UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Collection of Connected Entity Data	**)**	
From Regional Transmission	**)**	**Docket No. RM15-23-000**
Organizations and Independent	**)**	
System Operators	**)**	

COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION, INDEPENDENT POWER PRODUCERS OF NEW YORK, INC., AND PJM POWER PROVIDERS GROUP

Pursuant to the Federal Energy Regulatory Commission's ("FERC" or "Commission") Notice of Proposed Rulemaking ("NOPR")[1] on the collection of data regarding "Connected Entities" from Regional Transmission Organizations ("RTOs") and Independent System Operators ("ISOs"), the Electric Power Supply Association ("EPSA"),[2] the Independent Power Producers of New York, Inc. ("IPPNY"),[3] and the PJM Power Providers Group ("P3"),[4] (Collectively, "Joint Associations") are pleased to

[1] *Collection of Connected Entity Data from Reg'l Transmission Organizations & Indep. Sys. Operators*, FERC Stats. & Regs. ¶ 32,711 (2015) (Sept. 29, 2015).

[2] EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers that are active participants in physical commodity markets with related commercial hedging activities. These suppliers account for nearly 40 percent of the installed generating capacity in the United States and provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

[3] IPPNY is a not-for-profit trade association representing the independent power industry in New York State. Its members include nearly 100 companies involved in the development and operation of electric generating facilities and the marketing and sale of electric power in New York. IPPNY's members include suppliers and marketers that participate in the NYISO's energy and capacity markets. This pleading represents the position of IPPNY as an organization, but not necessarily the views of any particular member with respect to any issue.

[4] P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C.

submit the following comments on the NOPR. Joint Associations thank the Commission for extending the comment deadline per its Order dated November 10, 2015,[5] and holding a technical conference regarding the NOPR on December 8, 2015 ("Technical Conference"). Joint Associations support the Commission's efforts to improve and enhance the market surveillance and enforcement programs on which all market participants rely. As Joint Associations have expressed in numerous forums and proceedings, robust and efficient competitive markets hinge on confidence in those markets, which is supported by transparency and regulatory oversight. Joint Associations therefore provide the comments below to assist in the development of effective and reasonable enhancements to those tenets. To achieve a balanced approach, Joint Associations request that the NOPR be revised to reflect clarifications and discussion from the Technical Conference, and suggest additional approaches that will result in a far more efficient and significantly less burdensome program for collecting certain information sought by the Commission.

I. BACKGROUND

The NOPR proposes that each RTO and ISO would be required to electronically deliver to the Commission on an ongoing basis, data provided in filings made to the ISO/RTO by Market Participant. These filings would include each Market Participant's common alpha-numeric identifier (also referred to as a "legal entity identifier" or "LEI"), a

("PJM") region. Combined, P3 members own over 84,000 MWs of generation assets, produce enough power to supply over 20 million homes and employ over 40,000 people in the PJM region covering 13 states and the District of Columbia. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. For more information on P3, visit www.p3powergroup.com.

[5] *Collection of Connected Entity Data from Reg'l Transmission Organizations & Indep. Sys. Operators*, 153 FERC ¶ 61,162 (2015).

list of the Market Participant's Connected Entities, briefly describe the nature of the relationship of each Connected Entity, and the LEIs of each Connected Entity that has an LEI.[6] The NOPR states that the uniform identification of Market Participants, together with the listing of "entities that comprise a network of common interests," would enhance FERC's efforts to detect and deter market manipulation per a central objective of the Commission's Strategic Plan.[7] It also states that the information would assist market monitors for the ISOs/RTOs in their individual and joint investigations of potential cross-market manipulation.[8]

Under the NOPR, ISOs/RTOs would also be required to submit compliance filings setting forth tariff provisions directing their Market Participants to submit Connected Entities information. ISOs/RTOs would also be required to list all of their current affiliate information disclosure requirements, including any request to retain such requirements to meet some particularized need that would not be met by the Connected Entities submissions. Aside from FERC's accommodation of these specific requests, the NOPR explains that the affiliate disclosure requirements would otherwise be eliminated and replaced with a Connected Entities reporting program.

The NOPR further suggests that ISOs/RTOs should include in their tariffs the authority, though not the obligation, to audit Market Participants to determine the accuracy, completeness, and currency of Connected Entity filed data, noting that "Commission staff may also from time to time conduct audits for this purpose."[9] The

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6 NOPR, FERC Stats. & Regs. ¶ 32,711 at P 1.

7 *Id.* (citing Federal Energy Regulatory Commission, *Strategic Plan FY 2014-2018*, Objective 1.2 (Mar. 2014) ("Strategic Plan"), http://www.ferc.gov/about/strat-docs/FY-2014-FY-2018-strat-plan.pdf).

8 *Id.* at P 2.

9 *Id.* at P 31.

NOPR adds that as conditions of participating in the ISO/RTO market, each Market Participant would be required to (i) update its Connected Entities data within fifteen (15) days of a change in the status of its Connected Entity affiliations, and (ii) annually certify that its Connected Entities data filing is comprehensive and accurate.[10]

To support these filing requirements, the NOPR would define a reportable Connected Entity to include: (i) An entity that directly or indirectly owns, controls, or holds with power to vote 10% or more of the ownership instruments of the Market Participant (including but not limited to voting and non-voting stock, general and limited partnership shares), or entities under common control with a market participant; (ii) traders or officers of a Market Participant, or employees functioning in those roles regardless of their titles; (iii) an entity in which the Market Participant has debt interests, which when converted standalone or in combination with other ownership interests, constitute 10% or more ownership by the Market Participant, and similarly, convertible interests, standalone or in combination with other ownership interests, that give the entity an ownership interest of 10% or more in the Market Participant; (iv) an entity which holds or issues debt interests that provide, above a *de minimis* amount, a right to share in the Market Participant's profitability; and (v) entities that have entered into contractual agreements with the Market Participant relating to the management of resources participating in FERC-jurisdictional markets, *e.g.*, agreements for tolling, asset management, energy management, fuel management, operating management, energy marketing, and power purchase agreements.[11]

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[10] *Id.* at P 30.

[11] *Id.* at P 23.

I. SUMMARY OF COMMENTS

Joint Associations have worked over the past several weeks with their membership and stakeholders to develop specific recommendations and other comments on the NOPR as originally proposed. Joint Associations greatly appreciate that FERC staff provided many clarifications at the Technical Conference, and laud the Commission's commitment, as stated in the NOPR and during the Technical Conference, to develop a robust record regarding the proposed rule. Joint Associations look forward to further opportunities to discuss the recommendations below, and hope that the Commission will reconsider the scope and framework of the proposed data collection requirements as discussed herein.

Joint Associations have serious concerns about the NOPR as originally issued, and request that the Commission issue a revised NOPR that addresses these concerns. The Connected Entity reporting program proposed in the NOPR is a costly, time-consuming and vague reporting exercise that does not appear justified in light of the several other opportunities FERC has at its disposal to collect more data from market participants under preexisting programs like the Electric Quarterly Reports ("EQRs"). Joint Associations therefore request that the Commission issue a revised NOPR that provides a far less burdensome and more efficient framework for gathering the information sought to enhance its enforcement and oversight programs – noting that certain confidentiality concerns will have to be addressed in light of the current public availability of certain data that is reported to FERC. Joint Associations also caution that the benefits of any new reporting requirements should be weighed against the risk that making more granular information widely available about individual Market Participants

may provide more opportunity for third parties to misappropriate and potentially manipulate market outcomes on the basis of this information.

Should FERC issue a final rule in lieu of a revised NOPR, Joint Associations believe that at a minimum, the scope of a reportable Connected Entity must be substantially narrowed. Currently, the definition is so broad that the costs of compliance are likely prohibitive for Market Participants of all sizes. The Commission must narrow this definition to alleviate the risk of regulatory uncertainty about what elements of a Market Participant and its affiliates, corporate concerns, contractual relationships, creditors, debtors, employees, passive financial interests, and subsidiaries are not in scope of the definition. A narrower and clearer definition will also be of more help to the Commission in identifying "false positives" as well as those situations where a Market Participant may in fact have a material opportunity *and* incentive to intentionally act against or for its interest in another market position.

A final rule or a revised NOPR should also squarely address several other issues. Primary among Joint Associations' concerns is that the current NOPR calls for an entirely new reporting requirement based on a vaguely defined, new regulatory term of art, a "Connected Entity," and an incomplete discussion of the relative costs and benefits of the proposal. The NOPR does not demonstrate how this new regulatory concept would benefit the Commission's goals such that it outweighs the extensive costs and difficulties of implementing the reporting requirements. Though it notes that the FERC Strategic Plan requires the agency to enhance its market manipulation detection and deterrence efforts, the NOPR provides no reasoning as to why these objectives cannot be better met – in terms of implementation timelines, costs, burdens,

accuracy of filings, and costs to ISO/RTOs, industry, and consumers – by reforming preexisting reporting programs to collect such information. As such the NOPR discusses largely theoretical benefits based on an incomplete evaluation of potential costs and pitfalls. In addition, even if the scope of the definition is narrowed, some of the proposed reporting items are already provided to FERC and the ISOs/RTOs in various filings. Yet the NOPR would require largely redundant reporting multiple times, given that Market Participants are likely to be active across several ISOs/RTOs. Thus, it is unlikely that the NOPR as originally proposed would produce relevant or useful information based on the proposed overbroad definition of a "Connected Entity."

Second, the NOPR's threshold definitions for who is a reportable "Connected Entity" based on ownership interests at or above 10%, debtor and creditor relationships, upstream and downstream contracts, and a broad group of employees and contractors, will lead to reporting of an overbroad data set that is likely to confuse and mask the trading relationships that would actually be of interest to the Commission. EPSA is concerned that the lack of clarity and the breadth of this definition does not support a meaningful exercise in understanding the costs, benefits and burdens of applying the proposed reporting requirement.

Third, the NOPR severely underestimates certain compliance costs for the ISOs/RTOs' implementation, excludes other costs altogether, underestimates key data points like labor rates, and provides overly optimistic views of the implementation phase timeline while minimally addressing the practical challenges of this phase *and* the substantial post-implementation costs associated with the 15-day status filing requirement, annual certifications, audits of Connected Entity filings by FERC staff or

each ISO/RTO at its discretion, and changes in the LEI fee structure that are beyond the control of the Commission or Market Participants. Even as to serving FERC's interests, namely enhancing its understanding of trading patterns across and within physical and financial power markets, the NOPR provides only aspirational statements of possible benefits to the agency.

