPS has urged the Commission (unsuccessfully) to require prompter disclosure of bids and offers in organized markets,[4] a step that would increase transparency of all market-participant activities without regard to jurisdictional status and without imposing any additional reporting requirements. TAPS also supported the enactment of FPA section 220, and would therefore support the exercise of the Commission's authority under it so long as the limits on that authority are respected. Although the NOPR properly excludes from section 220 reporting requirements most non-public utilities that sell fewer than 4 million MWh at wholesale annually, it fails to implement that *de minimis* exemption fully. The NOPR also fails to adhere to section

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3 *See generally* Comments of the Transmission Access Policy Study Group at 1 (Mar. 30, 2010), eLibrary No. 20100330-5085 (TAPS NOI Comments).

4 *Id.* at 1 n.2 (citing Comments of the Transmission Access Policy Study Group, *Wholesale Competition in Regions with Organized Electric Markets*, Docket Nos. RM07-19-000 *et al.*, at 53-58 (Apr. 21, 2008); Request for Rehearing or Clarification of the Transmission Access Policy Study Group, *Wholesale Competition in Regions with Organized Electric Markets*, Docket Nos. RM07-19-000 *et al.*, at 56-61 (Nov. 17, 2008) (TAPS 719 Rehearing)).

220's limits in other important respects. The Commission should correct these errors in any final rule adopted in this docket.

A. The NOPR is correct that entities selling fewer than 4 million MWh at wholesale annually have a de minimis market presence.

In expanding the Commission's authority over otherwise non-jurisdictional entities, Congress expressly limited the increased scope of that authority. As the NOPR acknowledges (*see* P 68), Congress prohibited the Commission from imposing section 220 reporting requirements on entities with a *de minimis* market presence.[5] The NOPR proposes to implement that prohibition by excluding from the new reporting requirements most non-public utilities that sell fewer than 4 million MWh at wholesale annually.[6]

TAPS appreciates the Commission's adoption of a 4 million MWh wholesale sales threshold for assessing whether a market presence is *de minimis*, which is well supported.[7] As TAPS explained in its NOI Comments, Congress and the Commission have used a 4 million MWh threshold to determine the applicability of FERC regulation in various contexts. For example, Congress excluded from Commission jurisdiction electric cooperatives that receive financing under the Rural Electrification Act of 1936 or that "sell[] less than 4,000,000 megawatt hours of electricity per year."[8] In determining the extent of the Commission's refund authority over non-public utilities besides

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[5] 16 U.S.C. § 824t(d).

[6] NOPR P 69.

[7] TAPS also appreciates the NOPR's acknowledgment of the concerns raised regarding potential double-counting of JAA sales to members in ISO/RTO markets and its acceptance of APPA's suggestion to use EIA Form 861 data as a means of avoiding such double-counting in the assessment of whether a JAA has a *de minimis* market presence. *See* NOPR P 73.

[8] 16 U.S.C. § 824(f).

cooperatives with respect to their short-term sales in organized wholesale markets, Congress chose an even higher threshold—8 million MWh of total electricity sales per year.[9] The Commission also has recognized that it is appropriate to apply those numerical thresholds to retail, wholesale, or total sales, as appropriate depending on the context.[10] Because the task here is to implement Congress's exemption of entities that have a *de minimis* presence in wholesale markets, it is appropriate to exempt from reporting requirements under FPA section 220 entities that sell fewer than 4 million MWh per year at wholesale.[11]

B. *The final rule should reverse the NOPR's proposal to extend section 220 requirements to balancing authorities with a de minimis market presence.*

The NOPR fails to apply its 4 million MWh wholesale sales *de minimis* threshold consistently, however. Instead, the NOPR proposes to impose section 220 reporting requirements on some non-public utilities whose market presence is *de minimis*: balancing authorities that sell between 1 and 4 million MWh at wholesale annually.[12]

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[9] 16 U.S.C. § 824e(e)(3).

