New FERC Data Collection Requirements for Market-Based Rate Sellers

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes, Order No. 860, 168 FERC ¶ 61,039 (2019).

On July 18, 2019, the Federal Energy Regulatory Commission (“Commission”) issued a final rule which will have impacts on new market-based rate applications, as well as companies which currently have such authorization. Under this rule, companies which currently hold market-based rates, as well as new applicants, will need to submit data into a relational database regarding their affiliates, and will need to keep such data updated. This will add a new compliance obligation to companies, and will require closer monitoring of active and passive investors in a project.

Following up on the 2016 series of Notices of Proposed Rulemaking,[1] the Commission issued a final rule, adopting its proposal to collect market-based rate information in a relational database, but declining to require entities, including those holding market-based rates (“Sellers”) and those who transact in virtual energy and FTRs, to submit Connected Entity data.[2] The data received from Sellers will be used to construct a relational database, linking Sellers with their upstream affiliates. This will allow for the creation of a complete asset appendix based on the information in the relational database. The Final Rule defines an “ultimate upstream affiliate” as “the furthest upstream affiliate(s) in the ownership chain – i.e., each of the upstream affiliate(s) of a Seller, who itself does not have 10 percent
or more of its outstanding securities owned, held or controlled, with power to vote, by any person (including an individual or company).”

Under this rule, Sellers will be required to submit information regarding upstream affiliates, generation assets, long-term firm sales and purchases, vertical assets and other information currently provided in the Asset Appendices of a market-based rate application in XML format, along with their indicative screens in the same format. Entities will use their existing Company Identification (“CID”) issued by FERC to file. Sellers will identify passive owners and make a statement regarding the passive nature of their ownership interests, but will not need to include them in the relational database information. Further, notices of change in status will now be filed on a quarterly basis, rather than within 30 days of the triggering event. Database updates will now need to be filed on a monthly basis.

At the same time, the Final Rule reduces certain existing filing requirements, including reducing the amount of ownership information provided, eliminating the need for corporate org charts, and eliminating the requirement to show passivity when Seller has made an affirmative statement regarding the passive nature of certain ownership interests.

Commissioner Glick dissented in part, arguing that the Connected Entity Data regarding Virtual/FTR Participants is critical in combatting market manipulation and should have been included in this Final Rule. He referenced both the Vitol and GreenHat matters as examples of recidivism which the Commission should have been able to track. Commission McNamee did not participate in this item.

The rule will become effective October 1, 2020, meaning that existing entities with market-based rates must file their initial database submissions by that date. New applicants seeking market-based rates after February 21, 2021 will need to include the relational database information in their filings.


[2] The filings regarding the original Connected Entity NOPR have been transferred to a new docket. AD19-17, so that the Commission could consider it further in the future, if desired.

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requirements-market-based-rate-sellers