In sum, the Connected Entity NOPR requests extensive information without adequate justification of its costs: some portions of the proposed information will be elusive or prohibitively costly to furnish, whereas other portions are duplicative with information sent currently by market participants to the ISOs/RTOs and directly to FERC.

Joint Associations therefore respectfully request that the current NOPR be replaced with a revised NOPR that relies on existing reporting frameworks, and provides several recommendations for a revised NOPR:

i. A revised NOPR should focus the information collection efforts on a more efficient and less burdensome mechanism that could generally draw on the successful elements of preexisting reporting requirements within the EQR and market-based rate ("MBR") programs, thereby eliminating reliance on the ISOs/RTOs as reporting intermediaries. This change will address redundant filing requirements and duplicative filing compliance costs, eliminate added pass-through costs from ISOs/RTOs to market participants, and remedy significant confidentiality concerns arising from reporting commercially sensitive data to a non-government entity. This change also eliminates an important compliance risk for Market Participants, as including the ISOs/RTOs' potential audit authority and tariff authority over this proposed filing creates added and unnecessary risks of potential tariff violations and discretionary audits of complex, dynamic information that is reported in good faith by Market Participants. However, alternative filings to the Commission will require special confidentiality protections to ensure commercially sensitive information is not publicly available as it is currently under the EQRs.

ii. If the Commission believes it appropriate to develop a new term of art such as "Connected Entity" for this purpose, Joint Associations emphasize

the need for a clear, precise proposed definition that would permit data gathering *exclusively* as to those linked entities of a Market Participant wherein either the Market Participant or the linked entity has majority control in the other. The clarifying changes would include:

a. An "over 50%" ownership threshold should be the basis for identifying reportable Connected Entities. This approach is consistent with the Commission's goals in identifying situations where a Market Participant has, or can be influenced by, a relationship of control in which an entity has both the means and opportunity, *and* the incentive, to take action in concert or independently that influences trading patterns in FERC-regulated markets.

b. An "over 50%" ownership threshold should be the basis for identifying reportable Connected Entities indirectly connected to a market participant, such that reporting of Connected Entities based on indirect control through an intermediary is only required where there is a majority ownership interest of over 50% as between the Market Participant and the intermediary, *and* as between the intermediary and the other entity/entities indirectly linked to a Market Participant.

c. The scope of "Connected Entities" should exclude lenders and debt holdings (direct or indirect as to the market participant), passive interests, non-voting interests, minority voting interests, convertible interests, or any other entity or interest that does not exercise an over-50% controlling vote on the Connected Entity's marketing or financial decisions or vice versa. Contractual relationships and structured transactions should also be excluded from the scope of the definition – in general, if there is no relationship of majority control over financial positions or assets by dint of a contractual or equity-based interest as between a Market Participant and another entity, that interest or contract should be excluded from scope.

d. A covered trader, officer, or employee should cover only those designated individuals that exercise ultimate control of strategic decision-making. Generally as to covered reporting personnel, this requirement should be limited to the individuals who have overall authority for the Market Participant's marketing decisions and strategies. Market Participants should have flexibility to determine and provide an explanation to the Commission supporting their decision to designate specific person(s) for this purpose. These persons would be distinguishable as the highest level spokespersons and authority for the company, and would be in the best position to explain the Market Participant's overall marketing strategies.

e. Requirements for LEI reporting should be narrowly tailored with clarification that only Market Participants' LEIs are required to be

reported, not those of Connected Entities or natural persons such as traders.

f. The rule should include mechanisms and procedures promoting good faith compliance and safe harbors for inadvertent errors outside a reporting party's control, as well as specific confidentiality protections, *and* excuse Market Participants from filing LEI or other information about a reportable connected entity where conflicts exist with foreign law or regulatory confidentiality rules (beyond the generic protections articulated for FOIA Exemption 4 and 7 in the NOPR); and,

g. The Commission should develop a revised burdens estimate based on a narrowed Connected Entities definition, elimination of ISO/RTO reporting, and other changes as appropriate to reduce unnecessary burdens on market participants.

The Joints Associations urge the Commission to issue a revised NOPR that adopts the above-noted recommendations, and provide market participants a further opportunity to comment on the Commission's revised proposal.

III. COMMENTS

A. The Commission's Information Collection Needs Will be Better Served by Enhancing Preexisting Reporting Requirements Rather than Through a New Connected Entities Program that Has Not Been Demonstrated to Efficiently and Effectively Meet the Commission's Goals.

Joint Associations recommend that preexisting reporting tools can and should be the Commission's focus for reforms, as opposed to an entirely new regulatory term of art and reporting framework that partially duplicates and otherwise complicates reporting processes, substantially increases compliance costs, and leads to over-inclusive data reporting. Joint Associations' recommendation is in support of more efficiently and effectively fulfilling the Commission's stated goals under its Strategic Plan, specifically as to "increasing compliance of regulated entities and detecting and

deterring market manipulation" per Objective 1.2 of the Plan and as articulated in the NOPR.[12]

Joint Associations are concerned that the NOPR as originally proposed does not provide sufficient reasoning as to why the Strategic Plan Objective 1.2 is better served by a new reporting framework than it would be through other tools in the agency's' enforcement and oversight program. Based on the broad, unprecedented scope of the NOPR and the likely over-reporting it would generate, it appears that the collection of such additional data could contribute to more false positive surveillance screen trips, resulting in winding inquiries about each tenuous or immaterial linkage between a Market Participant and its myriad financial interests. Given these concerns, Joint Associations offer several comments supporting a revised NOPR which we believe would better serves the Commission's stated information collection goals.

First, FERC's Strategic Plan is helpful to understand where the Commission's interest in the proposed information collection fits within the broader landscape of its proactive approach to regulating electricity in markets. The Plan's Objective 1.2 notes several aspects of the enforcement and oversight programs that can be enhanced under this approach: "surveillance and analysis of market trends and data," "promot[ion of] internal compliance programs," "robust audit and investigation programs" and "when appropriate, exercise [of] the Commission's civil penalty authority to deter violations."[13]

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[12] Strategic Plan at 12. This Objective focuses on monitoring and surveillance activities, including daily surveillance conducted with automated screening tools used by the Office of Enforcement Division of Surveillance and Analytics with the objective of identifying and parsing trading anomalies to support enhanced analytical procedures regarding these results and the implications for a Market Participant's motives and interests. *See* NOPR, FERC Stats. & Regs. ¶ 32,711 at P 2 ("In recent years the Commission has greatly enhanced its capabilities … having developed automated screens of market activities and set up analytical procedures to detect potential market manipulation.").

[13] Strategic Plan at 12.

And yet, the instant NOPR is problematic in that it does not conform to the balanced approach of Objective 1.2. Instead, it draws heavily on one aspect of the oversight program without demonstrating its relative need or added value over other alternatives which are given equal weight in the Strategic Plan. Joint Associations therefore believe that while the Plan appropriately acknowledges a "balanced approach to oversight and enforcement efforts," the current NOPR should be revised consistent with the Commission's long-term commitment to this balanced approach. As noted at the Technical Conference on issues related to this NOPR, there are several other means of collecting this, or similar, information which may be more helpful, more efficient, and less burdensome to both the Commission and to the regulated industry.

Second, Joint Associations are concerned that the NOPR does only a cursory analysis of the comparative advantage of a potential Connected Entity approach in relation to the current Commission and ISO/RTO affiliate disclosure requirements.[14] The NOPR claims that the existing affiliate program is flawed in "ferreting out potential market manipulation" and concludes that a new term of art is appropriate merely because it is "free of any associations that have developed around the term 'affiliate.'"[15] This limited explanation does not weigh the strategic benefits or strengths of the Connected Entity data collection approach, and the creation of a new relationship category, against other vehicles and nomenclature that are already used by

[14] *See* NOPR, FERC Stats. & Regs. ¶ 32,711 at P 2 ("As we explain below, the existing affiliate disclosure requirements do not appropriately enable the Commission to identify and monitor these business relationships.").

[15] *Id.* at PP 7-8.

ISOs/RTOs and by FERC as integral pieces of the agency's regulatory oversight and enforcement program.

The current NOPR's omission of this analysis conflicts with the balanced approach sought in the Strategic Plan. Other programs and reporting – such as the MBR filings, EQRs, Commodity Futures Trading Commission ("CFTC") Large Trader Reports, ISO/RTO Forms for Minimum Participation Criteria for Market Participants pursuant to Order No. 741,[16] Annual Reports of Interlocking Positions (Form 561 requiring disclosure of Officers and Directors) – *do* provide information which could be utilized together or separately enhanced to uncover potential market manipulation. If any of these preexisting information collections were revised, they could "appropriately enable the Commission to identify and monitor [such] business relationships" which the NOPR states to be of concern.[17]

Third, the NOPR diverges from the FERC's commitment to balanced enhancements to oversight and enforcement tools, as it dismisses the importance of "informal inquiries" with Market Participants when FERC needs more clarity around the scope of a given Market Participant's trading activity. As stated in the NOPR, FERC has authority under the FPA to make investigative inquiries, which allows it to ask any Market Participant for more data, not "merely on suspicion that a law is being violated" but "just because it wants assurance that it is not" being violated.[18] The Commission also points to the importance of these informal inquiries, such as information requests

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16 *Credit Reforms in Organized Wholesale Elec. Mkts.*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *on reh'g*, Order No. 741-A, FERC Stats. & Regs.¶ 31,320 (2011), *reh'g denied*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

17 NOPR, FERC Stats. & Regs. ¶ 32,711 at P 2.

18 *Id.* at P 16 (citing FPA § 370(a)).

and its proactive outreach to market participants broadly, in Objective 1.2 of its Strategic Plan. And yet, the NOPR's only discussion of information requests is in noting that informal inquiries should be reduced in response to "false positive surveillance screen trips that may result from an incomplete picture of Market Participants' incentive structures."[19]

Joint Associations argue that an informal inquiry can be a very beneficial tool that when used efficiently, quickly provides an accurate picture of a Market Participant's incentive structures– valuable information that can be relied on in ongoing surveillance. In fact, these inquiries are likely to continue even with a Connected Entity reporting program in place as proposed in the NOPR: with information being provided through an aggregated ISO/RTO report, it is difficult to envision that the *ex-post* inquiry would not be made following a screen trip. This is especially true where a connection is remote, as would often occur if the reporting rule for Connected Entities is based on a broad swath of debt and equity interests and contracts in which a Market Participant's financial motivations under the circumstances, would be far more tenuous.