[10] For example, the Commission uses a 4 million MWh total sales cutoff (in line with that used by the Small Business Act) for purposes of determining whether to grant waivers of OASIS requirements and standards of conduct-related, functional separation requirements on grounds that the transmission provider is a small utility for which compliance would be too burdensome. *E.g.*, *Grand Ridge Energy*, 128 FERC ¶ 61,134, P 17 (2009). But it uses a 4 million MWh cutoff based on the level of retail sales, not total sales, where the matter at issue pertained to retail demand response. *See generally* Wholesale Competition in Regions with Organized Electric Markets, Order No. 719-A, 74 Fed. Reg. 37,776, at 37,783-84 (July 29, 2009), FERC Stat. & Regs. ¶ 31,292, P 51 & nn.79-82, *on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

[11] *See* NOPR P 69 ("The transparency provisions in FPA section 220 focus on the Commission requiring information concerning the availability and prices of 'wholesale electric energy and transmission service.' Therefore, the Commission proposes to use only the wholesale electricity sales made by non-public utilities for purposes of calculating the *de minimis* market presence threshold.") (footnote omitted).

[12] *See id.* P 72. The NOPR appears to adopt NERC's definition of the term "Balancing Authority" as the "responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balancing within a Balancing Authority Area, and supports Interconnection frequency in real time." *Id.* P 69 n.86 (quotation marks and citation omitted).

This requirement, which singles out a few entities to be subjected to EQR reporting requirements,[13] is insufficiently explained, unduly discriminatory, and inconsistent with the statute.

The NOPR's sole justification for applying section 220 reporting requirements to balancing authorities that sell fewer than 4 million MWh at wholesale annually is that doing so

> will provide a more complete picture of prices within the balancing authority area markets that are operated by non-public utilities and thereby assist market participants and the Commission, particularly with respect to conducting market-based rate analyses for jurisdictional market-based rate sellers.

NOPR P 72. But the Commission's authority to require reporting by non-public utilities does not rest on how useful the information would be in monitoring the activities of jurisdictional market-based rate sellers. Rather, it turns on whether the non-public utility at issue has a *de minimis* market presence. Nothing in the NOPR justifies a finding that a balancing authority that sells just 1 million MWh at wholesale annually has more than a *de minimis* market presence. Nor is there anything about being a balancing authority that should lead to such a conclusion; being a balancing authority does not magnify the market impact of a non-public utility's sales. The 4 million MWh wholesale sales *de minimis* threshold should therefore apply uniformly regardless of whether the non-public utility is a balancing authority.

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[13] The NOPR states (P 134) that it believes the proposed rule, if finalized "would apply to only five non-public utilities (Balancing Authorities) that are considered small entities." TAPS has not attempted to confirm the exact number, but agrees that the NOPR would subject a handful of small entities to EQR reporting requirements.

Even on its own terms, the NOPR fails to justify imposing reporting requirements on non-public utility balancing authorities with a *de minimis* market presence—at least in the context of ISO/RTO markets. The NOPR claims that reporting by small balancing authorities is necessary to enable review of jurisdictional sellers' market power in relevant markets. It supports the contention by observing that—outside of ISO/RTO markets—the balancing authority area is the default market for evaluating sellers' market power. *Id.* But observations about the default market in non-ISO/RTO areas cannot justify reporting requirements imposed on small, non-public utility balancing authorities that operate within ISO/RTO regions. In those regions, absent a specific Commission finding that there is a submarket within an ISO/RTO, the default market is the entire ISO/RTO.[14] Thus, the NOPR's MBR-based explanation provides no basis for application of EQR reporting requirements to non-public utility balancing authorities in ISOs/RTOs.

Additionally, the diminishing role of individual utility balancing authorities within ISO/RTO regions heightens the irrationality of singling out a limited number of small entities with less than 4 million MWh wholesale sales for imposition of EQR reporting requirements. It also adds confusion. In some regions, the ISO/RTO performs all balancing authority functions. In other areas, balancing authority responsibilities are in

