

II. INTERESTS OF SEIA

SEIA is the national trade association of the United States solar industry, encompassing all solar technologies, including photovoltaic (“PV”), concentrating solar power (“CSP”), solar heating and cooling, and other technologies. Through advocacy and education, SEIA and its 1,000 member companies work to make solar energy a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry, and educating the public on the benefits of solar energy.

The proposed changes to Commission rules regarding the sale of ancillary services at market-based rates, electric storage technology accounting rules, will likely have a major impact on SEIA’s members, many of whom are affected by the cost, price, and availability of ancillary services, in particular energy and generation imbalance services used to help integrate variable energy resources such as solar into the grid. SEIA and its members also will likely be impacted by Commission policies related to electric storage.

Therefore, SEIA and its members have a vital interest in ensuring that the above-captioned NOPR is just and reasonable and not unduly discriminatory. SEIA thus has a direct and substantial interest in the outcome of this proceeding that cannot be adequately represented by any other party.

III. MOTION TO INTERVENE

Intervention is appropriate where the movant has or represents an interest that may be directly affected by the outcome of the proceeding. *See* 18 C.F.R. § 385.214(b)(2)(ii). SEIA requests that its motion to intervene be granted pursuant to Rule

214 because, as discussed above, the outcome of this proceeding will directly and materially affect its members.

IV. COMMENTS

A) Regulation and Frequency Response Service

The NOPR provides that a public utility's "Open Access Transmission Tariff ("OATT"), must include provisions explaining how it will determine its Regulation and Frequency Response reserve requirements. These provisions must take into account speed and accuracy of regulation resources . . ."² SEIA supports the Commission's effort to take into account the speed and accuracy of regulation services when establishing the rates that may be charged for such services, with faster and more accurate resources being priced accordingly.

B) Rebuttable Presumption of Lack of Market Power and Authority to Sell Generation and Energy Imbalance Ancillary Services at Market-Based Rates

FERC proposes "a rebuttable presumption that a Seller lacks horizontal market power with respect to sales of energy, capacity, energy imbalance service and generation imbalance service if it passes two indicative market power screens: a pivotal supplier analysis based on annual peak demand of the relevant market, and a market share analysis applied on a seasonal basis. There will be a rebuttable presumption that a seller possesses horizontal market power with respect to sales of energy, capacity, energy imbalance service, and generation imbalance service if it fails either screen."³ In other

² *Id.* at p. 78

³ *Id.* at p. 79.

words, it will be assumed that a Seller of imbalance services does not have market power in the imbalance market if it meets two market power screens for a particular power market.

It is in the interest of SEIA members that ancillary services such as energy and generation imbalance services are widely available in efficient, transparent, and liquid wholesale competitive markets. Ideally, the product of such a market would be abundant and reasonably priced energy and generation imbalance services that could, among other things, be utilized for the purpose of integrating central station variable generation such as solar and wind. Establishing the rebuttable presumption proposed by FERC would dramatically increase the number of entities authorized to sell key ancillary services at market rates.

SEIA supports this approach conceptually. The lack of robust markets for ancillary services in many geographic regions or control areas, particularly outside organized markets administered by RTOs and ISOs, is a strong indicator that the Commission needs to take dramatic action to spur market development for various imbalance service products. At the same time, as FERC is no doubt aware, it is entirely possible that a seller deemed not to have market power in an energy or capacity market has market power in certain ancillary service markets. As a consequence, it is essential that FERC take effective steps to police ancillary service markets created in large part due to the adoption of a rebuttable presumption of lack of market power as proposed in the NOPR.

C) Rebuttable Presumption that Sellers of Operating Reserve Spinning, Operating Reserve Supplemental, Reactive Supply or Regulation and Frequency Response Services Lack Market Power.

FERC states that “[t]here will be a rebuttable presumption that a Seller of Operating Reserve-Spinning, Operating Reserve-Supplemental, Reactive Supply and Voltage Control, or Regulation and Frequency Response services lacks horizontal market power with respect to sales of the ancillary services in question if the amount of capacity in MWs (or, as applicable, MVARs) that it can dedicate to providing the ancillary services in the relevant geographic market, taking into account any reported historical locational requirements, is no more than 20 percent of the relevant reported aggregate requirement for that ancillary service as reported pursuant to § 37.6(k) of the Commission’s Regulations.”⁴

SEIA also supports this approach conceptually because it likely will broaden the number of participants in the markets for these particular ancillary services. However, SEIA has some concern about the availability of sufficient information on ancillary service sales to accurately calculate market share. As is the case with the rebuttable presumption for energy and capacity imbalance services, it will be essential that FERC vigorously police the market.

D) Market Power Mitigation Through Use of Cost-Based Caps

The NOPR provides that if a Seller of ancillary services either has been found to have market power or is subject to such a presumption, it can sell such services under a cost-based cap.⁵ Such a cost-based rate cap may be established in three different ways:

⁴ *Id.*

⁵ *Id.* at p. 80.

1. “. . . based on the relevant OATT ancillary service rate of the purchasing public utility transmission operator . . . ”
2. “. . . based on the highest relevant public utility OATT ancillary service rate in the proposed trading area . . . ”
3. “. . . the results of a competitive solicitation that meets the Commission’s requirements . . .”⁶

SEIA does not have a specific position on the three cost-based rate cap alternatives proposed. However, as a general matter, SEIA agrees that cost-based rates are an effective and longstanding method of mitigating market power in wholesale electricity markets when market mechanisms are ineffective or infeasible.

E) Ancillary Service Information to be Posted on OASIS

The NOPR proposes that a Transmission Provider must post on OASIS the aggregate amount of ancillary services “that it has historically required in order to serve its long-term firm obligations, including any geographic limitations it may face in meeting such ancillary service requirements.”⁷ SEIA supports this requirement and suggests that the Commission broaden it to also include sales of ancillary services not necessary to serve long-term firm obligations. The Commission should also consider means of obtaining detailed information regarding the sale of ancillary services by non-jurisdictional entities such as the Tennessee Valley Authority, Bonneville, Western and Southwestern Power Administrations and large municipal and cooperative generators. In

⁶ *Id.*

⁷ *Id.* at p. 81.

a number of areas of the country a transparent picture of the ancillary services market can only be achieved by including data regarding such transactions by these entities.

F) Accounting and Financial Reporting for New Electric Storage Technologies

SEIA offers no comments at this time regarding accounting and financial reporting for new electric storage technologies. However, the development and deployment of cost-effective energy storage technologies is likely to be a critical component of a modernized clean electricity system, including one that relies on very high levels of variable resources such as solar and wind. However, in light of the unknowns regarding the nature of the role of storage in the future electric grid, SEIA believes it is premature to establish definitive reporting requirements for new storage technologies. The Commission's goal should be the establishment of a storage regulatory approach that results in the availability of abundant and cost-effective electricity storage used for a variety of purposes, including power/ancillary services production, transmission and storage. Such an outcome would provide a wide range of benefits to society, including improved electric system reliability, backup needed when large nuclear and coal power plants unexpectedly trip, and support for very high levels of market penetration for variable renewable resources such as wind and solar.

V. CONCLUSION

SEIA respectfully requests that the Commission address the NOPR consistent with the findings and recommendations herein.

Respectfully submitted this 7th day of September 2012,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has on or before the 7th day of August, 2012, served the forgoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Heather Whitpan