

(“MMUs”). While PJM and SPP acknowledge that some issues raised in the Rehearing Requests merit attention, an approach of simply laying those issues at the Commission’s doorstep ignores and avoids the role that jurisdictional entities and their service providers, including OATI, must play in developing solutions to meet the Final Rule’s compliance obligations. Therefore, PJM and SPP urge an alternative approach whereby the Commission directs the filing of any required compliance plans by a date certain to address certain of the implementation issues raised in the OATI Request and certain of the other Rehearing Requests. Such an approach, widely employed by the Commission in other contexts, will allow the industry to craft solutions that expedite both Commission and ISO/RTO access to complete e-Tag information, and will avoid tasking the Commission with devising those solutions.⁴ The Commission might consider a technical conference or other means of collaborative discourse; but, in the first instance, the Commission should use its compliance authority to direct industry participants to take the necessary lead in implementing the Final Rule. Also, for the reasons stated below, the Commission should resist any attempts by certain entities to complicate or restrict the Final Rule’s straightforward requirement to share complete e-Tag information with ISO/RTOs and MMUs.⁵

I. Motion for Leave to Answer

To the extent the Commission’s Rules of Practice and Procedure do not expressly authorize this Answer, PJM and SPP respectfully request leave to submit this Answer to aid the

⁴ Such filings will still need Commission approval. However those filings (and related approvals) should be limited to RTO/ISO tariff changes or to Order No. 771 clarifications that may be needed to ensure timely implementation of Order No. 771’s provisions.

⁵ As noted herein, PJM intends, in short order, to supplement the record with a specific proposal to address compliance with the portions of Order No. 771 concerning ISO/RTO and MMU access to complete e-Tag information. PJM’s proposal will also address the privacy and confidentiality issues raised in the OATI Request.

Commission in its decision-making process. The Commission has frequently accepted answers, like this one, that clarify the record or contribute to an understanding of the issues.⁶

II. Answer

A. Validation Requirement

(1) *PJM and SPP Support, on the Merits, EEI/NRECA's and Southern's Concerns regarding the Validation Requirement. The Commission Should Use Its Compliance Directive Authority to Provide the Industry with the Opportunity to Craft Suitable Solutions to Address Validation of E-Tags.*

EEI/NRECA and Southern object to the Final Rule's provisions that will require sink balancing authorities ("BAs") and authority services to validate that e-Tag Authors have included the Commission as an addressee on all e-Tags.⁷ EEI/NRECA and Southern opine that power deliveries might be disrupted if e-Tags are rejected for not meeting the validation requirement, which could interfere with market operations and create reliability concerns. They recommend that the Commission remove the validation requirement, and simply require that sink BAs and their service providers forward e-Tags to a Commission-provided e-mail address. Alternatively, they argue that any validation requirement should be implemented through a change to the North American Energy Standards Board ("NAESB") e-Tag protocols, which would automate the process and help to avoid or minimize negative consequences.

⁶ See, e.g., *New York Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,188, 62,138 (2004) (accepting the answer because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, 61,036 (2000) (accepting the answer as "helpful in the development of the record"); *New York Indep. Sys. Operator, Inc.*, 91 FERC ¶ 61,218, 61,797 (2000) (accepting the answer as "useful in addressing the issues arising in these proceedings").

⁷ EEI/NRECA Request at 2, 4, 6-8, and 11-12. Southern Request at 5-6.

PJM and SPP agree that it is not practical to task individual sink BAs with this validation responsibility. For example, PJM is a sink BA handling approximately 60,000 e-Tags per year. It would be impractical to expect a sink BA to validate each of thousands of e-Tags, and then face potential compliance penalties if an e-Tag is processed without validation.

PJM and SPP believe that the Commission's goal of collecting copies of all e-Tags can be accomplished without creating a new and unworkable compliance obligation that could delay transactions and increase BA costs. On the other hand, EEI/NRECA's proposal to defer to the NAESB process provides no guarantee of a timely solution and could frustrate the Commission's need for timely receipt of e-Tag information as described in Order No. 771.