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[14] Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Order No. 697, 72 Fed. Reg. 39,904, at 39,932 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252, PP 235-36 (2007), *clarified*, 72 Fed. Reg. 72,239 (Dec. 20, 2007), 121 FERC ¶ 61,260 (2007), *on reh'g*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008) (Order No. 697-A), *on reh'g*, Order No. 697-B, 73 Fed. Reg. 79,610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008), *on reh'g and clarification*, Order No. 697-C, 74 Fed. Reg. 30,924 (June 29, 2009), FERC Stats. & Regs. ¶ 31,291 (2009), *corrected*, 128 FERC ¶ 61,014 (2009), *clarified*, Order No. 697-D, 75 Fed. Reg. 14,342 (Mar. 25, 2010), FERC Stats. & Regs. ¶ 31,305, *clarified*, 131 FERC ¶ 61,021 (2010), *reh'g denied*, 134 FERC ¶ 61,046 (2011), *petition for review filed sub nom. Mont. Consumer Counsel v. FERC*, No. 08-71827 (9th Cir. filed May 1, 2008). Moreover, the designation of submarkets is based on the existence of transmission constraints, not balancing authority boundaries. Order No. 697-A, P 94.

the process of migrating to the ISO/RTO. For example, with the advent of the ancillary services market in the Midwest ISO region, MISO became the balancing authority for its region. Utilities that formerly performed those functions now act only as "local balancing authorities" with responsibility for only a subset of balancing authority functions, as defined by contract and a Coordinated Functional Registration submitted to NERC. Southwest Power Pool, Inc. (SPP), is developing an ancillary services market, which presumably will entail shifting of balancing authority functions to the SPP.[15] Are non-public utilities that are no longer a "balancing authority," but continue to perform only a portion of the NERC balancing authority functions, covered by EQR requirements? If so, which balancing authority functions trigger the EQR filing requirement? This evolution and the difficult line-drawing it presents confirm that, particularly for those non-public utilities in an ISO/RTO region, performance of some or all balancing authority functions is not rationally related to whether EQR reporting is necessary or appropriate.

Moreover, to the extent that there is cause for concern about the market power of a jurisdictional market-based rate seller in a particular case, nothing prevents the Commission from seeking the production of relevant, non-privileged data from other entities as needed on a case-by-case basis. Seeking to satisfy such needs generically, by imposing ongoing section 220 reporting requirements on non-public utility balancing authorities with a *de minimis* market presence, is overkill and is therefore inconsistent with the statute.

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[15] *See, e.g.*, SPP's March 1, 2011 Status Report filed in Docket No. ER06-451-000 at 5 (eLibrary No. 20110301-5291).

The Final Rule should therefore apply the *de minimis* exemption from section 220 reporting requirements uniformly, and should not impose such requirements on balancing authorities selling fewer than 4 million MWh at wholesale annually. At minimum, the Final Rule should impose section 220 requirements only on those small balancing authorities that operate outside of an ISO/RTO market.[16]

C. The final rule should not require reporting of JAAs' and G&T coops' cost-based sales to members.

Municipal and other consumer-owned utilities often are too small to construct generation or enter into other long-term power supply arrangements at an efficient scale. In order to achieve the economies of scale that their larger competitors naturally enjoy, they must join together in joint action agencies or generation-and-transmission cooperatives to perform such functions on a joint basis. The JAA or G&T coop builds generation or procures other power supplies which it then sells to its members at cost, frequently under long-term (e.g., 30-year) contracts that support the bonds issued to finance the resources. (For example, TAPS member Missouri River Energy Services serves its 61 member municipalities under contracts that terminate in 2046.) These transactions are wholesale sales in name only.[17] They arise only because the individual members were too small to conduct such activities on their own and had to create a distinct legal entity to perform them on a joint basis. The sales to members are analogous to the sales made by regulated, vertically-integrated investor-owned utilities to their

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[16] *Cf. Black Hills Power, Inc.*, 135 FERC ¶ 61,058 (2011) (adopting different criteria for standards of conduct waiver applications by transmission owners that have turned over control of their facilities to RTOs than for those that have not).

[17] For ease of reference, the NOPR refers to these transactions as "inter-familial transactions." NOPR P 74. Although they would be more appropriately called *intra*-familial transactions, we adopt the NOPR's terminology.

captive retail customers.[18] If enacted as a final rule, the NOPR would wrongly require JAAs and G&T coops to report the details of such transactions in their EQRs.[19] The Commission should reverse course in the final rule.

