

168 FERC ¶ 61,039  
DEPARTMENT OF ENERGY  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35

[Docket No. RM16-17-000; Order No. 860]

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes

(Issued July 18, 2019)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations governing market-based rates for public utilities. The Commission will collect certain information currently filed in the electric market-based rate program in a consolidated and streamlined manner through a relational database. The relational database construct modernizes the Commission's data collection processes, eliminates duplications, and renders information collected through its market-based rate program usable and accessible for the Commission. The Commission will not adopt the proposal from the NOPR to collect Connected Entity data from market-based rate Sellers and entities trading virtual or holding financial transmission rights in this final rule. With respect to the market-based rate program, the Commission will adopt changes that reduce and clarify the scope of ownership information that Sellers must provide as part of their market-based rate filings. In addition, the Commission will modify its regulations to change the information required in a Seller's asset appendix as well as the format

through which such information must be submitted. The revised regulations will require a Seller to update the relational database on a monthly basis to reflect any changes that have occurred but will also extend the change in status filing requirement to a quarterly filing obligation. Finally, the Commission will modify its regulations to eliminate the requirement that Sellers submit corporate organizational charts.

EFFECTIVE DATES: This rule will become effective October 1, 2020.

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SUPPLEMENTARY INFORMATION:

168 FERC ¶ 61,039  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

Data Collection for Analytics and Surveillance and  
Market-Based Rate Purposes

Docket No. RM16-17-000

ORDER NO. 860

FINAL RULE

(Issued July 18, 2019)

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## **I. Introduction**

1. On July 21, 2016, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR)<sup>1</sup> proposing to revise its regulations to collect certain data for analytics and surveillance purposes from Sellers<sup>2</sup> and certain other

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<sup>1</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, Notice of Proposed Rulemaking, 156 FERC ¶ 61,045 (2016) (NOPR). The instant proceeding was the outgrowth of two prior rulemaking proceedings that had previously been withdrawn and superseded. *See Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, Notice of Proposed Rulemaking, 152 FERC ¶ 61,219 (2015) (Connected Entity NOPR); *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, Withdrawal of Proposed Rulemaking and Termination of Rulemaking Proceeding, 156 FERC ¶ 61,046 (2016); *Ownership Information in Market-Based Rate Filings*, Notice of Proposed Rulemaking, 153 FERC ¶ 61,309 (2015) (Ownership NOPR); *Ownership Information in Market-Based Rate Filings*, Withdrawal of Proposed Rulemaking and Termination of Rulemaking Proceeding, 156 FERC ¶ 61,047 (2016).

<sup>2</sup> A Seller is defined as any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act (FPA). 18 CFR 35.36(a)(1); 16 U.S.C. 824d.

participants in the organized wholesale electric markets subject to the Commission's jurisdiction pursuant to the FPA.<sup>3</sup> The Commission also proposed to change certain aspects of the substance and format of information submitted for market-based rate purposes. The Commission commenced the instant rulemaking in order to modernize its data collection processes, eliminate duplication, ease compliance burdens, and render information collected through its programs more usable and accessible for the Commission.

2. As such, the revisions proposed included new requirements for entities, other than those described in FPA section 201(f),<sup>4</sup> that trade virtual products<sup>5</sup> or that hold financial

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<sup>3</sup> The organized wholesale electric markets subject to the Commission's jurisdiction refers to the markets operated by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) operating in the United States. These RTOs and ISOs include: PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England Inc. (ISO-NE), California Independent System Operator Corporation (CAISO), Midcontinent Independent System Operator, Inc. (MISO), and Southwest Power Pool, Inc. (SPP).

<sup>4</sup> 16 U.S.C. 824(f).

<sup>5</sup> Virtual trading involves sales or purchases in an RTO/ISO day-ahead market that do not go to physical delivery. By making virtual energy sales or purchases in the day-ahead market and settling these positions in the real-time, any market participant can arbitrage price differences between the two markets. *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295, at P 921 n.1047, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Public Citizen, Inc. v. FERC*, 567 U.S. 934 (2012).

transmission rights (FTR)<sup>6</sup> (collectively, Virtual/FTR Participants) and for Sellers to report certain information about their legal and financial connections to other entities (Connected Entity Information) to assist the Commission in its analytics and surveillance efforts. The Commission further proposed to consolidate and streamline the data collection through the creation of a relational database.<sup>7</sup> The Commission also proposed to collect certain information currently submitted by Sellers in the relational database, reasoning that the relational database would allow for the automatic generation of an asset appendix and organizational chart that is specific to each Seller. Given this functionality, the Commission also proposed to eliminate the requirement in Order No. 816 that Sellers submit corporate organizational charts.<sup>8</sup> Lastly, the Commission proposed other revisions to the market-based rate program.

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<sup>6</sup> The term “FTR” as used in the NOPR was intended to cover not only Financial Transmission Rights, a term used by PJM, ISO-NE, and MISO, but also Transmission Congestion Contracts in NYISO, Transmission Congestion Rights in SPP, and Congestion Revenue Rights in CAISO. *See* NOPR, 156 FERC ¶ 61,045 at P 1 n.6.

<sup>7</sup> A relational database is a database model whereby multiple data tables relate to one another via unique identifiers. A relational database contains a table for each type of object (e.g., generation assets), with each row in the table containing information about a single instance of that object (e.g., a particular generation unit) and each column representing a particular attribute of that object (e.g., a generation unit’s capacity rating). Relational databases are structured to allow for easy data retrieval while avoiding inconsistencies and redundancies.

<sup>8</sup> *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065, at P 320 (2015), *order on reh’g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016). The organizational chart requirement was suspended in Order No. 816-A “until the Commission issues an order at a later date addressing this



3. The Commission received 31 comments in response to the NOPR. A list of commenters, including the abbreviated names used in this final rule, is attached as an appendix to this final rule.

4. In this final rule, we adopt the approach to data collection proposed in the NOPR, with several modifications and clarifications as discussed below. We adopt the proposal to collect market-based rate information in a relational database but decline to adopt the proposal to require Sellers and Virtual/FTR Participants to submit Connected Entity Information.<sup>9</sup> Notwithstanding this decision, we note that the market-based rate information will assist the Commission in administering both its market-based rate and analytics and surveillance programs.

5. The relational database construct that we adopt in this final rule provides for a more modern and flexible format for the reporting and retrieval of information. Sellers will be linked to their market-based rate affiliates through common ultimate upstream affiliate(s).<sup>10</sup> Through this linkage, the relational database will allow for the automatic

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requirement.” Order No. 816-A, 155 FERC ¶ 61,188 at P 47. The relevant organizational chart requirements currently appear in §§ 35.37(a)(2) and 35.42(c) of the Commission’s regulations.

<sup>9</sup> Given our decision not to pursue collection of Connected Entity Information in this final rule, the remainder of this final rule focuses on the proposals and comments regarding the collection of market-based rate information and other proposed changes to the market-based rate program.

<sup>10</sup> In the NOPR, the Commission proposed the term “ultimate affiliate owner.” NOPR, 156 FERC ¶ 61,045 at P 8. Herein, we replace this proposed term with “ultimate upstream affiliate” to reflect that an ultimate upstream affiliate could have control, but

generation of a complete asset appendix based solely on the information submitted into the relational database.

6. To allow for this functionality, we will require Sellers to submit into the relational database certain information concerning their upstream affiliates, generation assets, long-term firm sales and purchases, vertical assets, category status, the specific markets in which the Seller is authorized to sell operating reserves, and whether the Seller is subject to mitigation or other limitations. We also adopt the NOPR proposal requiring Sellers to submit their indicative screen information in extensible markup language (XML) format, which will enable the information to be included in the relational database. Services will be available to automatically generate tabular indicative screen results based on this information, and the Seller will be able to reference these screen results as part of its initial application and, where appropriate, its triennial market power update or change in status filing.

7. The submission of generator-specific generation information and long-term firm sales information represent new substantive requirements to the market-based rate

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not ownership of a Seller. We define ultimate upstream affiliate as the furthest upstream affiliate(s) in the ownership chain – i.e., each of the upstream affiliate(s) of a Seller, who itself does not have 10 percent or more of its outstanding securities owned, held or controlled, with power to vote, by any person (including an individual or company). As discussed below, we codify this definition of “ultimate upstream affiliate” by amending § 35.36(a) of the Commission’s regulations. We made corresponding changes to the regulations in §§ 35.37(a)(1), 35.37(a)(2), and 35.42(a)(v) to reflect this new term. For clarity, in this final rule we will use the terms “upstream affiliate” and “ultimate upstream affiliate” in place of “affiliate owner” and “ultimate affiliate owner” when referencing the NOPR proposal and comments.

program but are counterbalanced by other revisions to the program that will reduce burden on Sellers. These revisions include reducing the amount of ownership information that Sellers need to provide, eliminating the requirement to provide corporate organizational charts, and eliminating the requirement to demonstrate ownership passivity where the Seller has made an affirmative statement concerning passive ownership interests. The automated generation of a Seller's asset appendix will also reduce burden to the extent that Sellers will no longer be required to report the assets of their market-based rate affiliates.

8. In this final rule, we provide more detail on the relational database construct and how entities can interact with the relational database to make submissions and prepare market-based rate filings. We also modify the reporting requirements for updates, including timing of change in status filings and quarterly database updates. Among other things, all updates to the relational database will be due on the 15<sup>th</sup> day of the month following a change. In light of these monthly relational database updates, we will require that Sellers file notices of change in status on a quarterly basis rather than within 30 days of any such changes, thus potentially reducing the number of change in status filings required of Sellers throughout the year. We also discuss modifications to the data dictionary provided in the NOPR (NOPR data dictionary) and provide a new version of the data dictionary (MBR Data Dictionary), which will be available on the Commission's website. As discussed below, the MBR Data Dictionary may undergo minor or non-material changes on occasion. The process for making minor or non-material changes to

the MBR Data Dictionary will be the same as that used for the Electric Quarterly Report (EQR) data dictionary. As is the process for EQR, any significant changes to the reporting requirements or the MBR Data Dictionary will be proposed in a Commission order or rulemaking, which would provide an opportunity for comment.<sup>11</sup> We will also post on the Commission's website high-level instructions that describe the mechanics of the relational database submission process and how to prepare filings that incorporate information that is submitted to the relational database. The revised regulatory text from this final rule will take effect on October 1, 2020. However, submission obligations will follow the implementation schedule discussed below.

## **II. Submission of Information Through a Relational Database**

### **A. Commission Proposal**

9. In the NOPR, the Commission proposed to create a relational database that would accommodate the needs of both the Commission's market-based rate and analytics and surveillance programs. The Commission proposed that information would be submitted into the relational database using an XML schema.<sup>12</sup> The Commission stated that the

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<sup>11</sup> See *Filing Requirements for Electric Utility Service Agreements*, 155 FERC ¶ 61,280, at P 5, *order on reh'g*, 157 FERC ¶ 61,180, at PP 40-43 (2016).

<sup>12</sup> As the Commission previously explained, XML schemas facilitate the sharing of data across different information systems, particularly via the Internet, by structuring the data using tags to identify particular data elements. The tagged information can be extracted and separately searched. See *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270, at P 12 & n.8 (2008). The Commission currently collects other data, including EQRs and eTariffs using XML. See Order No. 714, 124 FERC ¶ 61,270 (using XML for eTariff filings); see also *Revised Public Utility Filing Requirements*, Order No.