Rather than dictating a particular solution, PJM and SPP suggest that the Commission state its objectives and then, through a compliance obligation, task industry participants with developing a workable means of achieving those objectives by a date certain. PJM and SPP believe that compliance filings should be required within 30 days of the Commission's action on this portion of the EEI/NRECA and Southern Requests. Such compliance filings can describe potential solutions, including those crafted with outside service providers, and set forth the expected date for implementation of those solutions along with back-up support for the proposed implementation date for the validation the Commission seeks.

(2) *PJM and SPP Urge the Commission to Sever the Validation Issue from the Issue of Ensuring Timely ISO/RTO and MMU Access to Complete E-Tag Information.*

The validation requirement is clearly severable from the second prong of the Final Rule, which requires that ISO/RTOs and MMUs have access to complete e-Tag information, upon request. Such access is critical to the ISO/RTO's role of operating markets and ensuring

reliability, and to the MMU's role of monitoring the markets. The referenced NAESB process likely would be protracted with no clear outcome and an end date potentially far beyond the effective date of the Rule. As a result, should the Commission wish to defer any of these issues to the NAESB process, PJM and SPP urge the Commission to sever the validation issue from the issue of ensuring timely access by ISO/RTOs and MMUs to complete e-Tag information. As BAs, ISO/RTOs already are named on e-Tags, the issue of validation only relates to *Commission* access to e-Tag information. Instead, as indicated in prior comments in this proceeding, ISO/RTOs and MMUs primarily seek e-Tag access to be able to "trace" transactions back to their source. This will not, in most cases, involve ISO/RTOs and MMUs needing real-time access to "upstream" e-Tags. As a result, real time validation is not as critical in the RTO/ISO context since the RTO/ISO goal is to obtain access to these upstream tags in order to complete special analyses and studies of issues such as loop flows affecting the ISO/RTO system or, in the case of MMUs, potential instances of market manipulation. In short, ISO/RTO and MMU access is not dependent on any potential revisions to NAESB's e-Tag protocols nor should it be so tied. PJM and SPP ask the Commission to clarify that ISO/RTOs and MMUs will have access to complete e-Tag information as of the effective date of the Final Rule, and that such access is not dependent on any potential revisions to NAESB's e-Tag protocols.

B. Scope of Access to e-Tag Information

EEI/NRECA ask the Commission to clarify that the Final Rule does not apply to e-Tags that are used within a BA "by companies and cooperatives to manage their internal systems within their service territories."⁸ Southern asks the Commission to clarify that the Final Rule's requirement to provide e-Tag information to ISO/RTOs and MMUs, upon request, is limited to

⁸ EEI/NRECA Request at 5 and 8.

interchange transactions that flow into, out of, or across the ISO/RTO footprint.⁹ Southern further seeks clarification that the Final Rule does not give ISO/RTOs and MMUs access to all e-Tag information, but only to e-Tag information useful for assessing loop flows, potential market manipulation, and other issues within their markets.¹⁰

PJM and SPP urge the Commission to reject EEI/NRECA's and Southern's proposed limitations on ISO/RTO and MMU access to e-Tag information. The Final Rule broadly requires e-Tag Authors and BAs to provide, upon request, access to the complete e-Tags "used to schedule the transmission of electric power in wholesale markets, to [RTOs], [ISOs], and their [MMUs], on an ongoing basis, subject to appropriate confidentiality restrictions."¹¹ Broad access to e-Tag information upon request, wherever situated, will help RTOs and MMUs better address and manage loop flows, potential market manipulation, and various market design issues. ISO/RTOs already receive e-Tag information for transactions that source, sink, or wheel through their regions. What ISO/RTOs seek in this docket, and what the Commission has granted, is the ability to access "upstream" e-Tag information needed to "trace" transactions that may be impacting ISO/RTO markets or system reliability. If the Final Rule were limited in the manner proposed by EEI/NRECA and Southern, the Rule effectively would be gutted. The Commission should not countenance an attempt, through rehearing, to destroy the very rule that the Commission just issued.

By limiting an ISO/RTO's view to transactions into, out of, or through the ISO/RTO, as Southern requests, the Commission would be perpetuating a system where no entity sees the "big picture" or can view all of the information necessary to adequately analyze the impact of

⁹ Southern Request at 2.

¹⁰ *Id.* at 10.