For clarity, TAPS distinguishes two issues (1) whether JAAs' and G&T coops' cost-based inter-familial sales are counted toward the application of the *de minimis* threshold and (2) whether such sales must be reported by entities exceeding the threshold. The same considerations—namely, that the transactions are not *market* sales—would justify excluding those transactions for both purposes: application of the *de minimis* threshold and subsequent reporting. In the interest of administrative convenience and simplicity, TAPS did not propose to exclude such transactions for purposes of applying the *de minimis* exemption. *See* TAPS NOI Comments at 12. But other entities, such as the National Rural Electric Cooperative Association (NRECA), did ask the Commission to exclude such sales for purposes of applying the *de minimis* threshold. NOPR PP 63, 74. If the Commission adopts a final rule providing that G&T coops' cost-based sales to members do not count toward determining whether the coop has more than a *de minimis* wholesale market presence, comparability requires that JAA sales to members be treated in the same fashion.

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18 Thus, for EQR reporting purposes, the NOPR treats JAAs and G&T coops in a manner that is not comparable to IOUs and that is at odds with the Commission's efforts, in the transmission-access context, to require comparable treatment. As a result of the Commission's efforts to promote comparable transmission access, JAAs and G&T coops frequently use network transmission service to serve dispersed network load with dispersed network resources pursuant to long-term, average-cost-based agreements. These arrangements are designed to be comparable to the way in which vertically-integrated IOUs use their transmission systems to serve their captive retail customers. Yet the NOPR would require JAAs and G&T coops, for EQR reporting purposes, to disaggregate and report those transactions in a manner that vertically-integrated IOUs do not have to do. As explained in the text, there is no good reason to impose more onerous EQR reporting requirements on cost-based, inter-familial transactions that are analogous to vertically-integrated utilities' service to native retail load.

19 *See* NOPR P 47.

Regardless of whether cost-based, inter-familial sales count toward determining whether a JAA or G&T coop has more than a *de minimis* wholesale market presence, there is no basis for requiring such transactions to be reported in EQRs. Requiring JAAs and G&T coops to report the details of their cost-based sales to members is contrary to the statute because it imposes reporting requirements that do not advance section 220's objective of enhancing *market* transparency. As the Commission itself recently observed in the standards of conduct context, such entities' sales to their members is *not* a marketing function.[20]

Consistent with the Commission's determination that JAAs' sales to members are not a marketing function, there is no basis for requiring them to be reported to enhance market transparency. Indeed, reporting such sales would provide no information regarding the rates, terms, or conditions under which the JAA would be willing to sell power to any other entity. Nor would it provide information about the alternative rates, terms, and conditions under which the members could obtain power from other sources. Requiring the reporting of cost-based inter-familial sales simply imposes needless administrative burdens and unnecessary compliance risks (if reporting mistakes occur).

The NOPR fails to demonstrate that JAAs' cost-based sales to members affect market prices in any way that warrants imposition of the reporting requirements. The NOPR identifies two ways in which it says that such transactions can impact market prices. First, the NOPR asserts (P 47), "if the agencies and districts did not supply their members, then the members would have to purchase supply from other sources in the

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[20] Standards of Conduct for Transmission Providers, Order No. 717-C, 75 Fed. Reg. 20,909, at 20,911-12 (Apr. 22, 2010), 131 FERC ¶ 61,045, P 21 (2010), *on reh'g and clarification*, Order No. 717-D, 76 Fed. Reg. 20,838 (Apr. 14, 2011), 135 FERC ¶ 61,017 (2011).

market." But many kinds of activities—not just JAA sales to members—remove load from the market without being reported in EQRs. When a load-serving entity (LSE) engages in demand response, installs energy efficiency measures, or relies on its owned generation to serve its load, each of those activities reduces the LSE's need for market purchases. Yet the Commission has never required such activities to be reported in EQRs on the theory that it now advances to require reporting of cost-based inter-familial sales. Singling out those sales, as non-market transactions that must be reported because they *affect* the amount of demand served through the market, is unduly discriminatory.[21]

The NOPR acknowledges the different treatment but suggests that reporting of cost-based, inter-familial sales is justified simply *because* they are wholesale sales, while vertically-integrated utilities' internal transfers and LSEs' other means of serving load without purchasing from the market are not.[22] But the mere fact that a cost-based, inter-familial sale is technically a wholesale sale is not a sufficient basis for requiring it to be reported. Non-public utilities are exempt from the FPA section 205 rate-filing requirements that form the basis of public utilities' obligation to report every wholesale sale in an EQR.[23] Instead, section 220 empowers the Commission to require EQR filings by non-public utilities with a non-*de minimis* presence only to the extent that such filings are deemed necessary to enhance market transparency. The NOPR's theory is that inter-

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21 Moreover, in most cases, demand that is served through long-term, cost-based arrangements is unlikely to enter the market for many years. At minimum, if the Commission is inclined to require the reporting of any cost-based JAA sales to members, it should limit the reporting requirement to short-term sales that expire in less than 5 years.