Fourth, the current NOPR's presumption that a 10% interest is always a material interest or significant financial stake is deficient for the Commission's purposes of establishing motive toward potential manipulation. For a substantial majority of cases, a 10% ownership interest or debt arrangement is unlikely to be a "significant financial interest" for an individual market participant. Accordingly, information collection that reaches these lower levels adds little enhancement to the FERC's oversight program. While a 10% interest is significant in the context of defining customary affiliate

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19 *Id.* at P 11.

relationships, it is strategically critical for enforcement and oversight programs to focus more narrowly on the actual incentives at play in markets or the relative size or portfolios of market participants. By example, the incentive of a Market Participant with a multi-billion dollar portfolio to trade in a manner that benefits an affiliate that has a portfolio worth hundreds of thousands of dollars and in which it only owns a 10% interest, is remote. The reverse is also unlikely as the affiliate would have to be trading against its business interests and in volumes that it could not support.

Therefore, as discussed below, in lieu of creating a wholly new reporting program, the Commission should take steps to enhance the reporting programs that are already in place and develop procedures that better balance the burden of collecting the information and the value of the information. In pursuing alternative approaches, if the Commission believes that information about a 10% interest is warranted, it should develop *de minimis* approaches that eliminate reporting burdens for those entities that do not have material interests in another entity, or vice versa. Further, the Commission should specify that smaller investments must have some materiality to the Market Participant; otherwise, such small investments should be excluded from reporting altogether.

B. A "Connected Entity" Definition for the Purposes of Market Oversight and Enforcement Programs Should Be Significantly Narrower Than the One Proposed in the NOPR.

Joint Associations request that the Commission narrow and clarify the proposed definition of a Connected Entity to elicit information that will be more useful to the Commission and to reduce the burden and risk associated with complying with the reporting requirement. Although Commission staff suggested at the Technical Conference that interested parties may propose language to memorialize staff's

clarifications or help lighten the burdens of the NOPR, Joint Associations request that the Commission first provide certainty that the staff clarifications are in fact consistent with the Commission's intent. Thus, if the Commission does intend to create a Connected Entity reporting program, it should issue a revised NOPR that specifically addresses the staff clarifications and includes references and responses to the various clarifications that market participants requested at the Technical Conference and in their comments, particularly those not addressed by staff. These definitions and identifications are of great importance as, per the existing NOPR, any reporting errors or deficiencies may be deemed as ISO/RTO tariff violations with associated penalties. The following are some key areas in which Joint Associations seek definitional clarity.

(i) Definition of a Covered Market Participant

Joint Associations request that the Commission clarify those entities that will be considered to be "Market Participants" subject to the potential Connected Entity filing requirements. Further, Joint Associations request that the Commission memorialize the staff clarifications made at the Technical Conference as to the scope of Market Participants generally covered by the reporting requirement.

To the extent the Commission does not adopt an alternative approach in a revised NOPR and continues to use the ISOs/RTOs as a conduit for its proposed information collection, Joint Associations request clarification that a "Market Participant" subject to a final rule means a registered "Market Participant" as that term is defined and used by individual ISOs or RTOs. The definition should be consistent with distinctions made by ISOs/RTOs between a power marketer that is the "registered" Market Participant, and affiliated power plants that are owned by a different legal entity

and are *not* similarly registered. The definition should also clearly exclude those entities that are "members" of an ISO/RTO *and* further exclude those entities that are merely parties to an ISO/RTO operating agreement, both categories which do not have trading activities in the subject market but can be informally referred to as market participants in various contexts.

Joint Associations submit that the better alternative is to address in a revised NOPR whether Market Participants could provide the necessary data through their EQRs or other mechanisms, and if so, what the scope of covered market participants would be in light of this change.

(ii) Definition of a Covered Trader

Joint Associations request that the FERC issue a revised NOPR clarifying that traders covered by the Connected Entities definition include only those persons that truly control trading activity in the organized markets by dint of being the point person(s) for making overall strategic decisions for a company's wholesale marketing program, and do not include those individuals who are merely charged with executing those decisions on the trading floor.

Generally as to senior personnel inclusive of officers and traders, the reporting requirement should be limited to the individuals who have overall authority for the Market Participant's marketing decisions and strategies. These person(s) would be distinguishable as the highest level spokesperson and authority for the company, and would be in the best position to explain the Market Participant's overall marketing strategies. Market Participants should have flexibility to determine and provide an explanation to the Commission supporting their decision to designate specific person(s) for this purpose. Further, the definition of a reportable trader should exclude those

persons charged only with executing trades pursuant to the direction of a floor supervisor, trading manager or other officer in charge of strategic trading decision-making or trading process control. It should also exclude persons whose trading functions are limited to wholesale origination activities or day-ahead traders whose activities are limited to offering curves into the day-ahead market, and distinguish these non-reportable entities from real-time traders that hold key decision-making and strategic authority.

Ultimately, Joint Associations believe that the Commission will receive the most benefit from focusing its trader reporting requirement on those persons that have signature authority over floor strategy and execution and excluding those persons whose activities are limited to inputting data or transactions in ancillary functions on the trading floor. These changes must be made in a revised NOPR or in a final rule so that individuals and firms participating in the organized wholesale markets are not exposed to unnecessary regulatory risk with respect to which traders are in scope of the reporting requirement.

(iii) Definition of a Connected Entity Based on a 10% Ownership Threshold Should Be Revised to an Over 50% Ownership Approach, with the Ability for Any Market Participant to Demonstrate Trading Independence from Any Such Connected Entity, Even at an Over 50% Level, and Obtain Relief From Reporting.

Joint Associations believe the proposed approach to require Connected Entity reporting for ownership interests should focus only those entities that provide the Market Participant or the Connected Entity with an actionable financial interest, *i.e.* such that one entity can be presumed to have both the tools and a material opportunity, as well as the incentives, to make decisions that actually influence financial outcomes or positions

across entities for its ultimate benefit or benefit in concert with a Connected Entity. As a panel participant, EPSA provided similar feedback at the Technical Conference, noting that the information collection will be useful for the Commission's goals only where it focuses on assessing a Market Participant's actual ability to work in concert to manipulate the market or act as a measure of its financial interest in doing so.

In proposed Section 35.28(g)(4)(i), the Commission discusses ownership and control as separate and distinct parameters of interest in the scope of its pursuit of better information about a Market Participant's motives for certain trading activities. The Commission noted, for example, that it needs certain information because a Market Participant may, rather than performing a trade or other action for direct benefit to itself, instead take actions that benefit another entity that bears a financial or legal relationship to it.[20]

Joint Associations do not believe these parameters operate any differently to identify legitimate business purposes than they do to identify potential motive to manipulate market positions across commonly shared or connected financial interests. This is because the mere fact that a Market Participant *will* make decisions that *could* benefit its other holdings or interests, even its *de minimis* levels or passive investments, is merely a corollary of the equally logical and legitimate possibility that a Market Participant will *not* take direct actions that would indirectly *harm* its other financial interests. Said either way, the mere fact of common ownership – without more – is of limited use to effectively approach an inquiry of potential scienter for the purposes of identifying potentially manipulative activity that is the stated area of focus in this NOPR.

[20] *See* NOPR, FERC Stats. & Regs. ¶ 32,711 at P 10.

And, as discussed above, the inference of intent would be far weaker where the financial interests are not material.

Therefore, Joint Associations recommend that a revised NOPR take a refined approach, focusing only on those connections which are significant enough to provide financial incentives to engage in certain behavior *and* the opportunity/tools to act on it. A more workable standard for Connected Entities should only seek information about those relationships between a Market Participant and a connected interest where one or both have decision-making authority, as well as actual control and a material financial interest, in the other's trading activities, or exercise common control over trading activities. As noted above, the definition of a reportable "Connected Entity" must be narrowed substantially to focus only on financial interests that are material, *i.e.* only those which provide the ability and opportunity for an entity to coordinate and control activities with another entity that is the reporting market participant. Unlike the existing 10% standard for affiliate ownership, a test designed to identify motives for market manipulation should take a more strategic approach beyond warehousing generic information about any financial interest that could potentially inform a Market Participant's legitimate business decisions.

Additionally, the overall approach of seeking Connected Entity information may not be ultimately beneficial to the Commission's stated goals of eliminating false positives and making surveillance screenings more efficient. As was noted at the Technical Conference, the proposed percentage-based approach could lead to substantial over-reporting of a seemingly un-ending series of "connections" which may in fact cloud or mask a smaller subset of relationships between Market Participants and

other entities that could actually influence cross-market positions or outcomes for financial gain. Such an outcome would clearly be the unintended consequence of an overbroad standard for reportable Connected Entities – benefiting neither the Commission's surveillance goals nor the public interest, and actively harming consumers and market participants in competitive markets. In this sense, Joint Associations are very concerned that the Commission's proposed use of a percentage-based approach may lead to surveillance screen trips in cases of legitimate business decisions in competitive market environments, while also leading staff to potentially eliminate certain types of informal inquiries that might actually be much more effective in identifying potential misconduct.

Should the Commission continue to pursue a percentage-based approach, Joint Associations recommend that it be based on the tenet that control is a key indicator of whether an entity has the tools to engage in potentially manipulative conduct. Joint Associations argue that a 10% ownership threshold is not an appropriate level at which the Commission should set the bar for collecting relevant, timely information on where and how one entity has sufficient control over or interest in another entity to influence the way it will behave in the market. Instead, the Commission should set a much higher threshold for ownership interests that are considered to create reportable Connected Entities – at over 50% rather than at 10% or greater. An over 50% interest can be reasonably inferred to demarcate an entity's direct or indirect control of the owned entity's strategic or day-to-day trading functions. This is not only a more practical approach, it is an approach that the Commission can verify as appropriate for the task of setting regulatory reporting thresholds for the cross-market surveillance functions the

Commission shares with agencies such as the Commodity Futures Trading Commission ("CFTC").

