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FERC Seeks Comments on Extending Reporting Requirement to Cooperatives and Others

The Federal Energy Regulatory Commission (FERC) is seeking comments on whether to require electric cooperatives, municipal utilities and other non-jurisdictional sellers to file the Electric Quarterly Report (EQR) currently required of investor-owned utilities, merchant generators and power marketers. In its Notice of Inquiry (NOI) issued on January 21, 2010 (FERC Docket No. RM10-12-000), FERC seeks to promote price transparency in electricity markets through the expanded reporting requirement. Additionally, FERC requests comments on refinements to certain EQR fields for all entities that are required to file EQRs. A summary of these items follows.

Expansion of Reporting Requirement

FERC's EQR reporting requirement currently is limited to regulated public utilities, such as traditional investor-owned utilities, merchant generators and power marketers. The EQR collects, and makes publicly available, information on jurisdictional sellers' contracts and transactions, including counterparty, products, prices, quantities, and locations, all pursuant to a highly detailed FERC-specified format.

FERC's proposal to require non-jurisdictional cooperatives and municipal utilities to file EQRs is based on its authority under Federal Power Act (FPA) section 220 on transparency in electricity markets. Section 220 authorizes FERC to collect and analyze data from market participants. In the NOI, FERC notes that 29% of electric utility sales are by non-jurisdictional entities, and states that EQR information from such entities will help it carry out its regulatory program. For example, FERC states that collecting EQR reports from non-jurisdictional entities will be useful in assessing price formation and market concentration. FERC's initiative here follows on its recent expansion of reporting requirements for natural gas transactions.

FERC seeks comments in a number of specific areas outlined in the NOI:

- Whether the EQR requirement should be extended to non-jurisdictional entities;
- Whether there should be a threshold in order to exclude smaller players and, if so, what that threshold should be;
- Whether extending the EQR requirement would impact liquidity or the amount of power made available in the market;
- What information should be collected if the proposal is adopted; and
- What the burden on non-jurisdictional entities would be to comply with the proposal.

The NOI focuses on whether cooperatives and municipal utilities should file the EQR (or some form of it), but there is potential that the reporting requirement could apply more broadly. For example, entities such

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as qualifying cogeneration and small power production facilities (QFs), which also are generally exempt from FPA section 205, could be subject to the reporting requirement because the NOI asks generally whether entities that are not regulated under FPA section 205 should be subject to the reporting requirement.

Although FERC seeks comment on whether to establish a threshold pursuant to which entities with only a *de minimis* market presence would be excluded from the EQR reporting requirement, FPA section 220 excludes such entities from section 220 reporting requirements (without defining what constitutes a *de minimis* market presence). Similarly, section 220 exempts from price transparency reporting requirements transactions within the Electric Reliability Council of Texas (ERCOT) region.

Refinements to EQR

In addition to seeking comments on the expansion of the EQR reporting requirement, FERC seeks comments on certain refinements to the EQRs which would apply to all reporting entities required to file the EQR. FERC is proposing these refinements in an effort to enhance the effectiveness of the EQR program in promoting market transparency. Specifically, FERC has requested comments on each of the following:

- Whether the EQR should include the trade date (*i.e.*, the date on which a transaction price is set) and the type of rate (*i.e.*, fixed price, a formula, or an index), and, if so, how the trade date should be defined;
- Whether the EQR should include resales of financial transmission rights (FTRs) in secondary markets;
- Whether the EQR should standardize the unit for reporting energy and capacity transactions (*i.e.*, \$/MWh or \$/MW-mo. for energy, and \$/MW or \$/kW for capacity); and
- Whether the time zone field should be omitted from the contract section of the EQR.

FERC has generally been receptive to industry perspective on the EQR fields in the past, and it will likely give significant consideration to industry views on these refinements.

Comment Procedures

Comments are due at FERC within 60 days after the NOI is published in the Federal Register.



If you have any questions about this Legal Alert or FERC's NOI, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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