22 *See* NOPR P 48 ("Furthermore, we agree with TAPS that a vertically integrated utility that internally supplies its retail sales unit would not need to report that supply in the EQR because there is no wholesale sale in this situation. However, in the case of a G&T cooperative selling to its member cooperatives to meet the members' load obligations, this would constitute a wholesale sale that must be reported in the EQR.").

23 *See generally* TAPS NOI Comments at 4-5.

familial sales affect market prices by removing demand from the market. But the other, non-reported means of removing demand from the market—particularly, vertically-integrated utilities' self-supply with owned generation—swamp JAAs' and G&T coops' inter-familial sales in magnitude. It does not advance the cause of market transparency to require EQR reporting of transactions that affect only a small fraction of demand removed from the market.

Moreover, the primary reason why JAAs are engaging in cost-based sales to members are that the members were too small to construct or purchase such resources on their own. Had they been able to do so, the use of their owned generation or the internal transfer of their purchased-power resources to their retail supply function would not be a wholesale sale.[24] It is unreasonable and unduly discriminatory to impose reporting requirements on entities that are forced to engage in wholesale sales because their members are too small to take the steps—which would *not* be reported in EQRs—that other, larger entities can undertake to supply their loads.

Second, the NOPR asserts (P 47) that "depending on . . . agency and district rules, the members may be able to sell excess power into the market." That may be true in certain instances, but such a sale of excess power into the market *would* be reported in an EQR so long as the selling entity had more than a *de minimis* market presence. Thus, the potential resale at wholesale of power supplied by a JAA or G&T coop to its members at cost does not justify requiring the reporting of the JAA or coop's original, cost-based transaction.

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[24] *Id.*

TAPS also observes that, because these are not typical market transactions, it may be difficult to fit JAAs' sales to members neatly into the categories the Commission has developed to describe other types of transactions. For example, the NOPR proposes to require entities to identify trade dates and times, which the Commission proposes to clarify as "the date [and time when] the parties agree upon the price of a transaction."[25] Is the trade date the date the member municipal first signed a contract with the JAA to receive its power requirements at a cost-based rate (e.g., some time in the 1980s)? Or the date on which the currently applicable requirements contract was signed (e.g., in the early 2000s)? Or is it the date when the JAA Board adopted the currently effective rates (which may be subject to fuel clauses and the like)? And how would rates established periodically by JAA boards, subject to adjustment clauses in some cases, be characterized for purposes of reporting the transaction's "rate type," i.e., "fixed price, formula, index, or RTO/ISO price?"[26]

These square-peg, round-hole issues highlight that JAAs' and G&T coops' cost-based, inter-familial sales are not market transactions and cannot be compared to them meaningfully. And because they cannot be compared to them, reporting such cost-based sales does not enhance market transparency. Furthermore, attempts to fit such square pegs into the EQRs' round holes will require interpretive judgments that are bound to lead to inconsistent reporting conventions as among different entities—undermining, rather than enhancing transparency.

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[25] NOPR P 93. For transactions undertaken pursuant to a master agreement, the "trade date" will reflect the date on which the individual transaction—rather than the master agreement—is agreed to.

[26] NOPR P 92.

The Commission should therefore remove from the final rule any requirement that JAAs report in EQRs their cost-based sales to members.

D. The Commission should not require the EQR reporting of E-Tag IDs for JAAs' or G&T coops' sales to members.

The NOPR proposes to expand the range of information reported in EQRs to include E-Tag ID data for each transaction that was scheduled using an E-Tag.[27] The NOPR asserts that requiring the filing of E-Tag ID data "would assist market participants and the Commission in identifying chains of transactions and transaction paths."[28] The NOPR asserts that being able to track such transaction chains will enable market participants and the Commission to determine whether "an interchange transaction is competitively arbitraging price separations between markets or behaving anti-competitively." *Id.* P 118. Although TAPS supports efforts to improve market transparency to facilitate the identification of anti-competitive transactions or uncompetitive markets, it is concerned that an E-Tag ID filing requirement—particularly as applied to JAAs' and G&T coops' sales to members—would create onerous reporting requirements that will not materially promote market transparency.