XML schema would permit filers to assemble an XML filing package that includes all of the necessary attachments, including the cover letter and any related market-based rate tariffs.<sup>13</sup> The Commission intended that, upon the receipt of the filing, the XML schema could be parsed<sup>14</sup> into its component parts, with certain information placed into its eLibrary system and other information submitted into the new database, where it could be made available for review by the Commission and other interested parties.<sup>15</sup>

## **B. Comments**

10. Commenters generally expressed approval of the Commission's proposal to collect market-based rate information in a relational database but also suggested certain changes and clarifications.<sup>16</sup> EPSA commends the Commission for taking proactive steps

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2001, 99 FERC ¶ 61,107, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filings*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *clarification order*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, 125 FERC ¶ 61,103 (2008) (using XML for EQRs).

<sup>13</sup> NOPR, 156 FERC ¶ 61,045 at P 14.

<sup>14</sup> Parse means to capture the hierarchy of the text in the XML file and transform it into a form suitable for further processing. Order No. 714, 124 FERC ¶ 61,270 at n.9.

<sup>15</sup> The Commission also stated that the mechanics and formatting for data submission by filers would be provided on the Commission's website. NOPR, 156 FERC ¶ 61,045 at P 14.

<sup>16</sup> See e.g., APPA at 6 (“[t]he streamlined method of submitting the data to the relational database appears to provide benefits to [Sellers], the Commission and its staff,

to consolidate its various data collection and streamlining efforts and proposals.<sup>17</sup>

Similarly, Independent Generation states that it generally supports the proposal to limit ownership reporting and notes that, correctly interpreted, the proposal would significantly reduce the burden of collecting, monitoring and reporting extensive information concerning corporate relationships that do not relate to the reporting entity's jurisdictional activities.<sup>18</sup>

11. NextEra agrees that the creation of the relational database could ultimately help streamline the reporting process and reduce the amount of information submitted to the Commission in many filings.<sup>19</sup> TAPS also supports the Commission's objectives to render market-based rate information more usable and accessible, better understand the

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and the public."); EPSA at 2 (commending the Commission for "taking proactive steps to consolidate its various data collection and streamlining efforts and proposals").

<sup>17</sup> EPSA at 2; *see also* APPA at 5-6 (also recommending specific changes). The proposals are referenced in n.1 above.

<sup>18</sup> Independent Generation at 3-4 ("It is essential that the rule be narrowly tailored to capture entities with ultimate decision-making authority over FERC-jurisdictional activities without sweeping in countless intermediate, passive, or non-controlling entities that have no influence over such activities. Further, aligning the Connected Entity ownership reporting requirement with the [market-based rate] program ownership reporting requirement (also focused on ultimate affiliate owners) will reduce reporting errors and omissions and increase the usefulness of the information collected.").

<sup>19</sup> NextEra at 9 ("However, there is significant uncertainty about how this system would be implemented, and the initial burden of uploading and verifying data is likely to be significant.").

financial and legal connections among market participants and other entities, and streamline information collection through a relational database.<sup>20</sup>

12. However, these and other commenters express concern about the proposed collection and reporting requirements and suggest certain changes to the NOPR. For example, APPA seeks clarification that the relational database will maintain historical data and not just a snapshot of current information.<sup>21</sup> EEI argues that the required reporting of affiliates, ownership, and vertical assets in XML should eliminate the need for narratives on these subjects in new market-based rate applications, triennial updates, and change in status filings.<sup>22</sup>

13. Independent Generation seeks clarification regarding the relationship between the Commission's relational database and eTariff filing system. In particular, Independent Generation asks whether market-based rate filings with tariffs would be submitted through both systems using different software or if the systems will interact to reduce

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<sup>20</sup> TAPS at 5; *see also id.* at 7 (“But the proposed streamlined reporting requirements and transition to a relational database represent significant changes to the [market-based rate] reporting regime, and prudence dictates that they be accompanied by additional backstops and safeguards so that the Commission can ensure just and reasonable wholesale power rates.”).

<sup>21</sup> APPA at 7-9.

<sup>22</sup> EEI at 22; *see also id.* at 19-22 (suggesting five other changes to reduce burden).

duplicate filings.<sup>23</sup> EEI states that there is a lack of clarity regarding the data submission process.<sup>24</sup>

14. EPSA and others raise concerns about the proposed implementation and suggest alternative timelines, as discussed further in the Implementation and Timing of this final rule.

### **C. Commission Determination**

15. We adopt the proposal in the NOPR to collect market-based rate information through a relational database and revise language in § 35.37(a) to reference the relational database requirements.<sup>25</sup> We note that commenters have not opposed the relational database as a construct in and of itself, but instead raise questions and concerns as to implementation and burden. We have attempted, where possible, to rely on existing requirements to avoid duplication and to make requirements as clear and simple as possible. We address commenters' specific concerns regarding implementation and

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<sup>23</sup> Independent Generation at 15.

<sup>24</sup> EEI at 7-8.

<sup>25</sup> The NOPR proposed revisions to § 35.37(a)(1) to require that Sellers submit certain ownership information for input into the relational database. As discussed in the Ownership Information section of this final rule, we have further reduced the scope of ownership information required to be submitted, as reflected in the revised regulatory text changes to § 35.37(a)(2) that we adopt herein. Further, we revise § 35.37(a)(2) from what was proposed in the NOPR to explicitly require the submission of asset information, indicative screen information, category status information, the specific markets in which the Seller is authorized to sell operating reserves, and whether the Seller is subject to mitigation or other limitations.



information to be submitted in the sections that follow. However, we take this opportunity to clarify the submission and filing mechanics for the relational database and to describe how the relational database will interact with the Commission's eTariff and eLibrary systems. EEI's request for more clarity regarding the data submission process and Independent Generation's comment concerning the relationship between the eTariff filing system and relational database have prompted us to re-examine the single submission reporting obligation proposed in the NOPR. Upon further consideration, we have concluded that the single submission approach is not practical and instead adopt a modified two-step approach, as described below.

16. The existing eTariff XML schema does not contain fields for information that would be generated as output from the relational database (e.g., the asset appendix and indicative screens).<sup>26</sup> Modifying the existing eTariff schema would incur significant expense as such modifications would also necessitate the modification of the eTariff filing process procedures and could compromise the existing system for all eTariff users, including entities outside the scope of this rulemaking. We will therefore adopt a two-step submittal and filing process for Sellers that leaves the eTariff system unchanged. As will be detailed on the Commission's website, the first step will involve the submission

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<sup>26</sup> As discussed in the Asset Appendix section of this final rule, data submitted into the relational database will be used to auto-generate a Seller's asset appendix based on the information that is submitted into the relational database.

of information in XML into the relational database.<sup>27</sup> The relational database receives this information, which is then used to produce a retrievable asset appendix and indicative screens that the Seller, the Commission, and interested parties can access via serial numbers. Through the second step of the process, the Seller will submit its market-based rate filing through eFiling<sup>28</sup> and will provide the serial numbers for its asset appendices and indicative screens in its transmittal letter, as further discussed below.

17. In response to APPA, we clarify that the relational database will preserve historical information, some of which will be made available through the system.<sup>29</sup>

### **III. Obtaining a Legal Entity Identifier (LEI)**

#### **A. Commission Proposal**

18. In the NOPR, the Commission proposed requiring that all entities that must submit information into the database obtain and maintain a Legal Entity Identifier (LEI),<sup>30</sup> and report it to the Commission in its XML submission for inclusion in the relational database.<sup>31</sup>

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<sup>27</sup> Prior to submitting information into the relational database, Sellers must be registered with the Commission, as detailed on the Commission's website.

<sup>28</sup> This includes eFilings that use eTariff.

<sup>29</sup> Further information on this function will be detailed in an implementation guide that will become available after publication of this final rule.

<sup>30</sup> An LEI is a unique 20-digit alpha-numeric code assigned to a single entity. They are issued by the Local Operating Units of the Global LEI System.

<sup>31</sup> NOPR, 156 FERC ¶ 61,045 at P 56.

**B. Comments**

19. Multiple commenters request that the Commission allow entities to use a Company Identifier (CID) or Commission-generated identifier if they would not otherwise be required to obtain an LEI for other regulatory purposes.<sup>32</sup> Working Group states that it does not object to a global identification system, like the LEI system, but believes that a Commission-assigned unique identifier is equally sufficient. Working Group and IECA request that the Commission require LEIs only if the reporting entity has already obtained one for other purposes.<sup>33</sup> Similarly, EPSA recommends an option for physical market-only sellers to rely on Commission-assigned unique IDs in lieu of reporting LEIs in the event that there are significant changes to the costs, processes, or sources for obtaining LEIs.<sup>34</sup>

20. Independent Generation adds that the burden of obtaining an LEI is not justified. It notes that this burden would entail: (1) applying to a third-party LEI vendor and undergoing a due diligence verification process (in addition to the Commission-related processes imposed under the rule); (2) executing one or more contracts with the LEI vendor; (3) maintaining books, billing records, correspondence invoices, and accounts

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<sup>32</sup> See *e.g.*, EPSA at 17; IECA at 17; Independent Generation at 9; Power Trading Institute at 6; Working Group at 17.

<sup>33</sup> Working Group at 17; IECA at 17.

<sup>34</sup> EPSA at 17.

with the LEI vendor; and (4) keeping the LEI vendor informed of any material changes (separate and apart from notifying the Commission).<sup>35</sup> IECA also contends that the Commission has underestimated the cost and burden of “proliferating LEI filings and renewals within a corporate family.”<sup>36</sup> Before implementing a program that mandates the use of outside vendors and the associated expense, Independent Generation urges the Commission to take steps to improve its existing CID and expand that system to other entities covered under the rule that are not market-based rate sellers.<sup>37</sup>

21. EEI and IECA argue that the regulatory text should be revised to reflect the requirement that Sellers obtain an LEI if they do not already have one.<sup>38</sup>

22. Designated Companies state that reporting entities should have the option to either use an LEI or a Commission-created unique identifier for their upstream affiliates.<sup>39</sup>

### **C. Commission Determination**

23. We decline to adopt the proposal that Sellers must obtain and maintain an LEI and instead adopt commenters’ suggestion to allow Sellers to use their CIDs.<sup>40</sup> A separate

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<sup>35</sup> Independent Generation at 9-10.

<sup>36</sup> IECA at 19.

<sup>37</sup> Independent Generation at 9.

<sup>38</sup> EEI at 7; IECA at 4.

<sup>39</sup> Designated Companies at 5.

<sup>40</sup> CID stands for Company Identifier. All eTariff filings and certain form filings require that filers use Company Identifiers issued by the Commission. *See* <https://www.ferc.gov/docs-filing/company-reg.asp>.

identifier, like the LEI, would have been necessary to allow Virtual/FTR Participants to file information into the database. However, given our decision within this final rule to not require the Connected Entity Information, only Sellers will be required to submit information into the database. Because Sellers are already required to obtain and retain a CID, we find that it would be unnecessarily burdensome and duplicative to require Sellers to obtain and retain a separate identifier.