Specifically, the CFTC's revised rulemaking setting thresholds for market participants to aggregate and report positions held in common with connected firms (to monitor a given market participant's speculative activity through multiple owned entities) recognized that a firm can be exempt from aggregating its positions with another firm that is connected through common ownership, even if there is an ownership interest of 50% or more at issue, so long as a detailed notice filing is submitted showing a separation and independence of trading functions and lack of control between the two entities.[21] The notice filing approach in the CFTC's rulemaking would provide *immediate* relief from performing compliance tasks to aggregate information, even in circumstances where the CFTC staff believes further inquiry is required to verify that ownership interests do not in fact facilitate direct or indirect trading control between the two entities. As such, the CFTC's approach focuses on *ex ante* reporting of a narrower group of linked interests/positions of a market participant, but reserves the right to issue requests for more information after the fact.

EPSA as an organization has been supportive of this balanced approach in the CFTC's oversight program.[22] In a revised NOPR, the CFTC was persuaded by comments from energy market participants that its notice filing approach would alleviate impractical, burdensome requirements. The CFTC acknowledged that requiring

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[21] *See Supplemental Notice of Proposed Rulemaking, Aggregation of Positions*, 80 Fed. Reg. 58,365 (Sept. 29, 2015), http://www.cftc.gov/LawRegulation/FederalRegister/ProposedRules/2015-24596.

[22] *See Comments of the Electric Power Supply Association*, Aggregation of Positions, RIN 3038-AD82 (Sept. 29, 2015), https://www.epsa.org/forms/uploadFiles/34C260000002A.filename.Comments_of_the_Electric_Power_Supply_Association_Supplemental_NOPR_Aggregation_of_Positions.pdf.

aggregation at interests at or over 10% and even over 50% ownership is not in keeping with modern corporate structures that provide multiple forms of common ownership interests across entities which otherwise share no direct financial or trading control or decision-making authority.[23] Joint Associations believe there is adequate basis for the FERC to conceptually reach a similar conclusion: that a 10% threshold of "connectedness" for identifying potential manipulation is an anachronistic presumption about modern corporate structures, because it does not recognize that common ownership is no longer a sufficient basis to presume the likelihood of a motive to manipulate.

There are further reasons still to adopt a higher percentage threshold for ownership structures that should trigger reporting. First, the NOPR itself states that its affiliate disclosure rules do not sufficiently satisfy the intent and scope of information sought through the NOPR. Thus, FERC need not limit itself to setting reporting thresholds that are based on approaches taken for affiliate reporting rules or for the MBR program rules. Rather, the Commission is free to model a reporting threshold on any mix of percentage-based or independent factors that reasonably demonstrate the presence of trading control across market positions in which a Market Participant holds beneficial interests.

Second, without a higher reporting threshold, it is questionable that the Commission could actually achieve more efficiency, certainty and a reduction of "false

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[23] *Id.* at 58,369 ("However, the Commission is also mindful that … aggregation of positions held by owned entities may in some cases be impractical, burdensome, or not in keeping with modern corporate structures. Therefore, the Commission is proposing a limited revision to the 2013 Aggregation Proposal that would permit all owners of 10 percent or more of an owned entity (*i.e.*, the owners of up to and including 100 percent of an owned entity) to disaggregate the positions of the owned entity....").

positives." FERC staff would be tasked with reviewing lumped information for several classes of financial interests affiliated with any Market Participant, without regard to whether or not the Connected Entity or the Market Participant holds a material position, and without being able to dissect what information is material or significant with respect to the Market Participant's trading decisions. For example, a 10% or greater reporting threshold leaves FERC staff with little ability to further parse the data to identify interests held between 10% and 50%, interests held over 50%, whether those interests are passive or active interests, or how a given Market Participant has weighed one "at or over 10%" interest versus another "at or over 10%" interest. Stated another way, the proposed approach captures a broad variety of asset and debt holdings as Connected Entities without providing any basis for FERC staff to strategically identify which interests held at or over 10% may truly influence or indirectly impact trading activities that are of concern. Under Joint Associations' proposed alternative approach, "false positives" will be reduced and the field of potentially suspect activity will be narrowed to a list of meaningful financial interests that can actually be measured and queried in conjunction with a surveillance screen trip to quickly ascertain if further investigation is necessary.

Finally, the NOPR should be revised to provide a process for Market Participants to demonstrate trading independence even if Market Participants and Connected Entities have common ownership over assets or interests at any level over 10%, including majority ownership over 50%. This relief should be available well in advance so that Market Participants will not have to commit resources to prepare a Connected Entity filing. Additionally, FERC should exclude from reporting independently managed

entities that are separated pursuant to Commission rules and the codes of conduct, such as in situations where Chinese Walls exist between power marketing and trading firms and their transmission company affiliates.

As such, Joint Associations caution that a percentage-based approach cannot be a stand-in for the Commission's balanced approach to oversight and enforcement, and would support enhancement to preexisting reporting programs over a Connected Entity reporting framework.

(iv) Definition of a Connected Entity Should Exclude All Debt and All Passive Ownership Interests, inclusive of Non-Voting Stock and Minority Voting Stock Interests, Limited Partner Shares, or any Convertible Instruments or Syndicated Lending/Financing Structures.

Joint Associations recommend that the Commission limit the scope of its Connected Entity definition to only those interests that can be controlled by another entity to provide a tangible benefit to another commonly held interest/the Market Participant. Thus, Joint Associations request that FERC completely eliminate from the scope of a Connected Entity reporting program any reference to minority or non-controlling voting interests (50% or less), convertible debt interests and all forms of debt financing, non-voting stock holdings or non-voting stock with convertibility privileges, limited partner shares, acceleration rights or other privileges or stock options which employees, investors or lenders may hold to secure their interests or to establish secured creditor status, and all other passive ownership interests and interests held at fifty percent or below in a linked entity. Joint Associations provide several comments supporting this request.

First, none of these interests provide a firm basis to establish even the potential presence of suspect market behavior, as the behavior of a Market Participant or its

linked entity with regard to these interests cannot be reasonably tied to potential manipulation any more than it can be tied to legitimate business decisions that are undertaken to avoid active *harm* to these interests.

Second, competitive suppliers holding both equity and debt-financed plants and equipment, as well as those containing multiple marketing, transmission and/or utility companies, do not have this data currently and have no way of obtaining a precise, complete picture of this data as to each and every debt-holding or non-voting, passive interest which may exist within the core corporate structure or in upstream or downstream relationships with affiliated or "connected" interests. Furthermore, the possibility of obtaining such data and updating it on a 15-day, 30-day, or even bi-annual timeline, is prohibitive. The significant burdens of this requirement are uniquely felt in the competitive markets, which Joint Associations' members rely on to secure project financing for their generation projects. The following example is illustrative of the impracticable impacts of a debt interest reporting requirement:

> **Example Scenario: Applied to the Basic and Ubiquitous Form of Generation Project Financing, Syndicated Lending, a Debt Financing Reporting Requirement Poses Prohibitive Compliance Challenges for the Project Owner**
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> **Lending Scenario:** Company A, a FERC-regulated wholesale power market participant active in four ISOs/RTOs, is developing a fleet of natural gas generation projects through financing that is provided by a single, major lender that heads up a syndicate of other lending institutions. The lead lender provides the debt financing for the project as a whole, but then sells off portions of the debt interest to other banks and institutions within its syndicate. Pursuant to the project financing agreement between Company A and the lead lender, Company A has no knowledge of the identity and percentage share of debt interests acquired by any of the syndicated lenders in any specific plant. This is because the lead lender is acting as the Collateral Agent on behalf of all lenders in the group, and operates as their collective representative under an Intercreditor Agreement that Company A is not entitled to see, and Company A's only contact with the lenders is with the Collateral Agent.

Compliance Challenge: Company A is required under the current NOPR to request information as to the debt interests acquired by each institution within the lending syndicate, and ascertain the specific percentage of the debt interest held in each of the plants that are under the project agreement, as well as any changes in these holdings over time. Company A seeks to ascertain this information through its unitary relationship with the Collateral Agent, but is barred from doing so because its loan agreement with the Collateral Agent gives it no right to demand this information.

Impact: Company A now faces a serious compliance exposure risk because it is locked into projects that trigger a requirement to report certain debt interests as Connected Entities to an ISO/RTO, and yet Company A has no means to obtain this information from its lending institution. Per the current NOPR, Company A has no means to seek an exception from reporting, and further risks violating individual tariff provisions in each ISO/RTO where it owns and operates units because it cannot provide the required information.

The scenario described above is a plain vanilla project financing arrangement relied on throughout the competitive power industry, by firms within and beyond those represented in Joint Associations' membership. Given the widespread compliance hurdles that a debt interest component would create in any Connected Entity reporting program, Joint Associations urge the Commission to exclude all such debt and financing arrangements altogether, from the scope of its proposed data collection.

The Commission should also exclude from the Connected Entity definition's scope "non-voting" ownership interests which function in practice as preferred stock or secondary stock interests. These asset classes provide only passive ownership incentives and may not be readily amenable to quantification in terms of "ownership percentages" as do common stock or other primary stock interests – in fact, non-voting ownership interests are more likely to fluctuate in form (options convertible to preferred stock, for example) and relative value over time, without notice to a given passive investor (which could include a small business employee owning options in a plant) or

without formal documentation of those changes several times within a single year. Thus, requiring the reporting of non-voting interests and changes thereto (particularly in a matter of 15 days) creates an undue regulatory risk of non-compliance, and yet does not advance the Commission's stated goals of identifying interests that provide an actionable opportunity for manipulating a market.

The inclusion of non-voting and other minority or passive interests poses the same compliance challenges as demonstrated above in the lending syndicate scenario. Again, it is very common for electric generator project financing to be carried out through arrangements where hedge funds own multiple, passive, non-voting interests, or non-controlling (fifty percent or less) voting interests in a project. A market participant responsible for the project has no current knowledge of the specific investors that are party to the hedge fund's holdings in its project, or how hedge funds might be selling off portions of their interests to others. Even if there is a single large investor behind a hedge fund that might be deemed a reportable Connected Entity per the current NOPR's definition, the market participant has no legal right or privilege to ascertain the identity and holdings of that investor – its knowledge will stop with the name of the hedge fund, and it has no ability to report what it does not know.

