

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Control and Purposes of the
Commission's Market-based Rate
Requirements under Section 205 of
the Federal Power Act and the
Requirements of Section 203 of the
Federal Power Act

Docket No. PL09-3-000

**POST-WORKSHOP COMMENTS OF THE
TRANSMISSION ACCESS POLICY STUDY GROUP**

Pursuant to the December 9, 2008 Notice Inviting Post-Workshop Comments, Transmission Access Policy Study Group ("TAPS") hereby submits its Post-Workshop Comments, as a supplement to its September 30, 2008 Motion to Intervene and Protest of the September 2, 2008 Electric Power Supply Association ("EPSA") Petition for Guidance Regarding "Control" and "Affiliation" ("Petition") in Docket No. EL08-78-000.¹

EPSA's Petition asks the Commission to rely on a single factor – the filing with the Securities and Exchange Commission ("SEC") of Schedule 13G – to establish lack of control or affiliation by investors owning less than 20% of the voting securities of publicly held companies for purposes of merger review and submission of information to demonstrate qualification for and disclose changes in status pertinent to market-based rate ("MBR") authority. In addition, it asks the Commission to "state that investments by entities upstream of a publicly-held company in entities not otherwise related to the publicly-held company will not be deemed to be within the knowledge and control of the publicly-held company's subsidiaries with MBR authorization, and, therefore, those

¹ The EPSA Petition was redocketed in the instant docket.

MBR subsidiaries will not be required to file a notification of change in status or to include generation or inputs to generation owned or controlled by other entities in future market power analyses.” Petition at 2-3.

For the reasons stated in the Comments of the American Public Power Association and the National Rural Electric Cooperative Association filed today (which TAPS supports), as well as in TAPS’ September 30 Protest, the EPSA Petition should be denied. Given the current turmoil in our nation’s financial markets, this is not the time to make it harder for the Commission and the public to understand and assess potential impacts of transactions on electricity markets in both the merger and market-based rate contexts. Nor would such action be consistent with the Commission’s statutory mandate. EPSA’s generalized assertion that its proposed exemptions are needed to encourage investment hardly supports shielding from public view information on relevant inter-relationships, which may create the incentive and opportunity to influence electricity markets. Indeed, recent hedge fund filings belie any such contention. Any burden claimed by EPSA pales compared to the burden placed on the Commission and intervenors to identify and expose these relationships if EPSA were to prevail.

Thus, the Commission should reject EPSA’s collateral attack on recent rulemakings and adhere to its case-by-case approach to requiring disclosure of and evaluating all factors bearing on “control,” consistent with precedent and its obligations under the Act. And the Commission should uphold its recently promulgated affiliate definition, rejecting EPSA’s proposed presumption against knowledge of affiliate relationships and holdings of generation, transmission and inputs to generation. In short, the Commission should resist EPSA’s request to decrease transparency and impede the

Commission's ability to ensure that jurisdictional sales and markets operate without distortion resulting from the exercise of market power.

However, to address one of EPSA's concerns – the claimed burden on sellers with market-based rates to disclose “upstream” affiliations with other sellers that the market-based rate seller does not know – TAPS would not object to the narrow solution offered in the APPA/NRECA Comments: Clarification that the Commission only requires market-based sellers to analyze and report on affiliates that are known or should be known with reasonable diligence. Such clarification would reasonably mitigate EPSA's concern, while recognizing that a seller availing itself of the privilege of market-based rates is in a better position than the Commission and intervenors to identify and expose affiliate relationships, so that their implications for the seller's qualifications to maintain market-based rate authority can be evaluated.

CONCLUSION

For the reasons set forth above, in TAPS' Protest and in the APPA/NRECA Comments, EPSA's Petition should be denied. However, TAPS would not object to clarification that the Commission only requires market-based sellers to analyze and report on affiliates that are known or should be known with reasonable diligence.

Respectfully submitted,

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