24. However, we will retain the ability for Sellers to identify their affiliates using their affiliates' LEIs, if the affiliate does not have a CID.<sup>41</sup> While we expect Sellers to use their affiliates' CIDs if available, we understand some affiliates may not have, and will not be eligible to receive a CID. In such cases, Sellers must provide their affiliates' LEI, if available. Further, as discussed below, to aid Sellers in identifying affiliates that neither have a CID or an LEI, we are creating a third identifier that we refer to in this final rule as the FERC generated ID.<sup>42</sup> Although Sellers will use their CIDs to make

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<sup>41</sup> As discussed elsewhere in this final rule, to allow for the automatic generation of a Seller's asset appendix, a Seller must identify certain affiliates to the extent they are ultimate upstream affiliates or non-market based rate affiliates with reportable assets.

<sup>42</sup> The FERC generated ID is a new form of identification that we are creating alongside this final rule to serve as an identifier for reportable entities that do not have a CID or LEI. The system will allow Sellers to obtain unique FERC generated ID(s) for their affiliates. Additional information on the mechanics of this process one will be made available on the Commission's website prior to the October 1, 2020 effective date of this final rule. We require affiliates to be identified using their CID if they have one. If the affiliate does not have a CID, the Seller must the LEI if available, and if the affiliate has neither, the FERC generated ID must be provided.

submissions into the database, they will identify their affiliates through reference to their affiliates' CIDs, LEIs or FERC generated IDs.

#### **IV. Substantive Changes to Market-Based Rate Requirements**

##### **A. Asset Appendix**

##### **1. New Format**

##### **a. Commission Proposal**

25. In the NOPR, the Commission proposed to require the submission of the asset appendix<sup>43</sup> in XML format instead of the currently required workable electronic spreadsheet format. This would allow the asset appendix information to be included in the relational database. Also, the Commission proposed that each Seller would no longer report assets owned by its affiliates with market-based rate authority.<sup>44</sup> Since information on a Seller's ultimate upstream affiliates would be included in the relational database, that information could be retrieved to create an asset appendix for the Seller that includes all of the assets of its affiliates with market-based rate authority. This would be possible because the Seller's assets would be linked with those assets owned by the Seller's

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<sup>43</sup> The Commission requires Sellers to submit an asset appendix that contains information regarding the generation assets, long-term firm purchases, and vertical assets that they and all of their affiliates own or control. Order No. 697, 119 FERC ¶ 61,295 at Appendix B; Order No. 816, 153 FERC ¶ 61,065 at P 20.

<sup>44</sup> This proposal was specific to the relational database requirement to provide asset appendix information. This does not relieve Sellers from the requirements to consider and discuss affiliates' assets as part of their horizontal and vertical market power analyses.

market-based rate affiliates<sup>45</sup> who would have separately submitted information about their assets into the relational database.

26. In the NOPR, the Commission proposed that the asset appendix would be placed into eLibrary as part of the Seller's filing. Since the Seller would not be directly responsible for *all* information in the asset appendix (i.e., because some of that information used to generate the complete asset appendix will have been reported by its affiliates), the Commission proposed that the Seller incorporate by reference its affiliates' most recent relational database submittals or otherwise acknowledge that the information from its affiliates' relational database submittals would be included as part of the Seller's asset appendix.<sup>46</sup>

27. The Commission also recognized that a Seller's current asset appendix could include assets that are owned or controlled by an affiliate that does not have market-based rate authority, such as a generating plant owned by an affiliate that only makes sales at cost-based rates. The Commission explained that if a Seller does not have a requirement to submit the information related to the affiliated generating plant into the relational database, that information could be "lost." To avoid this problem, the Commission proposed to require that the Seller include in its relational database submission any assets

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<sup>45</sup> Sellers with common upstream ultimate affiliates can be linked through the services that interact with the relational database.

<sup>46</sup> NOPR, 156 FERC ¶ 61,045 at PP 31, 33.

that are owned or controlled by an affiliate that does not have market-based rate authority.<sup>47</sup>

28. The Commission also sought comment on an alternative approach whereby Sellers would continue to provide information on all of their affiliates' assets when submitting asset appendix information for the relational database.<sup>48</sup>

**b. Comments**

29. APPA, EDF, GE, and NextEra support the Commission's proposal that Sellers report into the relational database their assets and long-term power purchase agreements (PPAs) as well as the assets and long-term PPAs of any non-market-based rate affiliate.<sup>49</sup> EEI states that while it does not oppose the Commission's proposal to require each Seller to report its own generation assets into the relational database, it is too burdensome to have each Seller in a corporate family report the same "non-market-based rate assets" and should not be adopted.<sup>50</sup> EEI suggests that the Commission consider creating a new table that focuses on assets of non-market-based rate affiliates<sup>51</sup> and that the Commission rename the vertical assets table in the MBR Data Dictionary as "Vertical Assets Owned

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<sup>47</sup> *Id.* P 32.

<sup>48</sup> *Id.* P 34.

<sup>49</sup> APPA at 10-11; EDF at 8-9; GE at 15; NextEra at 11-12.

<sup>50</sup> EEI at 19.

<sup>51</sup> *Id.*



by Filer” to reflect the NOPR, which does not require reporting of such assets owned by affiliates.<sup>52</sup>

30. EDF, NextEra, NRG, and Working Group ask the Commission to clarify how Sellers will be able to verify and/or make corrections to the relational database.<sup>53</sup>

31. Independent Generation prefers the Commission’s alternative approach to the asset appendix in which Sellers would continue to provide information on all of their affiliates’ assets, including affiliates with market-based rate authority, when submitting information into the relational database.<sup>54</sup> It expresses concern that the Commission’s primary proposal takes control of data out of the hands of Sellers, which may lead to a significant number of incorrect or incomplete filings, especially with respect to jointly-owned Sellers.<sup>55</sup> It further argues that identifying precisely the same ultimate upstream affiliate is not a simple task given the complicated organizational structures of private equity funds, institutional investors, and other industry participants.<sup>56</sup> It expresses concern that each time a filing is submitted, a Seller would have to confirm that auto-generated information is accurate and re-file to correct any errors or omissions and that

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<sup>52</sup> *Id.* at DD Appendix 27.

<sup>53</sup> EDF at 9; NextEra at 11; NRG at 5; Working Group at 29-30.

<sup>54</sup> Independent Generation at 14.

<sup>55</sup> *Id.* at 13-14.

<sup>56</sup> *Id.* at 14.

errors can continue to appear in subsequent filings due to discrepancies in the way affiliated Sellers report their ownership.<sup>57</sup> Independent Generation states that the alternative approach has the same inconsistent information concerns as the preferred proposal, but is more likely to produce current and accurate information, with considerably less burden.<sup>58</sup>

32. Working Group suggests that the Commission provide a Seller the option to report asset data on itself and: (1) some or all of its affiliates, including those with market-based rate authority; (2) only affiliates without market-based rate authority and incorporate by reference the market-based rate data submissions of its Seller affiliates; or (3) a select list of affiliates that the Seller either controls or with which it has an agency relationship that permits the Seller to report on behalf of its affiliates without incorporating by reference the data of excluded affiliates.<sup>59</sup>

33. NRG states that there are significant pitfalls to both of the Commission's proposals regarding the reporting of affiliates' assets into the relational database.<sup>60</sup> With the Commission's preferred approach, NRG is concerned that the relational database

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Working Group at 24.

<sup>60</sup> NRG at 5. For example, to the extent that a partial owner ("Entity A") does not notify the Commission that it has divested its interests, other co-owners could still be deemed affiliated with Entity A, despite the fact that such affiliation terminated with the divestiture of Entity A's interests.

could give false impressions of relationships between entities.<sup>61</sup> NRG states that it would need to spend considerable time and effort to review the relational database and even then may not be able to identify errors resulting from others' submissions. NRG is also concerned with the NOPR suggestion that if a Seller discovers an error in an affiliate's submission it should work with that affiliate to have the correct information submitted into the relational database.<sup>62</sup> NRG argues that this expectation "ignores the reality that NRG will have no control over affiliates' submissions other than its subsidiaries so as to ensure that the Commission's relational database is up to date."<sup>63</sup> Under the alternative approach, NRG argues that it would be extremely burdensome and time consuming for NRG to reach out to all of its affiliates to obtain and verify their information. This would jeopardize NRG's ability to make timely filings and NRG would not have the ability to ensure its affiliates submit accurate and complete information.<sup>64</sup>

34. FMP opposes the use of the relational database as a tool for gathering market-based rate information. FMP states that the relational database would function as an adjudication machine.<sup>65</sup> FMP states that a Seller will submit to the Commission an

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 5-6.

<sup>65</sup> FMP at 7-8.

electronic enumeration of the Seller's affiliates, then will learn after the fact whether the relational database, acting as the Commission's delegated adjudicator, has some disagreement with the Seller's disclosures.<sup>66</sup> FMP argues that in this fashion the Commission is proposing to delegate "first-step market-based rate adjudication" to the relational database, which it would do without prior notice or the opportunity to comment.<sup>67</sup> FMP argues that the Commission has established no right to delegate decisional functions to an adjudication machine whose processes are shielded from the public.<sup>68</sup> It states that the Commission should not invite the risk that market-based rate filings must be amended in order to respond to the unpredictable data entries of strangers to the affected filer, as overwritten by the Commission's new adjudication machine.<sup>69</sup> FMP argues that the NOPR establishes no basis to impose this regime. It states the relational database is intended as a data gathering and analysis tool and should not function as a substitute for the adjudication work of the Commission.<sup>70</sup>

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<sup>66</sup> *Id.* at 8.

<sup>67</sup> *Id.* at 9 and n.24.

<sup>68</sup> *Id.* at 9.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

35. EEI, FMP, Independent Generation, and NRG express concerns about the reporting of jointly-owned assets.<sup>71</sup> NRG states that jointly-owned assets could present a similar overwriting risk under either approach, as well as a double-counting problem.<sup>72</sup> EEI and FMP ask the Commission to clarify that for units in multiple markets or balancing authority areas and where the Seller is a partial owner, it needs to only report the market/balancing authority area that it considers its ownership share to be located in.

36. APPA and TAPS encourage the Commission to revise the proposed amendment to § 35.37(a)(2) to provide that Sellers must report information about the assets of their non-market-based rate affiliates.<sup>73</sup> They state that the regulations should expressly and unambiguously require the reporting of non-market-based rate affiliates' assets.

37. Some commenters request clarification of the proposed requirement that, to avoid the "lost" asset problem, Sellers report the assets of their non-market-based rate affiliates.<sup>74</sup> GE requests that the Commission clarify that this (1) does not include QFs exempt from FPA section 205 or behind-the-meter facilities; and (2) includes only jurisdictional generation facilities and not those located solely within the Electric

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<sup>71</sup> Independent Generation at 15; NRG at 6.

<sup>72</sup> NRG at 6. NRG provides the following example: If sellers A, B, and C, each own interest in an asset, a filing by A or B could overwrite C; even if C is the operator and best positioned to provide accurate and up-to-date information.

<sup>73</sup> APPA at 10-11; TAPS at 22.

<sup>74</sup> ELCON and AFPA at 11; GE at 23-24.