Further, Joint Associations note that in all other aspects of market regulation pursuant to Sections 203 and 205 of the FPA, the Commission does not require disclosure of "non-voting" ownership interests. Requiring the disclosure of these types of ownership interests in a Connected Entity context or an updated EQR or related reporting reform context is unprecedented in addition to being unnecessary and burdensome to market participants. Joint Associations would therefore urge that a

revised NOPR, or any other effort where the Commission seeks information about a market participant's business interests, should exclude from its scope the reporting of all convertible debt, passive interests, minority or non-controlling interests (held at fifty percent or under), and non-voting interests such as preferred stocks or stock-options.

(v) Addressing Daisy Chain Concerns through an Over-Fifty Percent Indirect Ownership Rule.

Adding to clarification provided by FERC staff at the Technical Conference, Joint Associations recommend that the Commission include a daisy chain rule in a revised NOPR to ensure that some "other entity" that is indirectly connected to a Market Participant through an intermediary that is a Connected Entity will only be considered a Connected Entity if the "other entity," the intermediary, and the Connected Entity are all connected to each other at an over-50% level. This bright-line rule is consistent with Joint Associations' recommendation above that the relationship between a market participant and Connected Entity based on ownership should also be reportable only at a level of over 50%.

The recommendation also serves to address a specific entity/relationship classification problem which Joint Associations believe is not sufficiently addressed in guidance offered at the Technical Conference and in staff clarifications. Specifically, the NOPR proposes to define a Market Participant's reportable Connected Entities by identifying specific types of indirect ownership interests that trigger reportable Connected Entity status. To the extent that some *other* entity is controlled by a reportable Connected Entity, Joint Associations understand from the Staff Responses that this "other entity" would be a reportable Connected Entity *only if* the "other entity" itself relates back to the Market Participant by means of fitting within one of the

proposed definitional parameters to establish direct or indirect control.[24] Staff also noted its view that there is no "daisy chain" problem because each such linked entity must be "connected under the definition itself," unless there is indirect control between the Market Participant and the "other entity" through the Connected Entity. The example staff provides is:

> *If one entity owns 100% of a second entity, and the second owns 10% of the Market Participant, then both entities are reportable Connected Entities since they both have indirect control at 10% in the Market Participant.*[25]

While this example is of some help, it merely speaks to a basic scenario where the "other entity" owns *100%* percent of the Connected Entity, and it can therefore be *assumed* that the "other entity" is controlling the Connected Entity and *indirectly* controlling the Market Participant. By contrast to this simple example, the more likely scenario for the average ISO/RTO participant will *not* be clear-cut 100% ownership between a reportable Connected Entity (the intermediary) and the "other entity." It is much more likely that a Connected Entity will be linked at *a less than 100%* level to this "other entity," yet the NOPR proposes no methodology that would suggest how to determine *control* between the "other entity" and the Connected Entity. Without such a methodology, Market Participants would be compelled to undertake ad hoc analyses or assumptions based on the facts and circumstances of each specific case to estimate whether an ownership interest of *less than* 100% creates enough of a basis to say that the Connected Entity and "other entity" are related through *direct control by the*

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[24] *See, e.g.*, Staff Responses to Definition Questions at 2, Docket No. RM15-23-000 (Dec. 10, 2015) ("If an entity is not connected under the definition itself, it is not a connected entity.").

[25] *Id.*

intermediary, and that the Market Participant should therefore report the "other entity" based on *indirect control*.

Given the lack of a clear rule on intermediaries and indirect control in a "daisy chain" situation, it is a near certainty that the Commission will receive inconsistent Connected Entity reports in spite of painstaking compliance efforts from Market Participants. Therefore, FERC must articulate a specific "daisy chain" rule to help Market Participants ascertain whether "other entities" and Connected Entities are *sufficiently* interconnected by direct control such that the "other entity" would *also* be a reportable Connected Entity.

Joint Associations propose that the rule should follow Staff's basic example: FERC should state that as to "other entities" linked to a reportable Connected Entity, the "other entity" and the Market Participant could have a relationship of *indirect control* that would trigger Connected Entity status for the "other entity," *only if* the reportable Connected Entity (or "intermediary") and the "other entity" are directly connected at a level of fifty percent ownership or more and therefore demonstrate a controlling interest that reflects the existence of actual, indirect control between the market participant and the "other entity."

C. The Commission Should Develop a More Realistic Burdens Analysis which Accurately Reflects the Costs and Benefits of Pursuing a Connected Entities Reporting Program and Eliminate Reliance on ISOs/RTOs as Reporting Intermediaries.

EPSA has surveyed its members and believes that the cost estimates for compliance with the NOPR as proposed are understated. The Joint Associations therefore request that the Commission update its burdens analysis in a revised NOPR, consistent with the information provided below.

Generally, competitive supply companies in the Joint Associations' membership have found that the current NOPR will require the development of new, costly compliance programs irrespective of the size or financial sophistication of a given Market Participant. Such a program will require resources to review transactions, corporate structures, structured transactions and debt arrangements – these areas of review will require *new* resources and investments because they introduce an incremental data collection and formatting effort that market participants do not undertake for any other reporting program.

One of the key costs identified which is not discussed in the NOPR, is the development of new IT system capabilities that will specifically collect, format and document Connected Entities data in the Commission's desired list format. Those costs will be added to by the costs passed on by ISOs/RTOs from their own development and refinement of new capabilities to collect information from market participants and report it to the Commission. For an appropriate comparison, the implementation of the Dodd-Frank mandates provides an ample record of the various costs and procedural challenges that must be addressed in implementing a new identifier-based program through technological reporting platforms -- it also provides valuable insights into the type of staff no-action relief, guidance, and ongoing compliance conversations that an agency should be prepared to engage in with market participants in order to address ongoing issues.

A specific CFTC record of interest in understanding these costs and ongoing compliance processes is the CFTC Ownership and Control Final Rule, 17 C.F.R. 15, 17, 18 & 20 ("OCR Rules"). Along with the OCR Rules, the CFTC provides information on

the applicable Ownership and Control Rule No-Action Letters, Mandatory Testing Schedule, Technical Guidance, XML Schema Definitions and Rule Validations, and CFTC Portal Information developed by staff to assist in compliance.[26] Joint Associations believe that the reporting scheme proposed in the instant NOPR, given the scope of entities required to report, the scope of counterparty information (any connected entity) that a reporter must collect and file, and the number of filings that will be made annually and otherwise, along with the scope of LEI reporting, make for an appropriate comparison of this NOPR's burdens to that of the CFTC's implementation of the OCR Rules.

Relatedly, EPSA's surveying on burden estimates has focused on the original NOPR's requirements so that individual members could develop a preliminary cost assessment based on a controlling data set rather than on different assumptions about which staff guidance will and will not be adopted (or expanded or narrowed) by the Commission. The following are survey results, noting that companies are not able to provide more granular modeling without further clarity from the Commission on which aspects of staff guidance may be expanded, narrowed or accepted in a final rule.

(i) Base Case Estimates and Cost Multipliers for Reporting

EPSA surveying shows that for a single small to mid-sized entity operating in the wholesale market as a registered ISO/RTO trader, it would cost between $30,000 and $60,000 to develop and implement a reporting system (averaging 120 - 200 hours of work at $300 per hour). It will cost an additional $45,000 per year to maintain the system, collect the data, and report the data to the ISO/RTOs (150 hours per year at

[26] Available at http://www.cftc.gov/Forms/OCR/index.htm.

$300 per hour). For a larger entity operating entity with marketing and scheduling functions in multiple ISOs/RTOs, a similar reporting system would cost approximately $500,000 in the first year, and another $300,000 per additional year.

The above estimate does not include the costs of training the impacted compliance groups, setting up a monitoring system to track the names and statuses of various individuals, contracted entities or officers subject to reporting, analytic functions for ascertaining equity and debt relationships or transactional relationships on an ongoing basis, and the work hours required to put these processes in place. This cost estimate also does not address training for affected groups such as upstream and downstream affiliates, or the records development needed to track and ascertain reporting status of certain employed traders and originators. These costs can add several work hours per week, per year in initial implementation, and will not taper over time given the need for ongoing analysis and compliance updates.

Contrary to the NOPR's assumption that it will be a simple administrative task to identify Connected Entities, competitive supply companies have noted that simply ascertaining the number and scope of such entities will require new procedures as well. These procedures would help identify transactions, debt arrangements and ownership structures that meet the Connected Entity criteria and provide parties a forum to agree to terms for reporting these entities as "Connected Entities." Based on experience with the change in status filings, numerous companies have noted that employees across multiple functions will need to be specifically trained to identify the equity, debt, contractual and employer/employee/contractor/officer/trader relationships that could potentially meet the criteria for reportable Connected Entity status.

The base case estimate also assumes that each ISO/RTO system for receiving the data is 100% compatible with the Market Participant's system such that the reporting process faces no technological hiccups, and does not cover troubleshooting costs. It also does not cover the necessary testing schedules internal to a reporting entity and as between reporters and the ISOs/RTOs, nor does it contemplate the time and costs of preparing technical guidance documents/handbooks, potentially unique for each ISO/RTO accepting LEI and Connected Entity reports.

With all of the above-described additional costs added to the base case estimate, we estimate the average initial cost to a given Market Participant required to report is well over several hundred thousand dollars to over a million dollars, depending on the size of the entity and its presence in the wholesale markets – these costs are in addition to the cost of obtaining legal entity identifiers and maintaining those identifiers annually for each "registered" or "member" affiliate of that entity. LEI costs are also variable, given the likelihood that initial costs and annual maintenance costs can not only rise over time, those cost increases are beyond the control of U.S. regulators or Market Participants.

Survey results also showed that if multiple entities within an ISO/RTO are "Market Participants" per the Connected Entity NOPR, and yet are also each other's Connected Entities in the same ISO/RTO, the NOPR is read such that each connected Market Participant would be required to develop and similarly maintain a reporting system. The potentially exponential costs of such an outcome can be prevented if the Commission provides clarity that the scope of a covered "Market Participant" excludes generators within an ISO/RTO that are not specifically registered as traders affiliated

with an ISO-registered power marketer, and would not be required to separately report as "Market Participants."

(ii) Underestimated Resources and Staffing Costs and Labor Rates

Survey results showed that the NOPR incorrectly states that the costs of implementation will be largely administrative, when in fact they will involve detailed, ongoing review and monitoring by senior compliance staff, in-house attorneys, IT directors, and outside counsel, as well as the hiring of specific contracting functions to build sophisticated compliance modules and training programs as necessary. The NOPR also underestimates labor rates for such services. Between these two cost metrics, significant costs have been omitted from the NOPR's burdens analysis: as discussed during the Technical Conference, operational, legal staff, as well as commercial and IT staff, will need to be brought together for departmental or corporation-wide exercises in compliance.

