

strongly support each element of the Commission's proposal and urge the Commission to implement them in a final rule.³ In some cases, Indicated Market Monitors provide some suggestions about how these proposals could be most effectively implemented.

I. COMMENTS

A. The Proposed Rule Correctly Requires Data from All Market Participants, Which Are Essential for the Regulation and Monitoring of Markets Regulated Through Competition.

The Commission explains (at P 1) its proposal to expand the scope of market participants required to submit EQRs:

This proposal would allow the Commission and the public to gain a more complete picture of wholesale power and transmission markets in interstate commerce by providing additional information concerning price formation and market concentration in these markets. Public access to additional sales and transmission-related information in the EQR would improve market participants' ability to assess supply and demand fundamentals and to price interstate wholesale market transactions. It also would strengthen the Commission's ability to identify potential exercises of market power or manipulation and to better evaluate the competitiveness of the interstate wholesale markets.

205(c) and that will be filed by non-public utilities under FPA section 220. These revisions include the addition of new fields for: (1) reporting the transaction date and time, as well as the type of rate; (2) indicating whether the sales transaction was reported to an index publisher; (3) identifying the broker or exchange used for a sales transaction, if applicable; and (4) reporting electronic tag (e-Tag) ID data. The Commission also proposes to eliminate the time zone from the contract section and the Data Universal Numbering System (DUNS) data requirement. Further, the Commission proposes to standardize the unit for reporting energy and capacity transactions." *Id.* at P 2.

³ The Market Surveillance Administrator (Alberta, Canada) wishes to make clear that it does not support the extension of FERC's jurisdictional reach into Canada. This is a separate matter that would require consideration of the usual principles of comity and sovereignty before moving forward.

The Indicated Market Monitors agree. The jurisdictional status of a market participant has no bearing on the impact of its participation and conduct on electricity markets. The Eastern Interconnection, for example, constitutes both a single interconnected electrical system and a single market. The Commission must have an understanding of what transpires in that market as a whole in order to fully understand any particular part of it. Expanding the scope of participants providing data necessary to understand those markets is, if anything, overdue.

The Commission's jurisdiction under the relative new section 222 of the Federal Power Act is significantly broader than its jurisdiction under section 205.⁴ The Commission cannot effectively detect, deter and remedy market manipulation if it does not have adequate access to basic data on the nature of that participation. The Commission's jurisdiction over market manipulation constitutes a standalone basis for requiring all market participants to file EQRs.

It is also significant that the Commission has in recent years changed its regulatory approach under section 205 of the Federal Power Act. Allowing market-based rates relies on a theory of regulation through competition, which relies on a lack of market power or adequate mitigation to ensure just and reasonable pricing.⁵ All market participants

⁴ 16 U.S.C. § 824v.

⁵ See *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶31,089, *mimeo* at 144–145324 (1999) (“Order No. 2000”) (“The Commission has a responsibility under FPA sections 205 and 206 to ensure that rates for wholesale power sales are just and reasonable, and has found that market-based rates can be just and reasonable where the seller has no market power. The Commission has determined that to show a lack of market power, the seller and its affiliates must not have, or must have adequately mitigated, market power in the generation and transmission of electric energy, and cannot erect other barriers to entry by potential competitors” (citing *Heartland Energy Services, Inc.*, 68 FERC ¶61,233 at 62,060 (1994); *Louisville Gas & Electric Company*, 62 FERC

participate in price formation and should, therefore, be required to provide the Commission data adequate to ensure that the Commission is able to fulfill its most basic regulatory duties.

B. The Proposed Rule Requires Information Necessary to Identify Particular Transactions and to Understand the Relationship Between FPA-Jurisdictional and Non-Jurisdictional Markets; Eliminates Information that Is Unneeded, Provided That Transacting Parties Indicate Their Exact Identity; and Standardizes Units In a Manner That Will Assist Efficient Analysis.

The Commission explains (at P 2) its proposal to revise the types data required for submittal in EQRs:

These refinements to the existing EQR filing requirements reflect the evolving nature of electricity markets, would increase market transparency for the Commission and the public, and would allow market participants to file the information in the most efficient manner possible.

The Indicated Market Monitors agree. EQR data must be sufficient to support complete and efficient analysis and collected in a manner that avoids imposing unnecessary burdens on market participants.

The NOPR proposes (at P 2) to add new fields for: “(1) reporting the transaction date and time, as well as the type of rate; (2) indicating whether the sales transaction was reported to an index publisher; (3) identifying the broker or exchange used for a sales transaction, if applicable; and (4) reporting electronic tag (e-Tag) ID data.” The data inputs will enhance the ability to identify and understand the market impact of particular

¶61,016 at 61,143-44 (1993); *Louisiana Energy and Power Authority v. FERC*, 141 F.3d 364 (D.C. Cir. 1998) (court upholds Commission's use of market-based rate authority).), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

transactions. Information about reporting to an index publisher will assist transparency in pricing. Information about the involvement of brokers will assist in understanding the increasingly complicated relationship between FPA-jurisdictional markets and closely related financial markets. From the perspective of participants, the financial meaning of transactions will be understood in the larger context, and the effective deterrence of and protection from manipulation and market power requires enhanced information on transactions that allows for insight about how the jurisdictional and non-jurisdictional markets interact.

The NOPR proposes (at P 2) to eliminate “the time zone from the contract section and the Data Universal Numbering System (DUNS) data requirement.” The North American Market Monitors do not believe DUNS information is necessary and can be eliminated. However, the North American Market Monitors do consider it very important that the EQR permit ready and exact identification of the transacting parties. The filing party should identify the party conducting each transaction under the precise legal name under which the participant is organized. This will ensure a comprehensive searchable electronic database. Having the correct participant identity is critical to the usefulness of the data. It will also preserve the confidentiality of any investigation based on data included in the EQRs. An investigator calling a participant to inquire about a transaction needs to know the identity of the specific transacting participant because confidential information, such as the existence of the investigation itself, could be compromised in the course of contacting the wrong participant due to confusion about the identity of the transacting entity.

The NOPR proposes (at P 2) to “standardize the unit for reporting energy and capacity transactions.” The North American Market Monitors support this requirement, as it will avoid considerable wasted time and resources by analysts who would necessarily

need to ensure that the units conform before conducting any meaningful analysis. In some cases, this standardization is needed so that the data reported can actually be utilized. For example, a substantial portion of bilateral capacity sales in the California ISO's market's have been reported without any indication of the amount of capacity (MW) covered by the sale. This renders such data useless and circumvents the intent of these requirements.

II. CONCLUSION

The North American Market Monitors respectfully request that the Commission afford due consideration to these comments as it resolves the issues raised in this proceeding.

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