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FERC Proposes to Eliminate Burdens in Its Market-Based Rate Program

Proposed changes to the program intend to simplify administration, improve transparency, and eliminate unnecessary filing requirements.

The Federal Energy Regulatory Commission (FERC or the Commission) introduced a set of reforms on June 19 to its current market-based rate (MBR) program for wholesale sales of electric energy, capacity, and ancillary services. Much of the wholesale electricity delivered on the U.S. interstate power grid—especially in the Commission's organized market regions in the Northeast and California—is sold under MBR regulation, in which the terms and conditions of sale are typically FERC-regulated, but the selling parties are not themselves subject to traditional utility cost-of-service ratemaking or regulatory (non-GAAP) accounting.

The Commission's main goal in issuing its notice of proposed rulemaking (NOPR) is to streamline the application process and increase the transparency of information submitted to the Commission as part of the MBR program. If adopted, the changes could reduce some administrative burdens on industry participants while still preserving FERC's regulatory jurisdiction and capability to supervise the market conduct and eligibility of MBR sellers. Overall, the changes exempt some participants from certain filing requirements while imposing additional requirements on other participants with MBR authority.

Market Power Analyses

Obtaining MBR authority requires the MBR applicant to pass two sets of indicative statistical screens, among other FERC requirements. The statistical screens measure the MBR applicant's market power in geographic markets that the Commission deems relevant to that applicant.

The Commission's indicative screens are the pivotal supplier screen and the wholesale market share screen. By passing the indicative screens and complying with certain more ministerial FERC requirements, a seller establishes a rebuttable presumption that it does not possess horizontal market power and should be awarded MBR authority. Although the Commission will continue to require sellers to submit these screens, it proposed to eliminate them in two situations: (1) for sellers in an organized, regional market, such as an Independent System Operator (ISO) or a Regional Transmission Organization (RTO) that already relies on FERC-approved market power mitigation measures, and (2) for sellers with fully committed generation capacity.

Under the Commission's current policy, sellers that fail the indicative screens but are located within an ISO or RTO may still obtain MBR authority by relying on FERC-approved RTO monitoring and mitigation. For these sellers, the Commission explained, submitting indicative screens provides little practical benefit because the Commission has concluded that monitoring and mitigation efforts in organized markets result in transparent prices. As a more practical alternative to filing the indicative screens, which can sometimes be intricate, costly, and time-consuming to prepare, the Commission proposes to allow sellers to simply state that they are already subject to RTO monitoring and mitigation. The Commission noted that this proposal would also apply to RTO sellers updating their MBR eligibility filings pursuant to FERC's post-MBR issuance requirements, even if the RTO seller may have market power.

Similarly, the Commission concluded that requiring sellers with fully committed capacity to perform indicative screens has no practical benefit. The indicative screens take into account a seller's uncommitted generation capacity, or the uncontracted difference between total capacity and fully committed long-term capacity. Thus, the Commission explained, if a seller and its affiliates' capacity in the relevant balancing authority areas or markets are fully committed, performing the indicative screens yields nothing more than a "purely mathematical task" that provides "no significant additional information." As with RTO sellers, the Commission proposed to allow these sellers to explain that their capacity is fully committed in lieu of including indicative screens in their ongoing, noninitial MBR filings. Although the Commission has permitted and tacitly accepted this practice for a number of years, the NOPR makes official a practice that MBR entities frequently rely on.

The NOPR also proposes to relieve MBR sellers of the obligation to file quarterly land acquisition reports to mitigate vertical market power. These reports are currently required when sellers acquire interconnection-eligible or similar sites for new-generation capacity development. The Commission's original concern was that these acquisitions may enable a seller to erect barriers to market entry. But, in more than six years since the requirement was imposed by Order No. 697, not a single protest has been filed in response to these submissions, and not a single MBR application has been rejected for land acquisition reasons. The Commission proposed to eliminate this requirement altogether, concluding that "the burden of such reporting outweighs the benefits."

Other Reporting Requirements

Additionally, the NOPR proposed several amendments to existing reporting requirements in the MBR program.

For independent power producers (IPPs), such as wholesale generators, the Commission proposed to revise the geographic market used by some IPPs in their indicative screens. For operational or technical reasons, some IPPs are deemed to be physically located in their own standalone geographic regions. The proposal would amend the default geographic market for IPPs with generation capacity in generation-only balancing authority areas to also include the balancing authority area(s) of each transmission provider to which the generation-only balancing authority area is directly interconnected—thereby making official a practice that FERC has informally permitted in a number of pre-NOPR circumstances. Under this proposal, IPPs may be required to provide indicative screens for multiple balancing authority areas. The rationale behind the Commission's proposal is that an IPP's uncommitted capacity could potentially be sold in each market to which it is directly interconnected. However, for a single-interconnection IPP seeking MBR authority, this NOPR provision may come as a welcome relief from previous uncertainty.

An entity's eligibility for MBR authority is based on the MBR entity's—and all of its FERC-defined "affiliates'"—market presence and statistical market power. The NOPR proposes that sellers report long-term firm purchases of capacity and/or energy in their indicative screens and appendices of affiliated assets. The Commission explained that the limited reporting of long-term firm purchases may create errors or misleading results in the indicative screens submitted by some sellers. Most notably, the Commission pointed to recent examples when neither the seller nor the purchaser under a long-term firm power sale was linked to the generation capacity used to make that sale. The proposed rule would also require the long-term firm purchaser to convert the amount of energy to which it is entitled into an amount of capacity for purposes of its indicative screens. Although mostly ministerial, this change would factor long-term firm purchases into the Commission's reporting threshold (typically requiring status-change filings that involve further capacity affiliations of 100 MW or more), which could trigger the seller's obligation to submit further MBR filings.

Comments on the NOPR are due 60 days after publication in the *Federal Register* and should be filed in FERC Docket No. RM14-14.

Contacts

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