Reliability Council of Texas (ERCOT) or outside of the contiguous United States.<sup>75</sup>

ELCON and AFPA are similarly concerned that the requirement to submit “any asset” that an affiliate lacking market-based rate authority “owns or controls” could potentially include all QFs, which it argues would be in conflict with the Commission’s determination in Order Nos. 816 and 816-A to exempt certain QFs from market-based rate screens and asset appendices.<sup>76</sup>

38. Moreover, ELCON and AFPA assert that, when conducting the indicative screens, many Sellers conservatively include output from QFs, consistent with Commission-approved simplifying assumptions for market power and pivotal supplier analyses; but it is now not clear how these QFs would be treated in the relational database or the “populated” Asset Appendix.<sup>77</sup> ELCON and AFPA request that, given the apparent incongruity between requiring “all assets” in the relational database with exempting QFs from the indicative screen and asset appendix under Order Nos. 816 and 816-A, the

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<sup>75</sup> See GE at 23-24 (“In Order Nos. 816 and 816-A, the Commission clarified that Sellers are not required to include qualifying facilities that are exempt from FPA section 205 and facilities that are behind-the-meter facilities in the asset appendix or indicative screens.”) (citing Order No. 816, 153 FERC ¶ 61,065 at P 255, *order on reh’g*, Order No. 816-A, 155 FERC ¶ 61,188 at PP 23, 44); see also Energy Ottawa at 5 (noting that P 66 n.67 of the NOPR clarifies that, consistent with Commission Order No. 816, certain QFs are not reportable assets).

<sup>76</sup> ELCON and AFPA at 10.

<sup>77</sup> *Id.* at 11 (“An additional complication may arise in a situation that requires relying on the accuracy of relational database submissions from other third-party ‘affiliates’ being used to populate that [Sellers]’ specific asset appendix.”).

Commission explicitly exclude QFs from the reporting obligations, or at a minimum provide guidance and clarification.

**c. Commission Determination**

39. We adopt the proposals in the NOPR to require Sellers to submit asset appendix information in XML format and that each Seller would no longer report assets owned by its affiliates with market-based rate authority. We also adopt the proposal to require that a Seller include in its relational database submission any assets that are owned or controlled by an affiliate that does not have market-based rate authority.<sup>78</sup>

40. As described in the NOPR, once a Seller identifies its own assets, the assets of its affiliates without market-based rate authority, and its ultimate upstream affiliate(s), the relational database will contain sufficient information to allow the Commission to identify all of that relevant Seller's affiliates (i.e., those with a common ultimate upstream affiliate) to create a complete asset appendix for the Seller, which includes all of its affiliates' assets. Additional information concerning the mechanics of this process will be made available on the Commission's website.

41. The majority of commenters agree that the automation of the asset appendix is preferable to the alternative approach presented in the NOPR, which would have required Sellers to continue to provide information on all of their affiliates' assets when

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<sup>78</sup> See revisions to §§ 35.37(a)(1) and (a)(2).

submitting asset appendix information to the relational database.<sup>79</sup> As EEI observes, the preferred alternative avoids repetitious filings and system overwrites if information is added or changed.<sup>80</sup>

42. We are adopting the requirement that a Seller include, in its relational database submission, any assets that are owned or controlled by an affiliate that does not have market-based rate authority because without this requirement, information about these assets – which is relevant to the Seller’s market power analysis – would be missing from the asset appendix, rendering the Seller’s filing incomplete. We appreciate commenter concerns that the term “any assets” is broad. Therefore, we clarify that in this final rule “any assets” refers to assets that are reportable in the asset appendix: generation assets, long-term PPAs, and vertical assets.<sup>81</sup> We disagree with EEI’s contention that the proposal is too burdensome because this same information is currently required in the asset appendix. While it is true that in some circumstances Sellers in a corporate family can make a joint filing with one asset appendix that contains all affiliates and eliminates the need for each Seller to report the same non-MBR assets separately, this is not always the case. In many instances, corporate families file separately and thus submit separate asset appendices. In such cases, duplication already exists. An advantage to the new

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<sup>79</sup> See, e.g., APPA at 10-11; GE at 15-16; NextEra at 11.

<sup>80</sup> See EEI at 19.

<sup>81</sup> This includes information on long term firm sales power purchase agreements, as discussed below.



approach is that the data on the non-market-based rate affiliates will be stored in the database such that no further duplicate reporting will occur unless there is a change. We view EEI's alternative proposal of creating a new table focusing on non-market-based rate assets as presenting a greater burden on Sellers. As discussed below, we are creating a table structure that will allow a one-to-many relationship to exist between the gen\_assets table, where all generators in the database will be uniquely identified, and the entities\_to\_genassets table,<sup>82</sup> where Sellers will report relationships between themselves (or their non-market-based rate affiliates) and the generators on the gen\_assets table. Creating an additional table specifically to focus on the assets of non-market-based rate affiliates would create an unnecessary step and table.

43. We appreciate EEI's contention that the software would have to be programmed to eliminate duplication if each Seller in a single corporate family includes the same non-market-based rate assets. The table structure is built to allow a one-to-many relationship to exist between the gen\_assets table and the entities\_to\_genassets table.<sup>83</sup> When creating an asset appendix for a specific Seller, the software will be designed such that the asset appendix will only include the non-market-based rate affiliate asset information submitted by that Seller. It is important to note that the system will pull information from

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<sup>82</sup> We have renamed the "Entities to Generation" table as "entities\_to\_genassets."

<sup>83</sup> Stated another way, the table structure will allow for each generation asset to have many reported relationships.

the relational database to create asset appendices unique to each Seller, rather than asset appendices that represent entire corporate families.<sup>84</sup>

44. We will not adopt EEI's suggestion to rename the vertical assets table "Vertical Assets Owned by Filer."<sup>85</sup> This would be misleading because Sellers are required to report not only their own vertical assets but also the vertical assets owned or controlled by their non-market-based rate affiliates. Contrary to EEI's statement, the NOPR proposal that a Seller include in its relational database submission any assets that are owned or controlled by an affiliate that does not have market-based rate authority, was not limited to generation assets or long-term PPAs, but also included vertical assets. The identification of a Seller's non-market based rate affiliates' vertical assets is necessary to have a complete asset appendix and to allow the Commission to fully analyze a Seller's potential vertical market power.

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<sup>84</sup> As an example, Seller A and Seller B are both wholly owned subsidiaries of the same ultimate upstream affiliate, and are affiliated with Entity C, which does not have market-based rate authority. Seller A and Seller B will both submit information on their respective assets. In addition, Seller A and Seller B will both separately report information on Entity C's reportable assets. When an asset appendix is created for Seller A, it will contain the following asset information: for Seller A, the asset information that Seller A submitted for itself; for Seller B, the asset information that Seller B submitted for itself; and, for Entity C, only the asset information that Seller A submitted for Entity C. Similarly, when an asset appendix is created for Seller B, it will contain the following asset information: for Seller A, the asset information that Seller A submitted for itself; for Seller B, the asset information that Seller B submitted for itself; and, for Entity C, only the asset information that Seller B submitted for Entity C.

<sup>85</sup> However, as discussed in the Data Dictionary Section, we have renamed the vertical assets table the "entities\_to\_vertical\_assets" table to reflect that Sellers will provide information on their relationships to their vertical assets.

45. Sellers will be able to report the assets of their non-market-based rate affiliates in the same XML submission that they use to report their own assets. However, Sellers will need to identify which affiliate owns/controls each reported asset using that affiliate's CID, LEI, or FERC generated ID. This will help to reduce duplication in the relational database and will allow the relational database to produce more accurate and complete asset appendices.

46. We agree with APPA and TAPS that the requirement for Sellers to report assets of their non-market-based rate affiliates should be explicit in the regulatory text and therefore revise the proposed amended § of 35.37(a)(2) to provide that Sellers must report information about the reportable assets of their non-market-based rate affiliates.<sup>86</sup>

47. We are not changing existing Commission policy regarding exempt QFs and behind-the-meter generation. As the Commission held in Order No. 816, Sellers do not need to include such entities in their asset appendix or indicative screens.<sup>87</sup> To avoid discrepancies in the auto-generation of the asset appendix, Sellers should not include these assets as part of the relational database submission for market-based rate purposes.

48. We disagree with Independent Generation's statement that this approach takes control of the data out of the hands of Sellers. Although we are relieving Sellers of the burden of compiling complete asset appendices for their filings, Sellers remain in control

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<sup>86</sup> APPA at 10-11 n.26; TAPS at 22.

<sup>87</sup> Order No. 816, 153 FERC ¶ 61,065 at P 255.

of, and in fact have the responsibility to maintain, their data in the relational database. It is true that Sellers will not have control of their affiliates' data; however, as discussed below, we are putting in place measures for Sellers to report to the Commission any errors in their affiliates' submissions that affect the Sellers' asset appendices.

49. We do not find persuasive Independent Generation's and NRG's arguments that the time necessary to review and confirm the accuracy of the relational database constitutes a new burden. We appreciate that Sellers will have to spend time reviewing the accuracy of their information based on what their affiliates submitted. However, this additional burden is counterbalanced by the time savings attributable to the fact that Sellers no longer need to compile and submit information about the assets of their market-based rate affiliates. Further, the only place an affiliate's submission would affect a Seller is the asset appendix. As discussed below, when a submission is made to the database that causes a change in a Seller's asset appendix, a new asset appendix will be generated incorporating the change.<sup>88</sup> A Seller will have the ability, at any time, to access its latest asset appendix to verify its contents to stay abreast of any changes that have occurred.

50. Independent Generation also raises a concern that Sellers would have to make additional submissions to correct any errors or omissions and that errors can continue to

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<sup>88</sup> The change could be the Seller or an affiliate submitting new, or updating, information that appears in the asset appendices such as its name, generation assets, PPAs, or vertical assets.

appear in subsequent filings. This is not necessarily the case. A Seller's asset information in the relational database will reflect the information the Seller submitted. To the extent that Sellers make errors or omissions when submitting data, they will be expected to make a subsequent submission to correct that error. When such corrections are made, future asset appendices will only contain the updated information. However, to the extent that Independent Generation shares NRG's concern that Sellers will not have any control over submissions by affiliates that may contain errors or may not be up to date, we note that Sellers will not be expected to correct their affiliates' data. If a Seller disagrees with information submitted by an affiliate that affects the Seller's asset appendix, the Seller should inform the Commission of that disagreement. Sellers will be able to inform the Commission in two ways. First, they can make note of any perceived errors in their transmittal letters. Second, the submittal process will include a commenting feature that will allow Sellers in their XML submissions to comment on the asset data of other Sellers.<sup>89</sup>

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<sup>89</sup> This commenting feature will allow Sellers to submit a narrative explaining why they disagree with any of the information contained within the relational database regarding their affiliates' assets. Comments submitted in this manner will only appear on the submitting Seller's Asset Appendix and will not alter the information provided by that Seller's affiliate. This feature can be utilized when an affiliate's information is factually incorrect or is being reported in a manner inconsistent with a Seller's market power analysis and should detail the specific fields that are being disputed and reason for the dispute.

