

FERC Seeks Comments on Whether to Require Electric Quarterly Reporting by Public Power Utilities

On January 21, the Federal Energy Regulatory Commission (FERC) issued a Notice of Inquiry (NOI) seeking comments on whether it should require municipal utilities, publicly-owned electric utilities, consumer-owned electric cooperatives, and Federal electric utilities (collectively, Public Power Utilities) to file reports of their wholesale power sales and contracts under FERC's Electric Quarterly Report (EQR) program. Public Power Utilities are currently excluded from FERC's rate jurisdiction under section 205 of the Federal Power Act (FPA). Comments are due 60 days after the NOI is published in the federal register.

BACKGROUND

The Energy Policy Act of 2005 added a new section 220 to the FPA, which authorizes FERC to obtain information about the availability and prices of wholesale electric energy and transmission service from "any market participant" in order to facilitate price transparency in wholesale electric markets. FERC interprets section 220 to apply to Public Power Utilities. Section 220 does not apply to transactions within the Electric Reliability Council of Texas (ERCOT).

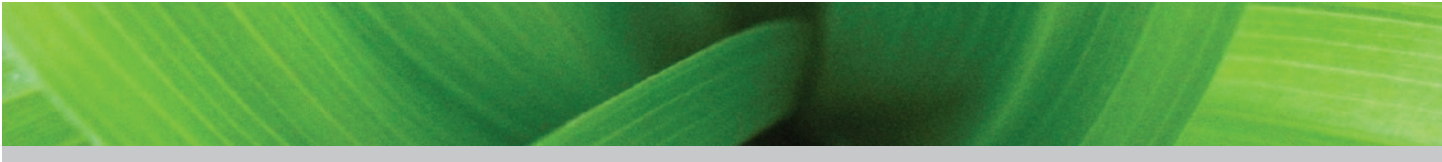
In prior rulemakings, FERC interpreted parallel natural gas market transparency provisions of the Natural Gas Act (NGA) to require certain reporting from entities not otherwise subject to traditional NGA regulation.

REQUEST FOR COMMENTS

The NOI asks whether FERC should require Public Power Utilities to file EQRs and provide detailed transactional and contractual information about their wholesale power sales, in the same manner as jurisdictional utilities under the FPA. The rationale for extending the EQR filing requirements to market participants excluded from FERC's section 205 jurisdiction is to provide FERC with more complete information regarding price formation, volume, and market concentration in electric markets, as well as to increase price transparency for all market participants in the electric sector.

The NOI seeks comments on the following questions, among others:

- Should FERC extend EQR filing requirements to market participants that are excluded from section 205 jurisdiction?
- Should FERC exempt market participants with a de minimis market presence from the EQR filing requirements? If so, how should the de minimis threshold be determined?
- What impact, if any, would extending the EQR requirements have on market liquidity?
- What specific information should FERC require to be filed?



- What is the burden of complying with EQR requirements for non-jurisdictional market participants?

The NOI also seeks comment on whether FERC should expand or change the information currently collected through the EQRs by requiring the reporting of trade date and type of rate for each transaction, and reporting of the resale of financial rights in secondary markets.

FOR ADDITIONAL INFORMATION

Van Ness Feldman has experience in all aspects of federal energy regulatory compliance, including advising public utilities on their compliance with EQR filing requirements. The firm represents several publicly-owned electric utilities on regulatory and compliance matters before FERC. For more information, please contact Andrew Art, Vincenzo Franco, David Yaffe or any member of the firm's Electric practice at (202) 298-1800.

© 2010 Van Ness Feldman, P.C.
All Rights Reserved. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.