



FERC Proposes Revisions to Upstream Ownership Information Requirements for Market-Based Rate Filings

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Background

Currently, entities seeking to obtain or retain MBR authority must identify and describe “*all* upstream owners” and their business activities. However, as FERC explains in the NOPR, corporate ownership structures have become more complex since FERC adopted its current requirements, which has caused some entities to have trouble identifying **all** of their upstream owners, especially those with small or partial indirect ownership interests. FERC states that this has resulted in numerous amendment filings, extra costs and processing delays related to information that has not necessarily affected FERC’s MBR assessments. Accordingly, to reduce burdens on the industry and make MBR filings more useful, FERC proposes a “new framework” for reporting ownership information in such filings, which it intends as a complement to the new corporate organizational chart requirement in Order No. 816.² FERC also proposes to clarify the types of ownership changes that trigger its change in status reporting requirement to reduce uncertainty and increase reporting consistency.

Proposed Reforms to Ownership Information Requirements for MBR Filings

FERC concluded that requiring information about upstream owners that are not “affiliates” of an entity as defined in 18 C.F.R. § 35.36(a)(9) is not necessary for FERC to evaluate market power and that continuing to require information about unaffiliated owners may create unnecessary burdens. FERC therefore proposes to require entities seeking to obtain or retain MBR authority to identify and describe two limited categories of upstream owners:

1. the entity's "ultimate affiliate owner(s)," referring to the "furthest upstream affiliate owner(s)" in the entity's ownership chain;
2. all "affiliate owners" of the entity that have a franchised service area or MBR authority, or that directly own or control generation, transmission or intrastate natural gas transportation, storage or distribution facilities, or physical coal supply sources or ownership of or control over who may access transportation of coal supplies.

For purposes of these categories, FERC proposes to define "affiliate owner" as an upstream owner that meets the definition of an "affiliate" in 18 C.F.R. § 35.36(a)(9), including (1) any person that directly or indirectly owns, controls or holds with power to vote 10 percent or more of the outstanding voting securities of the entity; (2) any person that FERC has determined, after notice and an opportunity for hearing, to treat as an affiliate of the entity; and (3) any person under common control with the entity. If an "affiliate owner" does not fall into either of the two new categories, the entity would not need to identify that "affiliate owner" as part of its ownership structure in its MBR filings.

With regard to any owner that an entity represents to be "passive," FERC proposes to require that the entity "affirm that its passive owners own a separate class of securities, have limited consent rights, do not exercise day-to-day control over the company, and cannot remove the manager without cause."

In addition, FERC proposes to require entities that are directly or indirectly owned or controlled by (1) a foreign government, (2) any political subdivision of a foreign government or (3) any corporation owned in whole or in part by such an entity to identify such foreign government, political subdivision or corporation in their MBR filings.

Proposed Reforms to Ownership Change Triggers for Change in Status Filings

FERC also expressed concerns about industry uncertainty regarding the requirements for change in status filings, which FERC requires for "any change in status that would reflect a departure from the characteristics [FERC] relied upon in granting [MBR] authority." FERC believes that such uncertainty has resulted in inconsistent reporting of changes in upstream ownership. To resolve the uncertainty, FERC proposes to create a "consistent reporting standard" by specifying the following types of ownership changes that would trigger a change in status filing:

1. any change in the entity's "ultimate affiliate owner(s)," as defined above or

2. the introduction of any new “affiliate owner” of the entity “that has a franchised service area or that: directly owns or controls generation (if it represents a 100 MW or more net increase in [the entity’s and its affiliates’ aggregate] generation); owns, operates or controls transmission; or . . . directly owns or controls: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies.”

Implications of the Proposed Reforms

FERC’s proposed reforms, if adopted, would narrow the scope and reduce the amount of upstream ownership information that entities must include in MBR filings, which could reduce the burden on them in preparing those filings and on FERC in processing them. In addition, clarifying the triggers for ownership-related change in status filings could reduce uncertainty and increase the consistency of change in status filings.

However, some of the potential benefits of FERC’s proposed reforms could be largely counteracted by proposed reforms pending in other proceedings. Specifically, FERC recognizes that some of the upstream ownership information that it proposes is no longer necessary for MBR assessment purposes still would be required under its recent “Connected Entity” data collection NOPR. As we noted [here](#) and [here](#), those reforms, if adopted, would significantly expand the types and amount of data that regional transmission organizations and independent system operators are required to collect from their market participants and provide to FERC, including information about entities with which market participants have certain ownership, employment, debt or contractual relationships. Thus, even though entities with MBR authority might no longer need to gather and prepare as much information for their MBR filings, other FERC regulations might require them to gather and prepare even more information to provide to their market administrators for purposes of their compliance with the proposed “Connected Entity” regulations.

¹ *Ownership Info. in Mkt.-Based Rate Filings*, 153 FERC ¶ 61,309 (2015).

² On December 23, 2015, FERC [delayed](#) the effective date of the corporate organizational chart requirement of Order No. 816 pending issuance of an order on the merits of requests for rehearing of that requirement that are currently pending. *Refinements to Policies &*

Procedures for Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils., 153 FERC ¶ 61,337 (2015).

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