51. We understand Independent Generation's concern that it may not be a simple task for multiple affiliated entities to identify the same ultimate upstream affiliate(s) given complicated ownership structures. However, we believe the requirement to identify the ultimate upstream affiliate(s) represents an overall reduction in burden as Sellers are currently required to identify all affiliates, including their ultimate upstream affiliates and any intermediate upstream affiliates.<sup>90</sup> Further, each ultimate upstream affiliate in the relational database will have a CID, LEI, and/or FERC generated ID, which will be the means for Sellers to report the connection. The system will allow a Seller to search the database to see if its ultimate upstream affiliates have already been reported to the Commission, and if so, to retrieve each of those entities' CID, LEI, and/or FERC generated ID. This will reduce the likelihood that Sellers attempting to report the same ultimate upstream affiliate(s) inadvertently report different entities, preventing the relational database from making the appropriate connections. This should also lessen NRG's concern that the relational database could give the false impression of relationships between entities.

52. In response to concerns raised by NRG, Independent Generation, EEI, and FMP regarding the reporting of jointly owned assets, double-counting, and overwriting, we have revised the information to be set forth in the MBR Data Dictionary. Multiple Sellers will be able to report a relationship with a generation asset, and each Seller will

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<sup>90</sup> See Order No. 697-A, 123 FERC ¶ 61,055 at n.258.

also provide information specific to its relationship with that generation asset. As discussed below in the Reporting of Generation Assets section, only the information reported by a given Seller will be associated with that Seller in any asset appendix created from the relational database.<sup>91</sup>

53. We disagree with FMP's statement that the relational database would function as an adjudication machine. The relational database is not "deciding" which entities have a relationship, but rather is aggregating the relationship information provided to it by Sellers to depict the relationships between them. When the information in the relational database indicates that two entities are affiliated, it is due to affiliate information being submitted to the relational database. We reiterate that to the extent that a Seller does not believe it has a relationship with an entity, the Seller will have the ability to correct the data. If the mistaken relationship is the product of an error not made by the Seller, the Seller will be able to explain its disagreement with the output of the relational database in its market-based rate filing.

54. Further, we are not delegating "first-step market-based rate adjudication" to the relational database. Applications for market-based rate authority, change in status filings, and triennial market power updates will continue to be evaluated according to the existing market-based rate regulations in public, docketed market-based rate proceedings. While Sellers will be submitting information to the relational database that may be used

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<sup>91</sup> In cases where the joint-owners of a generation assets are affiliates, that generation asset may appear multiple times in an asset appendix.

in market-based rate proceedings, the relational database does not adjudicate anything. Rather, as explained below, when Sellers are initiating a market-based rate proceeding, they will extract information from the relational database, verify it, and include it as part of their docketed, market-based rate filings.

55. We do not accept Working Group's suggestion that Sellers be able to choose how they wish to submit information into the asset appendix. That approach would disrupt the ability to use the information in the relational database to auto-generate accurate asset appendices and would result in the types of system overwrites and repetitious filings that we are seeking to avoid.

56. We appreciate comments requesting the opportunity to review the information input to the asset appendix before making the filing and have developed a submission and filing mechanism that will accommodate such review. As will be explained in more depth on the Commission's website, each Seller will first submit the required information into the relational database and an asset appendix will be generated for the Seller with a serial number that the Seller can reference in its market-based rate filing. The Seller will have the opportunity to review the asset appendix and, if necessary, make a submission to the relational database to address any errors. Next, when the Seller is comfortable with the asset appendix, it will reference in its transmittal letter the serial number of the asset appendix it wants included as part of its filing. However, the Seller must reference either its most recently created asset appendix or an asset appendix created fewer than 15 days



before it makes its filing.<sup>92</sup> This approach will minimize the need to correct errors through amendments and should mitigate commenters' concerns in that regard.

## **2. Reporting of Generation Assets**

### **a. Commission Proposal**

57. In the NOPR, the Commission proposed two changes to the information required to be reported regarding generation assets. First, the Commission proposed to require that each generator be reported separately for purposes of the relational database and that Sellers report the Plant Name, Plant Code, Generator ID and Unit Code (if applicable) information from the Energy Information Agency (EIA) Form EIA-860 database. Second, the Commission proposed that Sellers be required to report in the relational database the "Telemetered Location: Market/Balancing Authority Area" and "Telemetered Location: Geographic Region" in which the generator should be considered for market power purposes when that location differs from the reported physical location.

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<sup>92</sup> This ensures that Sellers will submit accurate asset appendices as part of their filings. A new asset appendix will be created after the close of business for any Seller whose asset appendix is affected by a relational database submission made during business hours by it or one of its affiliates. Sellers will also have the ability to request the creation of a new asset appendix "on demand." While we prefer that Sellers always reference their most recent asset appendix, we realize that Sellers may not know when their affiliates are going to make submissions that affect their asset appendices and that Sellers need an opportunity to review their asset appendix before making a filing.

**b. Comments**

58. GE and NextEra seek clarifications regarding the use of EIA-860 data. GE asks that to the extent a Seller is aware that the EIA data for its assets is inaccurate, that the Commission clarify whether the Seller should use the published EIA-860 data or whether it should submit to the Commission more up-to-date information known to it.<sup>93</sup> GE notes that EIA, at times, has two versions of their data available, “Final Data” which may be over a year old, and “Early Release” data which may not be fully edited. GE requests clarification as to which version of the data Sellers should use. NextEra requests that the Commission clarify that EIA-860 data need only be reported if available.<sup>94</sup> NextEra states that it is possible that a Seller may submit its initial application in advance of this information being entered into the EIA-860 database. Therefore, the Commission should clarify that such information, if unavailable at the time of filing, may be entered in the quarterly relational database update filing.<sup>95</sup> NextEra notes that, “[i]n addition to a delay in filing resulting from [the] burden in finding the employee responsible for submitting EIA-860 data,” the information has never before been needed by the Commission in accepting market-based rate filings. NextEra contends that the Commission did not

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<sup>93</sup> GE at 24-25.

<sup>94</sup> NextEra at 12.

<sup>95</sup> *Id.*

provide rationale as to why including this information should be a condition precedent to acceptance of an application.<sup>96</sup>

59. EEI, EPSA, and FMP note that the EIA-860 database only includes generators with a nameplate rating of one MW or greater,<sup>97</sup> and EEI argues that Sellers should only be required to provide information on facilities with a nameplate rating of one MW or larger, as the EIA-860 database does not include information on any facilities smaller than one MW.<sup>98</sup>

60. EPSA argues that the requirement to provide unit-specific generation information constitutes a change in the rules governing market power analysis and is beyond the scope of this rulemaking.<sup>99</sup>

61. EPSA and Brookfield note certain concerns regarding the use of EIA codes. EPSA states that EIA nomenclature is impractical to collect for purposes of achieving a consistent, granular view into the asset mix in each Seller's filing and notes that some wind farms are identified under a single ID without distinction of individual turbines with their own plant names and plant codes, while other wind farms have IDs for each of their

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<sup>96</sup> *Id.* at 12-13.

<sup>97</sup> EEI at 21; EPSA at 29; FMP at DD Appendix 6-8.

<sup>98</sup> EEI at 21.

<sup>99</sup> EPSA at 29-30.

turbines.<sup>100</sup> Brookfield notes that it has at least one plant with multiple EIA plant codes and requests that the Commission allow multiple entries.<sup>101</sup>

62. Independent Generation seeks clarification on whether Sellers should pro-rate assets on a proportional basis or whether each Seller will be required to account for the full capacity of the unit in its market power analysis.<sup>102</sup> EEI and FMP recommend that the Commission add an option for “nameplate” in the adjusted capacity rating field of the data dictionary.<sup>103</sup> EEI and FMP note that Order No. 816 stated that to the extent a Seller is attributing to itself less than a facility’s full capacity rating, the Seller can explain this fact in the end notes column. In light of the “entities\_genassets” table having an ownership percentage field, they ask the Commission to reconcile whether there is a need to explain the amount attributed in the ownership percentage field.<sup>104</sup> Designated Companies ask the Commission to clarify whether a Seller only reports one rating and how best to identify which season corresponds to which rating and which rating corresponds to the associated de-rating of a facility.<sup>105</sup>

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<sup>100</sup> *Id.* at 30.

<sup>101</sup> Brookfield at 9.

<sup>102</sup> Independent Generation at 15.

<sup>103</sup> EEI at DD Appendix 6-10; FMP at DD Appendix 6-8.

<sup>104</sup> EEI at DD Appendix 6-10; FMP at DD Appendix 6-8.

<sup>105</sup> Designated Companies at 18-19.

63. Others recommend that in-service date be changed to “in-service date if after final rule” because it is burdensome to locate the actual date in many cases (or a year or default date should be set).<sup>106</sup>

**c. Commission Determination**

64. We adopt the NOPR proposal to require each generator to be reported separately for purposes of the relational database and that Sellers report the Plant Code, Generator ID, and Unit Code (if applicable) (collectively, EIA Code) information from the EIA-860 database. However, the Commission will capture the Plant Name from the EIA-860 database and therefore we will not require Sellers to report it to the Commission’s relational database as had originally been proposed in the NOPR.<sup>107</sup> In response to comments that certain generators may not appear in the EIA-860 database, the Commission is creating a Commission Issued “Asset Identification” (Asset ID) number. Sellers will obtain Asset ID numbers for their generators that are not included in the EIA-860 database prior to making their relational database submission to the Commission.<sup>108</sup> Commission staff will maintain a look-up table containing EIA Codes and Asset ID numbers to help Sellers to find the appropriate Code or ID for their assets.

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<sup>106</sup> Brookfield at 10; EEI at DD Appendix 6-10; FMP at DD Appendix 6-8.

<sup>107</sup> The Commission will also capture the nameplate capacity and operating year from the EIA-860 database.

<sup>108</sup> When creating the Asset ID, Sellers will be required to provide basic information about the generator such as its plant name, nameplate capacity, and month and year it began commercial operation (if known).

65. We disagree with EPSA's comments that requiring Sellers to report generation units separately is a rule change impacting market power analysis. The requirement to report generators individually is a modification to the way assets should be reported to the Commission and not a change in how the generation assets are analyzed. The Commission's current rules allow Sellers to report their generation assets at either the plant or individual generator level. Requiring Sellers to report generators at the more granular generator level will reduce redundancy, reduce the need for explanatory notes in the relational database, and make the asset appendices more accurate. Further, the use of EIA-860 data and Asset IDs will make accessing and reporting generation data less burdensome for Sellers in some respects, as some of the current requirements are being eliminated (e.g., nameplate capacity and in-service date) given that the Commission can obtain comparable information from the EIA-860 database using the Plant Code as well as the Generator ID, and Unit Code provided by the Seller.

