

---

## FERC Extends Comment Period on Proposal to Expand Reporting Requirements for Power Market Participants

11/11/2015

On September 17, 2015, the Federal Energy Regulatory Commission (FERC) proposed a [rule](#) requiring wholesale electricity buyers and sellers (participants in markets run by Regional Transmission Organizations (RTOs) or Independent System Operators (ISOs)) to file information on each of their “Connected Entities”—even if those connected entities do not participate in the ISO/RTO markets. This is a potentially significant step in FERC’s efforts to expand its investigative and enforcement capabilities.

The following points should be of particular interest to market participants:

- FERC asserts that it needs information on Connected Entities to further its efforts to deter and detect market manipulation.
- In its notice on the proposed rule, FERC specifically solicits comments on whether the rule should be expanded to require the submission of Connected Entity information from non-RTO/ISO market participants.
- FERC claims that it has the legal authority to collect the requested information—a claim that may be questionable.
- The term “Connected Entities” is broader than “affiliates” and includes entities with certain ownership, employment, debt or contractual relationships with market participants.
- FERC states that “for purposes of ferreting out potential market manipulation, it is important to explore relationships that extend beyond corporate affiliation.” Therefore, FERC has proposed to define “Connected Entities” based on:
  - direct or indirect ownership interests
  - key employees, including traders
  - debt interests or structured transactions providing the right to share in the market participant’s profitability; and
  - agreements relating to management, operational or financial control of resources in FERC-jurisdictional markets.
- On a related point, FERC notes that its recently enhanced monitoring and surveillance capabilities have detected trading “anomalies” that were tied to various forms of market

manipulation, including:

- limited risk or riskless combinations of trades to enhance the value of a position or portfolio, such as wash trades
- repetitive, uneconomic physical trading or flows to benefit a position
- trading to affect the formation of an index price
- withholding physical generation to benefit a financial and/or physical position; and
- using virtual bids to benefit a financial and/or physical position.

On November 10, 2015, FERC agreed to extend the deadline to comment on the proposed rule to January 22, 2016, and to hold a technical conference to help clarify the proposal. FERC has scheduled the technical conference for December 8, 2015.

### Implications

1. As FERC acknowledges, the proposed rule would impose substantial new reporting requirements on market participants, as well as RTOs and ISOs that would be responsible for directly collecting and then sharing the reported information with FERC. But FERC claims that the uniformity of the term “Connected Entity” across all of the RTOs and ISOs may help ease compliance burdens on market participants that are active in more than one RTO or ISO. Similarly, FERC suggests that the regulated community may be subject to fewer inquiries in response to false positive surveillance screen trips that may result from an incomplete picture of market participants’ business relationships. FERC has stated that the technical conference will be useful in understanding industry concerns and the extent of the burdens that would be imposed upon market participants.
2. While FERC admits that significant Connected Entity information already is publicly available (e.g., from Dun & Bradstreet and other vendors), FERC nevertheless wants to be able to more easily “ascertain which individuals or companies may benefit from a given transaction or, indeed, who may be jointly participating in a common course of conduct.” Simply put, FERC wants a clearer window into the business of market participants. While the proposed rule may require market participants to submit commercially sensitive information, FERC offers no assurance that this information would be protected from disclosure.
3. The proposed rule has the potential to directly affect entities that previously have not been directly regulated by FERC, including private equity providers, fuel suppliers, financial institutions, infrastructure financiers, and infrastructure developers and operators. Given the potential magnitude of the proposed rule’s impacts, including the fact that FERC is considering expanding the scope of the rule to **non-market entities** (beyond those directly or indirectly involved in jurisdictional energy markets), concerned parties should carefully evaluate the rule and consider participating in the technical conference and filing comments.

WilmerHale’s Energy, Environmental and Natural Resources Group would be happy to discuss more particularized implications for your company.

---

## *Authors*



**H. David Gold**

SPECIAL COUNSEL

✉ [david.gold@wilmerhale.com](mailto:david.gold@wilmerhale.com)

☎ +1 617 526 6425