



FERC Adopts New Data Collection Requirements for Market-Based Rate Sellers, Streamlines Market Power Analysis for Certain Organized Markets

JULY 23, 2019

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On July 18, 2019, the Federal Energy Regulatory Commission (FERC) issued two final rules affecting entities that sell energy, capacity or ancillary services at market-based rates (MBR).

The first final rule, Order No. 860, adopts new data collection requirements to create a public relational database that will contain information about MBR sellers, their generation assets, and their ultimate upstream owners. FERC will use the relational database both to administer its MBR program and to assist its analytics and surveillance program within the Office of Enforcement. Order No. 860 will become effective October 1, 2020. MBR sellers must complete baseline submissions in the new database by February 1, 2021.

The second final rule, Order No. 861, eliminates the requirement that MBR sellers include indicative horizontal market power screens to obtain or retain MBR authority in certain organized markets. Order No. 861 will become effective 60 days from its publication in the Federal Register.

Order No. 860 – Data Collection Rule

In Order No. 860, FERC largely adopts the data collection requirements proposed in the July 21, 2016, Notice of Proposed Rulemaking (NOPR), but provides a longer implementation schedule. FERC declined to pursue the collection of additional information about certain “Connected Entities” (including entities that hold financial transmission rights or trade virtual products and individual traders), which was proposed in a 2015 NOPR. The data collection requirements adopted in Order No. 860 include the following:

- **Use of a Relational Database:** Each MBR seller will submit into a relational database information about, among other things, its “ultimate upstream affiliates,” generation assets, long-term firm sales and purchases, whether it is subject to mitigation or other limitations, and whether it is authorized to sell operating reserves. An MBR seller will no longer be required to report assets owned by other MBR affiliates, because they will submit their information independently in the database. However, each MBR affiliate will be required to report information about assets owned by affiliates without MBR authority.
- **Use of XML Schema:** Submissions in the relational database must be made using an XML schema. Once the information for an MBR seller is submitted, the database can automatically generate a complete asset appendix for that seller by consolidating the information associated with the same ultimate upstream affiliates. Order No. 860 also requires that indicative screens used in market power analyses be submitted in the relational database using an XML schema.
- **CIDs, LEIs, and FERC Generated IDs:** FERC did not adopt the proposal that all MBR sellers obtain and maintain a Legal Entity Identifier (LEI). Order No. 860 allows MBR sellers to use their existing FERC Company Identifier (CID). However, for reportable entities that do not have a CID (e.g., ultimate upstream affiliates or non-MBR affiliates that own intrastate gas assets), MBR sellers must use those affiliates’ LEIs or obtain a FERC generated ID, a new form of identification created under Order No. 860 for reportable entities that do not have a CID or an LEI.
- **New MBR Information Required:** MBR sellers will be required to report long-term firm sales. Similar to the current reporting requirement for purchases, MBR sellers will be required to identify the counterparty, type of sale (e.g., unit, system, or portfolio), relevant dates, amount sold, and the source market for each sale. In addition, MBR sellers will be required to report

their generation asset information consistent with their reporting in the Form EIA-860, including identifying the Plant Code, Generator ID, and Unit Code.

- Scope of Ownership Information included in MBR Filings: MBR sellers will no longer have to identify all intermediate upstream owners and must identify only their ultimate upstream owners, *i.e.*, the furthest upstream affiliates in the ownership chain who themselves do not have 10 percent or more of their securities owned or controlled by another entity or person. With respect to passive owners, FERC eliminated the requirement that MBR sellers demonstrate passivity by providing governance documentation. Instead, MBR sellers must identify such owners and affirm that the ownership interests consist solely of passive rights that are necessary to protect the owners' investments and do not confer control. No information about passive owners will be included in the relational database. FERC also clarified that ownership information may not be treated as privileged or confidential. Therefore, all information submitted to the relational database will be treated as public.
- Relational Database Updates and Notice of Change in Status: MBR sellers will be required to update the information in the relational database by the 15th day of the month following a change. Reportable changes will include events that currently may not require a FERC submission under the MBR program (*e.g.*, deactivation of generation facilities; changes to long-term firm sales or purchases that do not result in a net increase of 100 MW or more, or loss of affiliation with inputs to electric power production). Changes that affect multiple affiliates (*e.g.*, a new ultimate upstream owner) will require individual updates for each affiliate. Order No. 860 did not change the triggers that require the filing of a notice of change in status, but revised the timing of those filings. Rather than being due within 30 days of the change, notices of change in status will be filed 30 days after the end of the quarter when the change occurred, following the same filing schedule as the Electric Quarterly Reports (EQRs).
- Implementation and Timing of Order No. 860: Order No. 860 will become effective October 1, 2020. FERC expects that in the fall of 2020, MBR sellers will obtain FERC generated IDs for reportable affiliates that do not have a CID or LEI and Asset IDs for reportable generation assets that do not have any Form EIA-860 code. All MBR sellers must complete their baseline submissions in the relational database by February 1, 2021. MBR filings made between October 1, 2020 and January 31, 2021 must include both XML submissions into the relational database (which will be used to start populating the database) and indicative screens and asset appendices (which will be used to process the filing). As of February 1, 2021, FERC will no longer accept asset appendices and indicative screens submitted as Excel attachments.

Order No. 861 – Streamlined Horizontal Market Power Analysis

In Order No. 861, FERC eliminates the obligation to submit horizontal (generation) market power indicative screens in order to obtain or retain MBR authority to sell energy, capacity or ancillary services in organized markets that have FERC-approved monitoring and mitigation mechanisms. Such markets include those administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc., and Midcontinent Independent System Operator, Inc. With respect to the markets operated by California Independent System Operator Corporation (CAISO) and Southwest Power Pool, Inc. (SPP), FERC noted that those organized markets do not have capacity markets subject to FERC-approved monitoring and mitigation. Therefore, the submission of indicative screens is still required to obtain or retain MBR authority to sell capacity in CAISO and SPP. Order No. 861 does not change the obligation to submit indicative screens to obtain or retain MBR authority outside organized markets, including in the Western Energy Imbalance Market.

Implications

Order No. 860 introduces significant changes on what information MBR sellers must submit to FERC and how the information is provided. MBR sellers should take advantage of the current implementation schedule to fully understand the new requirements and how FERC is developing the new relational database. There are still many questions on the mechanics of the database submissions and FERC staff anticipates conducting regular outreach as the database is developed.

The creation of a single relational database to house information currently reported through different systems (*e.g.*, EIA, FERC asset appendix, EQRs) will render information about MBR sellers, their assets, and their owners more usable and accessible for FERC's administration of both MBR and analytics and surveillance programs. Order No. 860 confirms the importance of data accuracy that recent enforcement settlements have highlighted. While FERC declined to adopt a specific "safe harbor," MBR sellers should develop reasonable practices and procedures to demonstrate the exercise of due diligence when retrieving and reporting information in the relational database.

FOR MORE INFORMATION

If you are interested in additional information regarding the final rules discussed above, or would like to discuss the implications of the final rules, please contact [Vincenzo Franco](#), [Jessica Friedman](#), [Sharon White](#), [Haley Franco](#) or any member of the firm's [Electric](#) Practice at (202) 298-1800 in Washington, D.C. or in Seattle at (206) 623-9372.

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