66. We do not share EPSA and Brookfield's concerns regarding the use of EIA codes. The EIA-860 data is the most complete public database of generators available and can be relied upon to have accurate, detailed information on generation assets. We understand that there may be some instances where data is reported to EIA in an inconsistent manner.<sup>109</sup> In those instances, Sellers should use the most granular

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<sup>109</sup> This includes EPSA's wind farm example where some wind farms report the individual turbines as unique generators with their own Gen IDs, and others report the entire wind farm under one Gen ID.

information possible and, if necessary, make use of the “end notes” field in the entities\_to\_genassets table to provide explanations where necessary. For example, if a Seller owns one turbine in a wind farm that reports to EIA all of the turbines under one Gen ID; the Seller should report the EIA Code with the single Gen ID, and explain in the end notes field that the Gen ID covers multiple turbines, but that the Seller only owns one turbine.<sup>110</sup> In the case of Brookfield’s plant with multiple EIA codes, Brookfield will be able to report all of the relevant EIA codes.<sup>111</sup>

67. We also adopt the NOPR proposal that Sellers be required to report the telemetered market/balancing authority area of their generation, but not the proposal to require Sellers to report the telemetered region of their generation.<sup>112</sup> As explained in the NOPR, providing the telemetered location will ensure that the Commission is able to

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<sup>110</sup> As discussed below, the Commission will only retrieve from the EIA-860 certain basic information about the generator, such as nameplate capacity and operating year. Sellers will still provide information such as the adjusted capacity rating when they make their submissions. In that way, Sellers will be able to show if the actual amount of capacity they own is different than the EIA figure.

<sup>111</sup> We are not sure if Brookfield is indicating that its EIA codes are redundant. However, to the extent that they are redundant and will result in inaccurate or duplicative entries in the asset appendix, Brookfield should explain in its narrative or end notes column.

<sup>112</sup> We also clarify that Sellers are required to report the telemetered market/balancing authority area, even when it is the same as the physical market/balancing authority area. The NOPR contains an unclear statement, which could be read to suggest that Sellers only need to report the telemetered location when it differs from physical location. *See* NOPR, 156 FERC ¶ 61,045 at P 36.

properly match identified generators with the markets/balancing authority areas in which they are studied in a Seller's market power analysis. Providing the market/balancing authority area will be sufficient for the Commission to identify the region in which the generation is located.<sup>113</sup>

68. The MBR Data Dictionary will have multiple generation-related tables. The `gen_assets` table will store the basic information about all of the generators in the database, such as the generator's name, nameplate capacity, and in-service date. This information will be populated by the information from EIA-860 or the information provided by Sellers' when they request an Asset ID. Sellers will not submit information directly to the `gen_assets` table when updating the database. Instead, Sellers will update the `entities_to_genassets` table with the information pertinent to their (or their non-MBR affiliate's) relationship to the generation asset. This includes information on the type of relationship (ownership or control), the generator's location (physical and telemetered), de-rated capacity of the facility and de-rating methodology used, the actual amount of capacity controlled, and any explanatory notes.

69. We have restructured the tables in response to concerns about joint-ownership and overwriting of data. This structure will allow for more than one Seller to report a

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<sup>113</sup> This is true for other tables in the MBR Data Dictionary where the NOPR proposed to require both the market/balancing authority and region. We have accordingly revised those tables to only require the market/balancing authority area. The Commission will also be able to determine if a generator is in Canada, Mexico, or ERCOT by using the reported market/balancing authority area.



relationship with a specific asset. However, only the details that the Seller assigns to the generation asset via its submissions will appear on that Seller's entry in the asset appendix.<sup>114</sup> As an example, Seller A and Seller B can both report a relationship with Generator X. Seller A can report via the `entities_to_genassets` table that the capacity rating of Generator X is 20 MW; and Seller B can report via the `entities_to_genassets` table that the capacity rating of Generator X is 25 MW. When an asset appendix is created for Seller A (or an affiliate of Seller A), there will be a row containing Seller A's relationship with Generator X that will reflect Seller A's capacity rating of 20 MW. Similarly, for a Seller that is an affiliate of both Seller A and Seller B, its asset appendix will have two separate rows for Generator X: one to report its relationship to Seller A (with the 20 MW capacity rating) and a second to report its relationship to Seller B (with the 25 MW capacity rating).

70. This solution should resolve many of the concerns about the accuracy of the EIA data. The Commission will only rely on EIA data (or information input when creating an Asset ID) for basic information about generation assets such as Plant Name, Nameplate Capacity, and In-service Date.<sup>115</sup> The rest of the information in the asset appendix will be provided by Sellers. If a Seller believes the Plant Name, Nameplate Capacity, or In-

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<sup>114</sup> However, the Plant Name, Nameplate Capacity, and Operation Date information will be pulled from EIA-860 or provided when Sellers seek an Asset ID.

<sup>115</sup> The EIA data contains "operational month" and "operational year" fields, which the Commission will use for In-Service Date information.

service Date for one of its generation assets is incorrect, the Seller will be able to note the error in its transmittal letter or use the commenting feature discussed above.

71. In response to NextEra, we clarify that EIA-860 data need only be reported if available. However, if EIA-860 data is unavailable for a generation asset, the Seller should check to see if another Seller has obtained an Asset ID for that generation asset, and, if not, obtain an Asset ID for that generation asset. If, at a later date, EIA-860 data becomes available for that asset, the Seller should update its relationship to that generation asset to provide the EIA information in its next monthly database submission.<sup>116</sup> We disagree with NextEra's contention that the burden associated with finding the employee responsible for submitting the EIA-860 data will cause a delay. First, the only EIA-860 data that Sellers will be responsible for submitting into the relational database is the Plant Code, Generator ID, and Unit Code, which is necessary to identify which generation assets the Seller is referencing when submitted the entities\_to\_genassets table. Sellers will not have to resubmit this information in advance of every market-based rate filing. Instead, Sellers will report all of their generation assets (as well as the assets of any affiliates without market-based rate authority) when making their baseline or initial submissions. We anticipate that most Sellers will not have to provide additional asset information after submitting their baseline or initial submissions. However, in cases where a Seller does need to add, remove, or update information on a

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<sup>116</sup> The monthly relational database submissions are discussed in the Ongoing Reporting Requirements section of this final rule.

generation asset, it will be able to do so without having to resubmit information for all of its generation assets. Rather, it will only have to resubmit/update the information for that specific generation asset.

72. In response to GE, we clarify that Sellers should use the latest available “Final Data” from EIA. When the Final Data is released, the Commission will update the relevant information in the reference tables because, as GE notes, the “Early Release” data may be incomplete.

73. In response to comments regarding the need for clarity in reporting generation asset capacity, we have added an option for “Nameplate” under the `adj_rating_options` field in the `entities_to_genassets` table.

74. We clarify that Sellers should not pro-rate assets on a proportional basis when submitting the de-rated capacity of an asset in the `cap_rating_adjusted` field.<sup>117</sup> In response to EEI and FMP, we further clarify that there is no longer a need for a Seller to explain in the end notes fields that it is attributing to itself less than the full amount of a facility. However, a Seller will not provide its attributable capacity in the `ownership_percentage` field, as we have removed that field. Instead, we have added an “amount” field to the new `entities_to_genassets` table in the MBR Data Dictionary. In the amount field, Sellers will provide the megawatts controlled by the entity that it is

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<sup>117</sup> As noted above, the nameplate capacity for assets in the EIA-860 will be populated from the EIA-860 database and the nameplate capacity for assets with Asset IDs will be inserted when the Asset ID is created.

reporting as controlling the asset.<sup>118</sup> Further, in response to Independent Generation, we clarify that Sellers will not be required to account for the full capacity of the unit in their market power analysis. While Sellers may conservatively assume in their market power analyses that they own or control the full output of a facility, they are only required to attribute to themselves the actual energy and/or capacity that they and their affiliates own or control.

75. In response to Designated Companies, we clarify that Sellers will only report one rating in the `cap_rating_adjusted` and `amount` fields. The `cap_rating_adjusted` and `adj_rating_options` fields are analogous to the “Capacity Rating Used in Filing (MW)” and “Capacity Rating: Methodology Used” columns created in Order No. 816, and modified in Order No. 816-A, and should be populated in the same manner.

76. We deny requests to change “in-service date” to “in-service date if after final rule.” First, in-service date information is currently required in Sellers’ asset appendices and is not a new requirement. Also, as noted above, for entities with EIA codes, the Commission will obtain the operational month and operational year information from the EIA database. Therefore, Sellers will only have to provide the in-service date for assets for which they are requesting an Asset ID. To the extent that Sellers do not know the

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<sup>118</sup> The total in the amount field should be calculated using the same capacity rating methodology used to find the total de-rated capacity of that generator. If the reported entity does not control the generation asset, the Seller should input “0” as the amount.

precise in-service date for an asset for which they are requesting an Asset ID, they may use a default date of January 1, 2020 or, if they know the year, but not the month and date, they may use the appropriate year and assume January 1 as the month and day.<sup>119</sup>

### **3. Power Purchase Agreements**

#### **a. Commission Proposal**

77. In addition to long-term firm purchase agreements, the Commission proposed to require Sellers to submit into the relational database information on long-term firm sales (i.e., those one year or longer) agreements. The Commission stated that to the extent that a Seller believes there are any unique qualities of the contract that would not otherwise be captured by the relational database, the Seller is free to explain this as part of its horizontal market power discussion.

#### **b. Comments**

78. EEI and Independent Generation oppose the proposal to require Sellers to include information on long-term firm sales in the PPAs table.<sup>120</sup> They argue that the proposal is duplicative of sales information already reported through EQR.<sup>121</sup> EEI disagrees that the requirement will improve consistency in reporting between purchasers and Sellers. According to EEI, Sellers often sell to, and purchase power from, non-jurisdictional

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<sup>119</sup> Similarly, if they know the month, but not the actual date, they can use the first day of the month.

<sup>120</sup> EEI at 19; Independent Generation at 15.

<sup>121</sup> EEI at 19, 20; Independent Generation at 15.

assets such that the purchases and sales will not match up.<sup>122</sup> EEI states that the requirement to report long-term firm sales would violate the Paperwork Reduction Act and the Office of Management and Budget (OMB) prohibitions against duplicative collections of data.<sup>123</sup>

79. If the Commission retains the requirement to report long-term sales agreements, EEI and GE state that additional clarity is needed as to: (1) whether the sales reporting obligation is parallel to purchases in that purchases must have associated firm transmission;<sup>124</sup> (2) how to complete the amount field for full and partial requirements contracts;<sup>125</sup> (3) whether a heat rate call option should be reported; and (4) whether system contracts or just unit-specific contracts are intended to be captured.<sup>126</sup> EEI states that, as with PPA data, there is considerable confusion as to the requirement in Order

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<sup>122</sup> EEI at 20.

<sup>123</sup> *Id.* (citing Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2812, 44 U.S.C. 3501–352; Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat 163).

<sup>124</sup> *Id.* at 20 & n.45 (“If the obligation is parallel, the Commission must address how the Seller would be expected to know this information. And if the obligation is not parallel, it raises the question of the need for the information as it could not be used for matching purposes.”).

<sup>125</sup> *Id.* at 20; GE at 30.

<sup>126</sup> GE at 30.

No. 816 that asset appendices be both current and reflect triennial data from the study period.<sup>127</sup>

80. AVANGRID, and ELCON and AFPA request clarification on the NOPR proposal that if a Seller believes there are any unique qualities of the contract that would not otherwise be captured by the relational database, the Seller is free to explain this as part of its horizontal market power discussion.<sup>128</sup> They state that the NOPR provides little guidance on the characteristics of a contract that would be sufficiently unique to report,<sup>129</sup> and that the Commission should clarify that this obligation applies only to market-based rate-related filings and should identify the need for, and define, the sort of unique qualities to which the NOPR refers.<sup>130</sup>

81. AVANGRID also states that it is unclear when the “multi-lateral contract identifier” row would apply and what information needs to be listed and that the table requests filing entities identify the date of last change of a contract, but it is unclear if a filing entity is required to track and report all changes, even minor, non-substantive revisions and corrections.<sup>131</sup>

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<sup>127</sup> EEI at 20-21.