Thus, Joint Associations note that a revised burdens estimate should incorporate the work hours associated with bringing together legal compliance and audit teams, outside counsel, operational staff, and IT staff on a regular basis to address initial and annual compliance requirements, as well as bringing the appropriate team together to discuss any status changes that must be reported within a certain period of days (the NOPR proposes 15 days) of the occurrence of a change in the number/identity of reportable Connected Entities. The revised burden estimate should include figures modeling these costs, in addition to and *not* in lieu of, the staffing burden associated with filing the quarterly EQRs or performing affiliate disclosure functions to submit reports to each ISO/RTO. Labor rates should also be updated and revised

proportionately to reflect the substantial officer-level, legal and other non-administrative review that will be required on an ongoing basis to file Connected Entity reports.

(iii) Enlarged Costs and Reporting Burden for ISO/RTO Reporting

The NOPR correctly notes that Market Participants already submit information about some of their Connected Entities to the ISOs/RTOs and that the NOPR enlarges the information to be collected. However, Joint Associations do not believe it correct to state that the NOPR "enlarges the information to be collected and standardizes its format," given the potential numerous complications and avenues for inconsistent compliance that were elaborated upon at the Technical Conference. There are several scenarios offered by competitive supply companies to demonstrate the risk of inconsistency in reporting, as well as impracticable or prohibitive costs for reporting across the ISOs/RTOs:

a. It is unlikely that Connected Entity data collection requirements and definitions will be uniform across the ISOs/RTOs because the ISOs/RTOs are not required to use a common template and data dictionary, nor other universally applicable methods to collect this data under the NOPR.

b. It is prohibitively costly and impracticable to require a Market Participant to file with each ISO/RTO in a 15 day period a notice in a change of status as to a new or lapsed Connected Entity relationship per the innumerable conditions under which the NOPR suggests a Connected Entity reporting requirement may be triggered. Not only is 15 days an unreasonably short period of time to report changes, it is unprecedented in other Commission-administered reporting programs, and it is nearly impossible for a Market Participant to ascertain within 15 days that it has a new, reportable "Connected Entity" based on multiple proposed definitions of ownership, debt, structured transactions, contracts, voting interests, partnerships, and other corporate structures permitting a future ownership interest that may or may not materialize – as well as the burdensome task of weighing any debt or ownership interest included therein against all other "interests" that add up to 100% ownership of the Market Participant or the entity connected to the Market Participant by one of these relationships.

c. It is highly questionable that a Connected Entity filing in lieu of affiliate disclosure filings across multiple ISOs/RTOs would ultimately result in an equal or lesser burden for Market Participants.[27] This is because the NOPR provides substantial flexibility to each system operator to file for the retention of certain affiliate disclosures and the general preservation of affiliate-based provisions in its governing tariff language if any "particularized need" can be identified by an ISO/RTO. At the FERC Technical Conference, panelists made it clear that the generic substitution of "affiliate" with "Connected Entity" throughout ISO/RTO tariffs would be at odds with the diverse and unique purposes for which individual system operators can and would use affiliate reporting information well after the issuance of a Connected Entity regulation, including as to specific tariff requirements, obligations and actions based on how each ISO/RTO defines an affiliate under its current tariff. EPSA's own outreach to individual ISOs and RTOs has also indicated that there is substantial resistance to the notion of simply displacing the current affiliate rules with the Connected Entity definitions. It is EPSA's understanding that certain ISOs/RTOs intend to retain their current affiliate definitions and disclosure requirements regardless of any implementation of a Connected Entity definition or report.

d. The NOPR does not account for the significant costs that ISOs/RTOs will incur to directly comply with the reporting requirements. While it is stated in the NOPR that current reporting capabilities would be sufficient to integrate Connected Entity Filings, it is clear from the scope of the NOPR as proposed that new systems developments, administrative and technical resources, and legal resource for tariff reviews and compliance filings will be incurred. These costs will also be passed on to Market Participants, and ultimately, to electricity consumers.

e. Including ISOs/RTOs as reporting intermediaries adds unnecessary compliance risks and costs for Market Participants, exposing them to the ISOs/RTOs' discretionary audit authority and potential penalties for tariff violations related to inadvertent errors or errors made in good faith, even though the ISOs/RTOs are only intended to be a conduit of this information to the FERC's enforcement program.

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[27] The NOPR states that unless the RTOs and ISOs request continuation of existing affiliate disclosure requirements based on a particularized need, the Commission expects that this new disclosure obligation will supplant all existing affiliate disclosures requirements contained in the RTOs and ISOs tariffs. The proposed definitional uniformity of the term ''Connected Entity'' across all of the RTOs and ISOs may help ease compliance burdens on Market Participants that are active in more than one RTO or ISO, and that are now required to submit affiliate information that may be unique to each of the organized markets in which they participate. NOPR, FERC Stats. & Regs. ¶ 32,711 at P 14.

(iv) Metrics, Parameters and Recommendations Based On Surveying Results, Supporting a Revised Burdens Estimate

The following aggregated metrics and assumptions provide what the Joint Associations believe is a more realistic view of the compliance costs associated with several aspects of the NOPR:

a. Competitive suppliers participating in the wholesale markets are likely to have anywhere between one and 12 "Market Participants" actively trading in all the ISOs/RTOs, but also have other members of an ISO/RTO that are not actively trading and dozens of affiliated generation units in the same markets that do not have "member" or "registered" status in the ISOs/RTOs. Without clarification from FERC as to who is a Market Participant, Joint Association members may in fact have several dozen reporting "Market Participants."

b. To comply with a single aspect of the proposed Connected Entity definition as to direct and indirect ownership based on 10% interests in one or more entities, companies report that they may have a hundred or several hundred Connected Entities reportable in all RTOs where they are active Market Participants. Identifying potentially hundreds more Connected Entities, in addition to those covered by the 10% ownership and debt instruments threshold, will require several weeks of compliance hours that must be coordinated across several groups within the corporate company, and require additional resources to compile and consolidate Connected Entity information into a single database.

c. The definition of a Market Participant's contracted employees, traders, and officers could be a limitless exercise for many companies, as hundreds of individuals may qualify for any of these roles under the broad definitions articulated in the NOPR. Screening each of these individuals to determine whether their daily functions match up with the NOPR's definitions will take several hours a week per person, and require an additional team to develop this record and track any necessary changes or additions to this record. Additionally, IT system upgrades will need to be developed to identify these new categories of employees and traders, as current recordkeeping systems do not flag employees and traders in this specific way.

d. Regarding the definition of holders of debt interests, this process will require cross-team coordination of operational, business and legal compliance teams, and will likely take 2-3 hours per examination for analysis of every holder of structured interests, financing interests, or other convertible or traditional debt instruments to determine if such entity should be considered a reportable Connected Entity. Any given competitive supply company or its affiliate(s) may have an as yet undetermined number of financing

interests at a given point in time, as these interests are not likely to be amenable to static, discrete valuation to meet the weighting approach required under the NOPR's percentage-based reporting requirement.

e. Finally, regarding the inclusion of certain contractual relationships as Connected Entities, the gathering of this information would involve several staff teams within a given company (including front office and back office staff, as well as compliance and legal), involving anywhere from a half to full standard 8 hour work day, across several dozens of contracts held with several affiliated entities, repeated at every interval of time under which the Commission would require a status update. Using the NOPR's parameters, this work would need to be performed every 15 days to ascertain that all reportable contracts are on the books. The resulting reportable relationships via contract, like relationships reportable via debt interests, are likely to change frequently and would not be amenable to a reliable, static quantification for weighting these interests under a percentage-based reporting threshold. Further, adding a 15-day turnaround for status change updates on these relationships can add an additional three to four work days, including cross-organizational coordination. Companies estimate that this burden should be multiplied to reflect the process that must occur for each ISO/RTO where it is an active market participant. With a multiplier added to these compliance hours, a single Market Participant could end up spending over 150 hours simply to track its interests for potential status changes that would be reportable to the ISOs/RTOs on a 15 day turnaround.

f. Competitive suppliers' experience with minimum participation criteria requirements pursuant to Order No. 741[28] demonstrates that the ISOs/RTOs are unlikely to standardize a new Connected Entity information collection process across markets. Under Order 741, similar to this NOPR, FERC did not require uniform standards for each ISO/RTO's development of the required participation criteria and left it to each entity to develop the criteria with its stakeholders based on the needs of each individual region. This resulted in seven sets of unique standards – for example, efforts across the ISOs/RTOs to create singular, unified officer certification forms failed, given the lack of interest across markets and the substantive differences in each region's approach to certification. If FERC retains a similarly discretionary approach in this NOPR, the substantially more complex Connected Entity requirements will more than likely not result in a singular, unified filing requirement. There would not be notable benefits for entities transacting in multiple markets, as the NOPR contemplates. Instead, potential burdens for Market Participants would increase

[28] Note: Under Order 741, FERC required each ISO/RTO to develop minimum participation criteria to ensure that Market Participants have adequate risk management processes and procedures and adequate capital to engaging in trading with minimal risks and related costs to the wholesale electric markets. Credit Reforms in Organized Wholesale Electric Markets, 133 FERC ¶ 61,060 (October 21, 2010).

exponentially as a result of seven different approaches to a Connected Entity filing requirement – without any additional benefit to the Commission's oversight goals or priorities.