¹¹ *Id.*

transactions on individual systems. In short, Southern's proposal represents a step backward rather than a step forward in providing ISO/RTOs and MMUs with the transparency that is critical to assessing impacts on ISO/RTO systems.

C. Confidentiality Restrictions

OATI asks the Commission to clarify what qualifies as "appropriate confidentiality restrictions" with respect to the sharing of e-Tag information with ISO/RTOs, as required by the Final Rule.¹² In response, PJM and SPP note that OATI and similar companies provide agent services and authority services to e-Tag Authors and BAs, respectively. For example, OATI's existing agreement with PJM (which is largely a "form" agreement from OATI) contains confidentiality provisions that also require compliance with applicable FERC rules and orders. Moreover, the Commission has approved confidentiality provisions in ISO/RTO tariffs that also apply to the receipt of data by MMUs.

PJM and SPP believe that rather than opining in a vacuum on issues such as "privity" and "confidentiality," the Commission need only affirm that Order No. 771 creates a compliance obligation on e-Tag Authors to provide access to complete e-Tag data to RTOs/ISOs and their MMUs and that ISO/RTO tariffs represent the "appropriate confidentiality restrictions" that the Commission had in mind. In short, the Commission should clarify that the decision of what constitutes "appropriate confidentiality restrictions" is *not a decision that each e-Tag Author is empowered to make on its own*. Instead, while allowing for additional modifications that ISO/RTOs believe are appropriate, the Commission should affirm that it did not intend to require another set of confidentiality provisions or agreements beyond those found in ISO/RTO tariffs, nor shift the responsibility of determining what constitutes an "appropriate confidentiality

¹² OATI Request at 2.

restriction” to e-Tag Authors, OATI, or any other entity. PJM intends to work with OATI, the MMUs, and other interested parties to submit a specific proposal along these lines for Commission review in the near future.

D. Other OATI Issues

OATI asks the Commission to opine on an assortment of other implementation details, including privity of contract,¹³ necessary signatories,¹⁴ North American Electric Reliability Corporation (“NERC”) confidentiality agreements,¹⁵ and whether requests for e-Tag information should be directed to the e-Tag Author or the sink BA.¹⁶ OATI offers no suggested answers or solutions to its queries. Here too, the Commission should make clear its objectives, and its compliance expectations, and then leave to the affected ISO/RTOs and MMUs the coordination of those implementation details that do not directly involve the ISO/RTO tariff. Any necessary tariff provisions can be submitted to the Commission as part of an Order 771 compliance directive. Finally, OATI asks the Commission to clarify that the Final Rule “refers only to the [BA] serving as the Sink [BA] and providing tag authority services for the particular e-Tag transaction, and does not refer to other [BAs] that may be listed on the e-Tag.”¹⁷ Although the substance of OATI’s request is opaque, PJM’s and SPP’s expectation is that e-Tag data provided to the requesting RTO, upon its request, will contain complete information on the full path of the applicable transaction, from source to sink, and will not be limited to information from the sink BA only. To the extent that OATI harbors any confusion on the subject, PJM and SPP respectfully ask the Commission to clarify that their expectations are correct.

¹³ OATI Request at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 6.

E. Legal Authority

NRECA argues that the Commission lacks sufficient legal authority to require e-Tag Authors and BAs to provide complete e-Tag information to ISO/RTOs and MMUs.¹⁸ The Commission is in the best position to comment on its legal authority, and PJM and SPP leave responsive legal arguments to the Commission. However, PJM and SPP note that the sharing of e-Tag information between BAs, and with ISO/RTOs, is common practice, and ISO/RTOs already have access to e-Tag information to carry out their Order No. 2000 obligations. By simply expanding ISO/RTO access to that information, the Commission is not treading on new ground.

III. Conclusion

Wherefore, PJM and SPP respectfully request that the Commission accept this Answer, and consider the comments provided herein.

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¹⁸ NRECA Request at 20.

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February 19, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. to Requests for Rehearing or Clarification upon the individuals listed on the Commission's official service list in Docket No. RM11-12-000.

Date: February 19, 2013

Document Content(s)

FERC-E-TAG RESPONSE TO REHEARING-FINAL.PDF.....1-11