<sup>128</sup> AVANGRID at 13; ELCON and AFPA at 13 (citing NOPR, 156 FERC ¶ 61,045 at P 37).

<sup>129</sup> AVANGRID at 13.

<sup>130</sup> ELCON and AFPA at 13.

<sup>131</sup> AVANGRID at 13.

82. EEI strongly objects to the reporting of the source of supply for long-term PPAs.<sup>132</sup> EEI argues that it is unclear as to what data is being sought, and requires analysts to review contracts on an individual basis to gather the data, which are not collected elsewhere. EEI states that this is the type of requirement that cannot and should not be imposed without reissuing the NOPR to explain what is being required and its purpose.<sup>133</sup>

83. EEI explains that the Commission should recognize that there are data elements specific to PPA sellers that purchasers may not have contractual rights to receive, which are necessary in order to meet the new reporting requirements and that, therefore, the Commission should apply a “reasonable efforts” standard.”<sup>134</sup>

84. Several commenters requested clarifications regarding the definition of, and reporting requirements related to, power purchase agreements.<sup>135</sup>

**c. Commission Determination**

85. We adopt the NOPR proposal to require Sellers to include information on long-term firm sales. Collecting information on long-term firm sales will help the

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<sup>132</sup> EEI at 21. EEI notes that Commission staff explained at the Workshop that it wanted to expand Source reporting beyond a unit-specific power purchase agreement to system sales.

<sup>133</sup> *Id.* at 21-22.

<sup>134</sup> *Id.* at 22.

<sup>135</sup> *See e.g.*, Duke at 2 n.4; GE at 30.



Commission ensure that purchasers and sellers report and treat transactions in a consistent and accurate manner. It will also allow for corroboration of the long-term sale information in the indicative screens and delivered price tests, in a manner similar to installed capacity and long-term purchases.

86. We will maintain the definition of long-term firm sales established in Order No. 816.<sup>136</sup> Sellers will be required to report sales that are both long-term and firm. Long-term is defined as sales for one year or longer. Firm means a “service or product that is not interruptible for economic reasons.”<sup>137</sup> As discussed more below, long-term firm sales will be reportable even if they do not have associated firm transmission.

87. In regard to long-term firm sales, Sellers will be required to provide to the relational database the identity of the counter-party (using a CID, LEI, or FERC generated ID), the type of sale,<sup>138</sup> relevant dates, the amount, relevant de-rating information, and the source market/balancing authority area.<sup>139</sup> We note that the source market/balancing authority area will be required for all long-term firm sales.

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<sup>136</sup> Order No. 816, 153 FERC ¶ 61,065 at PP 39-44.

<sup>137</sup> This is consistent with the definition of firm used in the EQR Data Dictionary and for long-term firm purchases. *See* Order No. 816, 153 FERC ¶ 61,065 at P 43.

<sup>138</sup> Type of Sale can be Unit Specific, Slice of System, or Portfolio.

<sup>139</sup> For unit-specific sales, Sellers will know the location of their generators. The source for slice of system sales will be the market/balancing authority area where the Seller’s system is located. Sellers will identify all markets/balancing authority areas if generation is sourced from more than one area. If the source for a portfolio sale is generation purchased at a hub, and the location of the generation supplying the energy/capacity is unknown, sellers will provide the hub name.

88. We disagree with EEI's statement that the collection of this information here and in the EQR is a violation of the requirements of the Paperwork Reduction Act and OMB prohibitions against duplicate collection of data. While Sellers may report to the relational database some of the same contracts that they will report in their EQRs, the information is not unnecessarily duplicative. First, this data collection captures information on long-term firm purchases and sales, while the EQR only collects sales information. Further, where the EQR and this data collection have overlapping information i.e., agreement identifier, identities of parties, source and sink information, and contract start and end dates, this information is necessary for several reasons.

89. The power purchase agreement identifier, although similar to the EQR contract service agreement identifier, is different in that this unique identifier will remain assigned to a particular agreement in perpetuity whereas the EQR contract service agreement ID field does not necessarily retain the same identifier over different quarters.<sup>140</sup> Regarding fields that serve to identify the parties to an agreement, this is not a direct overlap as the EQR relies on counterparty/purchaser names while the relational database relies on unique identifiers, such as CID, LEI, and FERC generated ID, which are more precise and will help prevent a single entity from being reported with multiple names.

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<sup>140</sup> There is currently no requirement for the contract service agreement ID field in the EQR database to remain constant across every quarterly submission, making it difficult in some cases to consistently map a PPA with a contract reported through EQR. The Commission will continue to be mindful of opportunities to minimize overlap in the future.

90. In addition, Sellers currently are required to provide information regarding their counterparties to long-term firm purchases as part of their asset appendix. This final rule extends the PPA reporting to long-term firm sales. Similarly, information concerning the source and sink information of long-term firm purchases is already required to be reported in a Seller's asset appendix; we are merely altering the format in which the information is submitted and extending the requirements to long-term firm sales.<sup>141</sup> This information will allow the Commission to ensure that Sellers attribute the capacity associated with these PPAs to the appropriate markets/balancing authority areas when performing market power analyses.<sup>142</sup> Similarly, the end date is necessary to remove a PPA from a Seller's asset appendix upon its actual expiration.

91. There is also a time differential between the EQR reporting requirement and the long-term firm sales information required in a Seller's asset appendix. EQRs are submitted quarterly and the EQR submission obligation begins after a Seller receives market-based rate authority. In contrast, a Seller will have to provide information to this database prior to obtaining market-based rate authority, because it is necessary to create the asset appendix and to analyze the Seller's indicative screens.

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<sup>141</sup> See Order No. 816-A, 155 FERC ¶ 61,188 at P 61; 18 CFR 35, Subpt. H, App. A. The reporting requirements in Order Nos. 816 and 816-A were approved by OMB on December 22, 2015 and July 21, 2016 (OMB Control No. 1902-0234).

<sup>142</sup> We also note that the analogous EQR point of receipt and point of delivery balancing authority area fields are only required to be reported in EQR if specified in a contract.

92. Furthermore, the relational database submission requires certain information that is not contained in the EQR submission, e.g., supply type and supply identifier, and Sellers will be able to include in their relational database submissions the de-rated capacity of their unit-specific contracts, information that is not reported in EQRs. This will allow the Commission to more accurately review Sellers' indicative screens, which often reflect de-rated capacity numbers. Moreover, information on long-term firm sales made by certain non-jurisdictional public utilities is not reflected in EQRs<sup>143</sup> but must be reported in the relational database as a long-term firm purchase in the Seller's asset appendix. Further, where similar data are required in both the EQR and the instant proceeding, we have deliberately harmonized the definitions of that data to simplify the data gathering aspect of the requirement.

93. In response to EEI, we clarify that the long-term sales reporting obligation is not parallel to purchases in that purchases must have associated firm transmission. We understand that the Seller may not always know if the buyer has procured firm transmission. To EEI's question about the need for this information, as stated above, this information will allow the Commission to corroborate the long-term sales information in the indicative screens and delivered price tests.

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<sup>143</sup> Only non-public utilities above the *de minimis* market presence threshold are required to report their wholesale sales in the EQR, subject to certain reporting exclusions.

94. In response to EEI and GE, we clarify that Sellers should complete the amount field for full and partial requirements contracts. For a full requirements contract, the amount should equal the buyer's most recent historical annual peak load. For a partial requirements contract, the amount should equal the portion of the buyer's requirements served by the seller multiplied by the buyer's annual peak load. For example, if the seller supplies 50 percent of the buyer's requirements, it should multiply the buyer's annual peak load by 0.5 and place this value in the amount field.

95. We also clarify that Sellers' asset information, including long-term firm sales and purchase data, should be current in the relational database. The Commission's expectation has always been that the information in a Seller's asset appendix should be current. We recognize that at times this may create a data disconnect with the study period of a market power analysis. However, the Commission provided guidance on this issue in Order No. 816.<sup>144</sup>

96. In regard to long-term firm purchases, Sellers will be required to report to the relational database information on the counter-party (by providing a CID, LEI, or FERC generated ID), the type of purchase,<sup>145</sup> relevant dates, the amount, relevant de-rating information, and the sink market/balancing authority area.<sup>146</sup> In response to comments,

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<sup>144</sup> Order No. 816, 153 FERC ¶ 61,065 at PP 289-294.

<sup>145</sup> Type of purchase can be Unit Specific, Slice of System, or Portfolio.

<sup>146</sup> If the sink is a hub, Sellers will identify the hub.

we are not requiring Sellers to report the source market/balancing authority area for their long-term firm purchases. Source information for long-term firm purchases may provide useful information, but it is not critical to the Commission's examination of a specific Seller's market power. For that purpose the sink market/balancing authority area is more relevant, because that is where the Seller should study that energy/capacity.

97. We decline to adopt a "reasonable efforts" standard for data elements specific to PPAs as EEI suggests. Sellers are already reporting substantially all of this information in their asset appendices pursuant to Order No. 816-A.<sup>147</sup> The only additional information that Sellers will need to provide regarding their long-term firm purchases is the counterparty's CID, LEI, or FERC generated ID, de-rated capacity rating and details on their de-rating methodology (if they use a de-rating methodology), and two additional dates. This is information that should be available to Sellers with long-term firm purchases. As discussed in the Due Diligence section of this final rule, Sellers are subject to § 35.41(b) of the Commission's regulations when providing information to the Commission and are expected to exercise due diligence to ensure the accuracy of their submissions, including reporting the data elements specific to PPAs.

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<sup>147</sup> As revised in Order No. 816-A, the LT Firm Power Purchase Agreement sheet of the Asset Appendix requires Sellers to provide the following information for each reported purchase agreement: Seller (counterparty) Name, Amount of PPA, Source Market/balancing authority area, Sink Market/balancing authority area, Sink Geographic Region, Start Date, End Date, Type of PPA (Unit or System), and any relevant end notes.

98. In response to AVANGRID, and ELCON and APPA's requests for guidance on how to populate the "contractual details" row in the PPA table of the MBR Data Dictionary, we have replaced the "contractual details" row with an "explanatory notes" field. The "explanatory notes" field will work the same as the "End Notes" sheet in the current asset appendix, allowing Sellers to provide additional information or clarifications regarding the reported PPA if they desire to do so.<sup>148</sup>

99. In response to AVANGRID's comment, we have removed from the MBR Data Dictionary the "multi-lateral contract" row. Given our decision to not pursue the Connected Entities requirements and associated required contract information, and our revisions to the MBR Data Dictionary in regard to the reporting of long-term firm purchases and sales, this row is no longer necessary.

100. We need not provide in this final rule additional clarifications regarding the definition and reporting thresholds for long-term power purchase agreements. The definitions and thresholds established in Order No. 816 continue to apply.<sup>149</sup>

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<sup>148</sup> See Order No. 816, 153 FERC ¶ 61,065 at P 267.