As the NOPR acknowledges, E-Tags are not required for all transactions, and the NOPR proposes to require E-Tag IDs only "in the event an e-Tag is used to schedule the transaction." *Id.* P 116. That limitation is, of course, both necessary and appropriate. But

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[27] NOPR P 116. The NOPR explains that the "e-Tag ID is a subset of information associated with a full e-Tag and consists of four components: (1) Source Balancing Authority Entity Code, (2) Purchasing-Selling Entity Code, (3) e-Tag Code or Unique Transaction Identifier, and (4) Sink Balancing Authority Entity Code." *Id.* E-Tags are used to schedule physical interchange transactions for which the source is in one balancing authority area and the sink is in a different balancing authority area. *See id.* P 115 & n.124.

[28] NOPR P 116. For example, the Commission states that "market participants would be able to identify that an energy trade from Company A to Company B and an energy trade reported by Company B to Company C are, in fact, a resale of power from Company A to Company C because both sales would reflect the same e-Tag ID." *Id.* P 117.

the resulting reporting of E-Tag ID information for only a subset of sales will breed confusion rather than enhanced transparency. The absence of E-Tag data for transactions within a balancing authority area severely limits the utility of requiring the reporting of E-Tag data for interchange transactions. Using the Commission's example of sales from A to B and from B to C (*see* NOPR P 117), if either sale occurs within a single balancing authority area, the absence of an E-Tag for that sale will prevent the tracing of the transaction even if E-Tag ID information for the interchange transaction is included in an EQR.

As applied to efforts by JAAs and G&T coops to use network transmission service or secondary network transmission service to deliver resources to dispersed network loads on a cost-of-service basis,[29] the requirement to file E-Tag ID data is particularly likely to produce confusing results. For example, assume that in a given hour a JAA is using network transmission service to supply all but 50 MW of its members' network load in a balancing authority area with designated network resources located in the same balancing authority area. Further assume that the JAA is supplying the members' remaining network load using network or secondary network transmission service to import 50 MW of the JAA's resources located in a different balancing authority area. In that situation, there will be one E-Tag ID for a 50-MW interchange transaction providing for the transfer of power to the sink balancing authority area. The E-Tag will

[29] As explained above, these are not market transactions and there is no valid basis for requiring them to be reported in EQRs pursuant to the Commission's FPA section 220 authority to enhance market transparency. In this section, we explain that if the Commission nonetheless requires such transactions to be reported, the requirement to provide E-Tag ID data with respect to such transactions will lead to confusion and will not enhance transparency.

not identify the particular loads being served or the quantities of power being delivered (using network or secondary network service) to those loads.

Attempting to complete an EQR for those sales will be challenging at best, as the JAA is not selling and scheduling discrete amounts of power to its members; instead, it is using a form of network transmission service to deliver power to meet the members' fluctuating loads (some of which may be supplied from the same delivery points) on an hourly basis. To the extent it is possible to translate that kind of service into discrete EQR line items representing separate sales from the JAA to each member in that hour, each line item for those sales would reference the same E-Tag ID for the entire 50-MW import. TAPS questions the usefulness of requiring the submission of E-Tag ID data in such circumstances.

Finally, we note that vertically-integrated IOUs using network or secondary network transmission service to supply their native retail loads are not required to attempt to try to translate their use of that deliberately-flexible means of serving load into separate EQR-reported "sales." Nor are they required to submit E-Tag ID data in connection with those transactions. It is unduly discriminatory to require JAAs and their members to do so when they engage in functionally identical activities that happen to constitute wholesale sales solely because they are vertically integrated by contract rather than by corporate affiliation.

E. The final rule should rely on ISOs/RTOs, not non-public utilities, to provide data regarding sales in organized markets, and should shorten the time lag on publication of offers.