Given the significant scope and costs/work hours associated with the examples above, Joint Associations believe there is substantial justification for FERC to reconsider the instant NOPR. Joint Associations offer the following specific recommendations as to a revised burdens estimate, which we support including in a revised NOPR:

a. The burdens analysis should specify that the costs and compliance hours associated with the NOPR, for many mid-size and larger market participants, would likely increase manifold rather than decrease through the displacement of existing affiliate disclosure reporting burdens.

b. Relatedly, the current affiliate disclosure rules could not be replaced with the Connected Entity filing, as the information sought in the former filings is required for purposes which differ from and are in addition to FERC oversight and surveillance.

c. A requirement to make Connected Entity filings to each ISO and RTO will result in unnecessary, exponential compliance burdens because it is likely that each ISO/RTO *will* demonstrate a particularized need for retaining all of its affiliate disclosure rules and requirements – which are different in scope and purpose than the FERC's proposed Connected Entity reporting requirement.

d. Critical adjustments must be made to the definition of a "Connected Entity" to avoid costly, cumbersome compliance efforts on the part of the industry. This includes the removal of all debt and passive interests from the definition of a Connected Entity, as well as contracts in which a market participant does not have a controlling interest to dispose of assets or to direct the financial disposition of rights or obligations under such contracts including the positions taken by the contractual counterparty in physical and/or financial markets. These changes should also include clarifications regarding the scope of a covered "Market Participant," and the scope of a covered "trader," "officer" and "employee".

e. The 15-day turnaround requirement for reporting status changes is untenable in that it magnifies the compliance obligation and creates a routine exercise involving multiple staff divisions, compliance checks and decision-making even though there are several alternative methods for the Commission to seek timely information about transactions and acquisitions of concern for a given market participant. Instead of a 15-day update requirement, the reporting framework should focus on the quarterly compliance process flows

> that are pre-established within companies to meet EQR deadlines, or rely on the 30-day change in status filing requirement as an appropriate time period for such reporting.

Joint Associations also argue that at this point in time there is no basis to assume that the burdens of Connected Entity compliance would be balanced by reduced burdens in other reporting program compliance areas. Contrary to the NOPR's statement that "[i]t is possible that some, if not all, market participants will be able to use its existing processes for reporting affiliate information to the RTOs and ISOs to lessen the burden of this proposed reporting," the initial and updated filings required under the NOPR will in all likelihood have different substantive and timing requirements, and necessitate the use of a separate internal corporate process, from the ISO/RTO affiliate reports.

These factors further support Joint Associations' proposed approach of using EQRs as a potential alternative vehicle for new reporting requirements, along with complementary updates to the change in status filing requirements and elimination of duplication in other filings made with FERC and with the ISOs/RTOs. Where possible, any new reporting requirements should capitalize on and be administered in conjunction with other compliance processes that already require substantial resource commitments from market participants.

D. Joint Associations May Support the Commission's Issuance of Additional Filing Templates for the EQR Program with Coordinated Change in Status Updates as an Alternative to a New Connected Entities Requirement Provided that Confidentiality Concerns Can be Addressed.

Joint Associations recommend that the Commission look to preexisting reporting requirements across the ISOs/RTOs, and its own filing requirements for participants in its jurisdictional markets, to synthesize or refine specific elements of the information it

believes will assist its surveillance and analytics efforts. First, Joint Associations may support the development of a new EQR filing template that could capture certain aspects of the requested information in the NOPR (noting that there should be no overlap with information reported elsewhere, only information that can be publicly disclosed could be included, and other duplicative reporting can be eliminated). Second, Joint Associations also suggest that the Commission could obtain information about changes in the commonly controlled or controlling interests of a market participant by requiring updated information through the MBR change in status filings required under Section 35.42 of the Commission's regulations.[29]

The benefits of such an approach are that it would (i) be flexible and could be administered through a rulemaking; (ii) permit market participants to report through a centralized, unitary filing process rather than filing additional and effectively redundant reports with different ISO/RTOs; (iii) develop, with notice and public comment, a specific template that provides the option for a filer to add new or amended corporate entities and to keep the filed information current on a quarterly basis throughout the calendar year or on a 30-day update timeline per the MBR change in status filing requirement (rather than the overly burdensome 15-day turnaround required under the NOPR); and, (iv) permit Market Participants to use a streamlined, simplified XML machine readable format for submitting new information as is currently done for the EQRs.

Importantly, any additional reporting requirements that build on current reporting programs for market participants could be captured using compliance and

[29] *See* 18 C.F.R. § 35.42 (requiring that the Commission be notified of changes in status within 30 days).

recordkeeping systems, processes and staffing that are *already in place* to address preexisting EQR or MBR compliance requirements. Further, such records can be searched efficiently both on the industry side and by FERC's surveillance staff, whereas no such uniformity and consistency appears forthcoming from overlapping annual filings and multiple ad hoc filings made via the ISOs/RTOs per the current NOPR's proposed approach. For example, EQR records can be queried and retrieved by common identifying information across contracts, companies, specific customers or specific sellers, affiliated transactions, or product names, and are amenable to the type of unified and comprehensive information-gathering the Commission is seeking in this NOPR effort.

Joint Associations recognize that, given the Commission's intended scope of regulation, an alternative approach will have to be developed as to entities not required to make EQR filings. Joint Associations would propose that non-jurisdictional entities that are Market Participants and are not required to file EQRs would make informational filings providing the required data, and that ISOs/RTOs would modify their tariffs to require entities that do not file EQRs to make such informational filings as a condition of their continued participation in the ISO/RTO market. As such, the expanded reporting requirement would generally be an extension of the EQR report, and for any Market Participants that do not file EQRs, it may be achieved through informational filings. The other aspect of using current reporting programs will be to parse out the scope of information that is in fact publicly reportable, and develop alternative means to mask or treat as confidential aspects of these reports that cannot be publicly disclosed.

Given that there are limitations to both using the EQR template or change in status filings to collect certain information, Joint Associations recommend that the Commission's staff continue to develop the record supporting these alternative approaches through further industry outreach and opportunities for public comment and technical discussions. Joint Associations further believe that while the proposed 15-day status change notification proposed under the current NOPR would be unduly burdensome, either the quarterly reporting timeframe for EQR filings or a 30-day turnaround per the MBR change in status reporting requirement could be a reasonable approach, given a more narrow, focused scope of what entities are considered Connected Entities that would trigger a reporting event.

E. The Proposal to Require Legal Entity Identifiers for Connected Entities Should Address Redundancies with FERC Identifiers and Acknowledge the Broad Use of LEIs Globally.

It is important that the Commission specify in a revised NOPR the precise scope, parameters and confidentiality protections it would adopt should it require a Market Participant to obtain an LEI. Joint Associations offer the following comments on this point.

Joint Associations generally agree that uniform LEI implementation would support an agency's goals to achieve more consistency across data collections and analyses performed by various groups of staff, and across various agencies collecting similar information. However, the NOPR does not specifically discuss how consistency will be achieved and maintained, given two important trends in how Joint Associations' members and other market participants already use LEIs and other identifiers.

First, Joint Associations' members with market-based rate authority already obtain FERC-issued Company Numeric Identifiers, which are widely used for FERC

reporting requirements for self-identification and the identification of reportable counterparties. It is unclear how the Commission would adapt or merge LEI information with its current identifier requirements, especially in light of the potential use of EQR filings as alternative vehicles for conveying Connected Entity information. Joint Associations therefore request that the Commission address these issues in a revised NOPR, as they relate to practical implementation processes, implementation costs and relative benefits of substituting LEIs for FERC-required identifiers.

Second, Joint Associations' members may currently have LEIs only because certain plants, affiliates, subsidiaries or components of a broader corporate entity engage in commodity swaps or swaps in other assets classes reportable to the CFTC per Parts 20, 45, and 46 of the CFTC's regulations,[30] or through other regulatory mandates based on the Dodd-Frank Wall Street Reform and Consumer Protection Act. This is consistent with the fact that the *global* LEI reporting program has been designed to meet a gap in standard identification systems for financial counterparties. In obtaining LEIs for this purpose, Joint Associations' members and other market participants also have benefitted from the guidance, regulations and no-actions letters of various U.S. agencies that provide protection from extensive regulatory risk exposure due to confidentiality concerns or technological challenges. For example, on January 15, 2016, the CFTC extended relief to its market participants to mask the specific LEIs of those reportable counterparties (both contractual or affiliate relationships) operating in foreign jurisdictions that prohibit the sharing of LEIs under privacy, blocking, or

[30] *See* 17 C.F.R. Parts 20, 45-46 (2015).

secrecy laws.[31] The issuance is operative through March 2017, and a conservative estimate can be made that such masking relief will continue beyond that date. Joint Associations therefore believe that in further consideration of adopting LEIs for FERC market participants, a revised NOPR should provide insights as to how the Commission will address industry requests for similar guidance and confidentiality protections.

Furthermore, Joint Associations believe a FERC-led effort to adopt LEIs must be cognizant of the global process and current scope of LEI reporting beyond its intent to capture FERC-jurisdictional Market Participants, including the following:

i. LEI standards are not solely a creature of U.S. statute nor will changes be dictated solely by U.S. law or regulation. In this regard, even though the global LEI system can contemplate identification of natural persons, FERC's revised NOPR should clarify its intent to require reporting only for regulated entities, not natural persons affiliated with such entities.

ii. No single U.S. agency has ultimate control over which common system identifier replaces the currently fragmented global system of firm identifiers, as this task is the purview of the not-for-profit Global LEI Foundation, established by the global LEI Regulatory Oversight Committee pursuant to a directive of the Financial Stability Board. FERC should state in its revised NOPR whether its LEI requirements will be modified over time (or alternatively remain static) as global systems adapt to a unified and standardized format for identifiers. FERC should also consider grandfathering provisions that permit Market Participants to rely on currently available LEI formats, in the event those formats undergo a U.S. or systemic change over time.

iii. The US Office of Financial Research is pursuing common identification of *parties to financial contracts* through LEIs, not a common identifier for financial and non-financial market participants. FERC should explain why the LEIs are more appropriate to cover its non-financial market participants, rather than the currently-issued FERC identifiers.

iv. The global LEI initiative is specifically designed to help consistently identify the parties to OTC derivatives and other securities transactions in regulatory reporting, as well as the clearing institutions involved in such

[31] *See* CFTC Division of Market Oversight, No Action Letter No. 16-03 (issued Jan. 15, 2016), http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-03.pdf.

> transactions and the assets held in certain securitized products. Meanwhile, should FERC develop a reporting system based on LEIs, it would seem necessary to guard against the uncertainty that the Commission's internal reporting requirements may be subject to externally-developed changes and modifications to the scope of the global LEI program limited to financial entities.

Given the scope and evolution of this global reporting construct to date, Joint Associations believe there is a legitimate concern that requiring purely physical market participants to obtain LEIs outside the context of regulated swaps, security-based swaps or securities may not be perceived as enhancing this global initiative. As an example, the most recent progress report from the Regulatory Oversight Committee emphasizes the need for granularity across jurisdictions as to the presence of *financial* firms and plans to "clari[fy] the eligibility of entities for an LEI," and "better cover the population of legal entities subject to financial regulation."[32]

With the above caveats specifically addressed, Joint Associations believe that universal reporting based on unique identifiers could be helpful to the Commission's information-seeking goals. For example, FERC staff may find it helpful to cross-reference one Market Participant's actionable interests and opportunities in interconnected physical and financial power markets, if there is a record available of the Market Participant's unique identifier to cross-check related activities in other regulated markets. Importantly, a unique identifier initiative can proceed independent of specific requirements for Connected Entity reporting.

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[32] Legal Entity Identifier Regulatory Oversight Committee, *Progress Report by the LEI Regulatory Oversight Committee* at 3 (Nov. 5, 2015), http://www.leiroc.org/publications/gls/lou_20151105-1.pdf.

Joint Associations believe a regulatory effort focused on assigning LEIs or otherwise clarifying the scope of FERC-issued identifiers is an appropriate first step toward FERC's goal of achieving a better understanding of the business relationships of ISO/RTO Market Participants. Further, any lessons learned from pursuing a Market Participant identifier initiative could be instrumental in fashioning any additional reporting requirements that are much more complex than the submission of alpha-numeric identifiers.

F. The Commission's Reporting Program Should Provide for LEI Compliance Exceptions, and for Additional Confidentiality Protections as Appropriate and Necessary to Protect Commercially Sensitive Information.

Joint Associations request that FERC articulate specific rules surrounding the usage and protection of information that may be commercially sensitive and reportable in a Connected Entity context, such as information that is protectable in fuel supply contracts. The assertion in the NOPR that some of this information "may" be treated as confidential and protected from public disclosure is not sufficient if new information that is commercially sensitive may be accessed by ISOs/RTOs, market monitoring units, and potentially any other entity that makes a request for information that is not protected by the Commission, the courts, or by certain exemptions under the Freedom of Information Act ("FOIA").

Joint Associations seek more clarity especially on how Connected Entity information would be treated if transmitted to an ISO/RTO prior to being transmitted to FERC. As the result of being reported to the ISOs/RTOs, certain components of the requested Connected Entity information may lose protections they would otherwise have if reported directly to FERC.

Joint Associations specifically request that FERC clarify in a revised NOPR the purposes for which Connected Entities information can be used and who can have access to it. Importantly, FERC should articulate that this information will not be used to support out-of-market actions by ISO/RTO operational staff. Joint Associations raise this particular concern given comments made by the PJM market monitor (Monitoring Analytics, Dr. Joseph Bowring) at the Technical Conference, wherein it was indicated that Monitoring Analytics would like to use the data submitted under the Connected Entity filing as an input to the three pivotal supplier test that is used to determine market power in the PJM markets. However, those comments did not include any explanation as to which elements of the proposed definition may be used as inputs to this test. Further, no staff or panel discussion on the merits of this suggestion followed either during the Technical Conference or in follow-up written clarifications from FERC staff.

Therefore, Joint Associations believe the Commission should provide for a detailed discussion of this issue in a revised NOPR, and argue that without such discussion, the public would be denied a meaningful opportunity to comment on the appropriateness of using certain Connected Entity data for this purpose. Additionally, Joint Associations preliminarily believe that the NOPR does not contemplate the usage of this information toward operational decision-making or to support out-of-market actions by an ISO/RTO, nor does it specify that the information may be directly shared through ISO/RTO reports with any external or internal market monitoring unit for the purpose of market power tests, including but not limited to the three pivotal supplier test in PJM. Joint Associations would appreciate clarity in a revised NOPR so that the

scope and elements of a data collection that *could* be used for this purpose are clearly addressed and explained by the Commission.

The Commission should also address a question submitted by EPSA in preparation for its participation at the Technical Conference, on whether a Market Participant's provision of previously unreported, sensitive information about its organizational structure, trader names, key officers, or other such details in a Connected Entity filing might constitute a legally binding waiver of confidentiality as to that information, even though such information might otherwise merit confidential treatment in the course of a formal investigation. The Commission must opine with some certainty on the likelihood of inadvertent waiver and provide specific protection against it, as this concern can otherwise undermine the re-negotiation process between Market Participants and their potential Connected Entities, especially as to new corporate, affiliate or contractual assurances/amendments that must be in place prior to the Market Participant being able to collect, record and disclose commercial information of any Connected Entity to the Commission or to an ISO/RTO.

In a similar vein, though the NOPR indicates that FERC would protect commercially sensitive information as it would similar information provided under investigative procedures, it does not address the fact that contractual and employer-employee confidentiality provisions may need to be waived in the first instance to submit the requested information to a non-governmental authority (an ISO/RTO) prior to submission to FERC. Given that there will have to be *some* waiver of confidentiality to convey that information, the industry would need specific guidance and protection of that information in its transmittal to an ISO/RTO. However, as indicated previously,

Joint Associations do not believe the ISOs/RTOs are the appropriate vehicle for this information collection: Connected Entity information should be submitted through existing reporting vehicles directly to the Commission, rather than through ISO/RTO reporting. This change would alleviate waiver concerns expressed by Joint Associations' members, and help address a plethora of other costs and challenges discussed elsewhere in these comments.

Additionally, Joint Associations believe a revised NOPR should specifically ask for more information on what types of information could be included in certain filings, without risk of breaching confidentiality between parties, and without inadvertently requiring a detailed level of specificity that reveals commercially sensitive information. As was noted at the Technical Conference, the benefits of new reporting requirements should be weighed against the palatable risk that making more granular information widely available about FERC Market Participants also provides more opportunity for potential misappropriation by third parties which stand to benefit from this information.

Depending on the complexity and scope of the final rule, the Commission should adopt various measures that would phase in reporting implementation timelines for different classes of market participants and for the ISOs/RTOs. The Commission should also create mechanisms for ensuring that market participants can comply in good faith during the implementation phase under an appropriate safe harbor that recognizes inadvertent errors, technological reporting challenges and reporting field errors, and other errors made in good faith if and when they arise and come to staff's attention. Some of the mechanisms and criteria that Joint Associations recommend the Commission include in any final rule creating a Connected Entity program are:

i. Phased implementation timelines for certain classes of Market Participants based on their size, complexity and extent of their participation in one or more ISOs/RTOs.

ii. Specific availability of "no-action" letters or other temporary relief from the Connected Entity reporting rules that would be definitively available to a Market Participant should it need more time to ascertain the scope of compliance obligations, make necessary changes to IT infrastructure and data collection processes, and/or conduct due diligence to obtain data requested under the NOPR that has not already been recorded with respect to any Connected Entity.

iii. Safe harbors for errors made in good faith in Market Participants' Connected Entity reports, both as to LEI reporting and reporting of other information required to explain the relationship between the Market Participant and a reportable Connected Entity.

iv. Safe harbors protecting Market Participants from non-compliance or good faith errors beyond their control, such as a Connected Entity incorrectly reporting information beyond the direct knowledge or control of the Market Participant, or glitches in the LEI registration or annual renewal process that delays compliance or leads to inaccuracies in LEI issuance.

Joint Associations believe these are necessary safeguards – procedural and substantive – to ensure a fair, efficient, and transparent implementation phase for any version of the Commission's proposed Connected Entity reporting requirements. Given companies' recent experiences implementing similar reporting rules pursuant to the regulatory mandates imposed by the CFTC, these are critical implementation and compliance vehicles that must be available from the outset to Market Participants to ensure timely compliance, minimal burdens, and minimal inconsistencies and delays in effectuating the reporting program.

Joint Associations hope that the Commission will issue a revised NOPR that addresses our concerns regarding the scope of the Connected Entity definition as well as our other concerns regarding the costs and benefits of collecting this information through the ISOs/RTOs rather than modifying existing reporting programs. With a more

precise sense of what the Commission believes its new information collection will actually look like, how often the Commission anticipates that market participants would update their information, and other key metrics that would affect the scope and costs of preparing these filings, Joint Associations' members will be in a much more informed position to develop specific cost-based burden estimates that speak to the NOPR's request for more information. Joint Associations urge the Commission to issue a revised NOPR that adopts the recommendations above, which will be material to establishing more precise and reasonable burden estimates for implementing the proposed data collection.

IV. CONCLUSION

WHEREFORE, Joint Associations respectfully request that in lieu of developing a wholly new Connected Entities filing requirement, the Commission should revise the NOPR to conform to the following parameters:

i. Utilize a more efficient and less burdensome approach to gathering information to support its enforcement and oversight programs and generally draw on the successful elements of preexisting reporting requirements within the EQR and MBR programs.

ii. Eliminate reliance on the ISOs/RTOs as reporting intermediaries between market participants and the Commission.

iii. Substantially narrow the scope of relationships that would be deemed reportable "Connected Entities" of a Market Participant, and specifically exclude all passive ownership, minority voting stock positions, or debt interests from the scope of entity relationships defined as "Connected Entities."

iv. Eliminate the 10% ownership-based threshold *de minimis* rule and predicate reporting instead on a majority ownership interest indicative of actual control*, i.e.* an over fifty percent interest, and include a "daisy chain" limitation which states that reporting of other entities based on indirect control through an intermediary is only required where there is a majority ownership interest of over fifty percent as between the Market Participant

and the intermediary and as between the intermediary and the other entity or entities.

v. Provide definitional clarity around who is a "market participant," and a reportable "trader," "officer," or "employee" functioning in the role of a trader or officer per recommendations above, and exclude all contracts or structured transactions in which the Market Participant does not have control over the disposition of underlying assets or positions of its contractual counterparty.

vi. Narrowly tailor LEI reporting such that only Market Participants' LEIs are required to be reported, not those of Connected Entities or natural persons, such as traders.

vii. Include an updated burdens analysis reflecting all comments made at the Technical Conference and filed in the proceeding.

viii. Include mechanisms and procedures promoting good faith compliance and safe harbors for inadvertent errors outside a reporting party's control.

ix. Add confidentiality protections which would work specifically against the misuse of Connected Entity filing information by ISO/RTO operational staff or by third parties, and relieve Market Participants from filing where conflicts exist with foreign law or regulatory confidentiality rules, (beyond the generic protections articulated for FOIA Exemption 4 and 7 in the NOPR).

Respectfully submitted,

On Behalf of the Electric Power Supply Association

/s/

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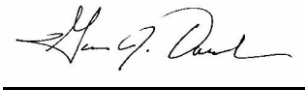

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Dated: January 27, 2016

CERTIFICATE OF SERVICE

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

Dated at Washington, DC this 27th day of January, 2016.

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