In its NOI Comments, TAPS noted that section 220 requires the Commission to "consider the degree of price transparency provided by existing price publishers and providers of trade processing services" and to "rely on such publishers and services to the maximum extent possible."[30] TAPS observed that ISOs and RTOs already publish massive amounts of data about the availability and prices of transmission and wholesale electric energy, and it questioned whether the imposition of section 220 requirements on non-public utilities selling in ISO/RTO markets would add materially to the transparency of those markets. *Id.* In contrast, TAPS explained, "[w]hat *would* facilitate additional transparency is shortening the time lag for release of bids and offers submitted by participants in those markets, as TAPS has repeatedly requested." *Id.* (emphasis added). Shortening the time lag would improve transparency with respect to sales by public utilities and non-public utilities alike, without imposing any additional reporting burdens on any entity. TAPS therefore renews its call for the Commission to take that step.

Consistent with section 220's command to rely on price publishers and trade processors "to the maximum extent possible," TAPS also urged the Commission to rely on ISOs/RTOs in the first instance to provide any necessary data regarding sales in organized markets.[31] TAPS explained that relying on the ISOs/RTOs would be the most efficient and low-cost approach (and therefore the approach most consistent with the public interest, *see* 16 U.S.C. § 824t(a)(1)), in that the ISOs/RTOs are the entities that process the transactions and generate the settlement data in the first instance. TAPS also observed that relying on the ISOs/RTOs to provide the data in their possession would yield higher-quality data, consistent with section 220's purpose, by minimizing the amount of information filed by distinct entities, enhancing consistency, and minimizing the opportunities for errors and confusion.

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[30] TAPS NOI Comments at 13 (quoting 16 U.S.C. § 824t(a)(4)).

[31] *Id.* at 13-14.

The NOPR responds by focusing on the need for filing of data that may *not* be in the ISOs/RTOs' possession:

> RTOs/ISOs post extensive information about RTO/ISO wholesale market prices and market participant bid/offer data that provide valuable transparency for spot wholesale power markets run by RTOs/ISOs. These postings contain detailed location, market and product information. However, these postings are limited to the wholesale electricity markets that are administered by RTOs and ISOs. In addition, publicly posted RTO/ISO data does not provide price transparency into the bilateral transactions entered into by market participants within the RTO/ISO balancing authority area that can impact RTO/ISO market price formation. These bilateral transactions are frequently scheduled into the RTO/ISO market. The terms of bilateral transactions are often not reported to RTO/ISO markets and not included in publicly posted price and bid/offer data.

NOPR P 36 (footnote omitted).

TAPS acknowledges that it may be appropriate under section 220 to require non-public utilities with a non-*de minimis* market presence to report data regarding their bilateral transactions in organized markets (at least to the extent that the ISOs/RTOs lack such data). But the section 220 reporting requirements imposed on non-public utilities with respect to transactions in organized markets should be limited to such data. There is no reason to require non-public utilities in ISO/RTO markets to repackage and submit in an EQR information regarding ISO/RTO-settled transactions that the ISO/RTO could provide more efficiently. ISOs/RTOs are the original source of the data regarding the transactions settled in their markets, and they already have the robust information systems and staff necessary to process that data. Any incremental changes that may be needed to facilitate the ISO/RTO reporting of transactions settled in organized markets should be less costly overall—and more effective—than requiring each market participant to develop and maintain the capacity to repackage ISO/RTO-supplied data into EQRs. The final rule should therefore require ISOs and RTOs to consult with their stakeholders and to submit an informational filing with the Commission, identifying the categories of information that the ISOs/RTOs can supply to the Commission and the remaining data that non-public utilities with a non-*de minimis* presence will be required to supply in EQRs.

IV. CONCLUSIONS

For the foregoing reasons, the final rule should: (a) exempt from any section 220 reporting requirements all non-public utilities that sell fewer than 4 million MWh at wholesale annually, regardless of whether they are a balancing authority; (b) not require the EQR filing of details regarding JAAs' or G&T coops' cost-based sales to members; (c) not expand the EQR requirements to encompass the submission of E-Tag ID data, at least not for JAAs' and coops' cost-based sales to members; (d) shorten the time lag for publication of offers in ISO/RTO markets; and (e) rely in the first instance of ISOs/RTOs to supply information regarding transactions in organized markets, requiring the filing by non-public utilities with a non-*de minimis* presence of only the information that the ISOs/RTOs lack.

Respectfully submitted,

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