<sup>149</sup> See *id.* PP 130-45, *order on reh'g*, Order No. 816-A 155 FERC ¶ 61,188 at PP 26-28.

**4. Providing EIA Codes for Unit-Specific Power Purchase Agreements**

**a. Commission Proposal**

101. The Commission proposed that for unit-specific power purchase agreements, Sellers must provide the associated Plant Code and Generator ID from the Form EIA-860 database, which will provide the unique identifier for that unit.

**b. Comments**

102. EEI and EPSA oppose this proposal, arguing that it is burdensome when the filing entity is the purchaser.<sup>150</sup> EEI argues that a purchaser has no basis for knowing such information and should not be tasked with searching for it.<sup>151</sup> EPSA states that this proposal would not provide the Commission with useful information and that the EIA data is not granular enough to tie all specific units within a facility to specific PPAs.<sup>152</sup>

103. EPSA expresses concerns that EIA data does not provide useful tracking information regarding which entities control specific units within a facility, making it difficult to identify which PPAs and off-takers are tied to specific units within a facility.<sup>153</sup> EPSA comments that some units may have more than one PPA and more than one off-taker, and all potential off-takers share the energy produced by the entire facility;

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<sup>150</sup> EEI at 21; EPSA at 31.

<sup>151</sup> EEI at 21.

<sup>152</sup> EPSA at 31.

<sup>153</sup> *Id.* at 30.



and that in other instances a sales contract may tie a specific off-taker to a specific turbine. EPSA states that there is confusion about the reporting of geographic region for generation units that serve multiple regions.<sup>154</sup> EPSA notes that some units in a plant may be pseudo-tied to another region, while others may not. According to EPSA, if EIA does not have separate generator IDs for each unit, it will be impossible to break down these unit commitments using EIA nomenclature.<sup>155</sup>

**c. Commission Determination**

104. We adopt the proposal that, for unit-specific power purchase agreements, Sellers must provide the associated EIA Codes or FERC Asset IDs, which will provide the unique identifier for that unit. This requirement will apply to both unit-specific sales and unit-specific purchases. Providing this information will allow the Commission to match reported long-term purchases and sales to ensure that generators are ascribed to the appropriate Sellers in market-power analyses. While we understand that the Commission and Sellers will not be able to match all reported purchases to a reported sale,<sup>156</sup> there is value in maximizing the instances that it can be done and in having corroborating data wherever possible.

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> For example, this could occur where a Seller makes a purchase from an entity that is not a Seller and thus is not required to submit any information to the relational database.

105. We disagree with EPSA and EEI's comments that providing this information on purchases is burdensome for Sellers; and we also disagree with EEI's argument that Sellers have no basis to know this information regarding their purchases and should not be tasked with searching for it. First, the Commission already requires Sellers to track and report information about their purchases under unit-specific long-term PPAs pursuant to Order No. 816-A.<sup>157</sup> We reiterate that this requirement is only for unit-specific purchases. If the PPA is not tied to a specific generator, then Sellers will not have to provide this information. If a Seller is entering into a PPA to purchase power from a specific generator, the Seller should know from which generator it is purchasing, and we do not believe it is burdensome for the Seller to report this information.

106. EPSA's concern regarding the use of EIA data to track information regarding the PPAs is misplaced. The Commission does not plan to use the EIA data (or FERC Asset IDs) to track information about the off-takers under a particular PPA. Rather, Sellers will provide the details of their long-term PPAs, including the identity of the relevant counterparties and off-takers. The EIA data, or relevant Asset IDs, will merely serve as identifiers for generators in unit-specific purchases or sales.

107. In regard to EPSA's concern that certain units may have more than one PPA and more than one off-taker, we clarify that it is acceptable for a specific generator to have

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<sup>157</sup> Order No. 816-A, 155 FERC ¶ 61,188 at P 25 ("We also clarify that the generation capacity associated with a unit-specific long-term contract should be reported in the 'Notes' portion of the asset appendix.").

multiple purchase agreements with multiple counter-parties and we have designed the database to allow generators to be associated with multiple reported PPAs. If EPSA's concern is that a Seller may be attributed an incorrect amount of generation in its asset appendix, we note that the Seller itself will input into the relational database the amount of generation or capacity that should be attributed to it.<sup>158</sup> Further, to the extent that Sellers want to provide further explanation, there will be a place for explanatory notes, similar to current Asset Appendices.

## **5. Vertical Assets**

### **a. Commission Proposal**

108. The Commission proposed to eliminate the requirement that Sellers provide specific details about their transmission facilities in their asset appendices. Instead, the Commission proposed that Sellers only report in the relational database whether they have transmission facilities covered by a tariff in a particular balancing authority area and region. With respect to the natural gas pipeline information, the Commission proposed to revise the requirements so that a Seller will only be required to indicate for purposes of the relational database whether it owns natural gas pipeline and storage facilities, and if so, to identify in which balancing authority area and region those assets are located.

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<sup>158</sup> In addition, the Seller will be providing its own indicative screen information and horizontal market power analysis, which will reflect the amount of capacity that the Seller is attributing to itself and its affiliates.

**b. Comments**

109. We did not receive any comments opposing this requirement. However, EEI argues that the Commission should determine that the reporting of affiliates, ownership, and Vertical Assets by XML eliminates the need for narratives on these subjects in market-based rate filings.<sup>159</sup> EEI argues that textual descriptions and lists of assets and affiliates should no longer be required and, if the final rule requires the same information in narrative and in XML, it violates OMB prohibitions and the Paper Reduction Act.<sup>160</sup> Conversely, TAPS argues that the Commission should maintain an ongoing narrative reporting of sufficient information concerning certain aspects of the market-based rate corporate family to monitor and ensure that the relational database is working and that the Commission possesses the necessary information to perform its required market-based rate oversight.<sup>161</sup>

**c. Commission Determination**

110. We adopt the proposal to eliminate the requirement that Sellers provide specific details about their transmission facilities and only require Sellers to submit into the relational database information as to whether they have transmission facilities covered by a tariff in a particular balancing authority area.<sup>162</sup> Additionally, we adopt the proposal

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<sup>159</sup> EEI at 22.

<sup>160</sup> *Id.*

<sup>161</sup> TAPS at 9-11.

<sup>162</sup> In line with our determination on the reporting of generation assets, Sellers will

that for purposes of the database, a Seller only needs to indicate, if applicable, that it owns natural gas pipeline and/or storage facilities and identify in which balancing authority area those assets are located.

111. Further, we will maintain the requirement that Sellers provide a narrative on their vertical assets, affiliates, and ownership in their market-based rate filings.<sup>163</sup> Thus, we are not proposing to revise the vertical market power requirements in §§ 35.37(d) and (e). As TAPS notes, requiring a description of ultimate upstream affiliates and affiliates relevant to the horizontal and vertical market power analyses as a supplement to the information in the relational database will ensure that the database includes the information necessary for market-based rate authorization purposes and for ensuring that the new relational database functions properly.<sup>164</sup>

## **B. Ownership Information**

### **1. Commission Proposal**

112. In Order No. 697-A, the Commission stated that Sellers seeking to obtain or retain market-based rate authority must identify all upstream owners and describe the business

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not need to report the region their transmission, or other vertical assets are located. Providing the market/balancing authority area will be sufficient for the Commission to identify the region in which the assets are located.

<sup>163</sup> The need for narratives in regard to ownership is addressed below in the Ownership Information section.

<sup>164</sup> TAPS at 11.

activity of its owners and whether they are involved in the energy industry.<sup>165</sup> In carrying forward and superseding the proposals in the Ownership NOPR,<sup>166</sup> the Commission proposed in this NOPR proceeding to reduce and clarify the scope of this requirement such that Sellers would only need to provide for market-based rate purposes information on a subset of upstream affiliates (i.e., entities that fall within the definition of affiliate found in 18 CFR 35.36(a)(9)(i)).<sup>167</sup> This subset would include upstream affiliates that either: (1) are an “ultimate upstream affiliate,” defined as the furthest upstream affiliate in the ownership/control chain; or (2) have a franchised service area or market-based rate authority, or directly own or control 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.<sup>168</sup>

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<sup>165</sup> Order No. 697-A provides: “A seller seeking market-based rate authority must provide information regarding its affiliates and its corporate structure or upstream ownership. To the extent that a seller’s owners are themselves owned by others, the seller seeking to obtain or retain market-based rate authority must identify those upstream owners. Sellers must trace upstream ownership until all upstream owners are identified. Sellers must also identify all affiliates. Finally, an entity seeking market-based rate authority must describe the business activities of its owners, stating whether they are in any way involved in the energy industry.” Order No. 697-A, 123 FERC ¶ 61,055 at n.258.

<sup>166</sup> Ownership NOPR, 153 FERC ¶ 61,309. *See also* n.1.

<sup>167</sup> As noted above, we use the term “upstream affiliate” and “ultimate upstream affiliate” in place of “affiliate owner” and “ultimate affiliate owner” when referencing the NOPR proposal and comments.

<sup>168</sup> *See* NOPR, 156 FERC ¶ 61,045 at P 25.

113. The Commission proposed that the first time an entity is identified as an ultimate upstream affiliate by a Seller in an XML submission, the relational database would create a unique identifier for that entity, assuming that the entity did not already have an LEI. A list of all of these entities and their associated unique identifiers, along with limited identifying information (e.g., business address) would be published on the Commission's website. Once a unique identifier is assigned to an entity, all Sellers would be responsible for using this unique identifier when identifying their upstream affiliates in future XML submissions.

114. The Commission explained that the upstream affiliate information in the relational database could be used to generate an organizational chart for use by the Commission.<sup>169</sup> Thus, the Commission also proposed to amend § 35.37(a)(2) to remove the requirement for Sellers to submit corporate organizational charts adopted in Order No. 816.<sup>170</sup>

## **2. Comments**

115. Independent Generation, and ELCON and AFPA support the Commission's proposal to limit the scope of ownership information required for market-based rate purposes. Independent Generation notes that it is burdensome for the industry to provide

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<sup>169</sup> The ultimate upstream affiliate information is also used to auto-generate a Seller's asset appendix, as discussed in the Asset Appendix section above.

<sup>170</sup> The organizational chart requirement was suspended in Order No. 816-A "until the Commission issues an order at a later date addressing this requirement." Order No. 816-A, 155 FERC ¶ 61,188 at P 47.

information on intermediate holding companies and unaffiliated owners when such information does not affect the Commission's determination of whether a Seller qualifies for market-based rate authority.<sup>171</sup> ELCON and AFPA agree that there is no realistic way to strictly implement Order No. 697-A, which on its face would require disclosure of individual shareholders.<sup>172</sup>

116. NextEra requests clarification of the proposed requirement that Sellers identify all upstream affiliates with market-based rate authority and other upstream affiliates that directly own or control generation. NextEra suggests that the Commission require Sellers to identify all affiliates relevant to the specific market power analysis but allow Sellers to identify other upstream affiliates by reference to the relational database.<sup>173</sup>

117. In light of the Commission's proposal to require the reporting of affiliates and ownership information through the relational database, EEI and SoCal Edison request that the Commission eliminate the need for narratives on these subjects in new market-based rate applications, triennial filings, and change-in-status filings.<sup>174</sup> EEI adds that if the same narratives are required in addition to the information submitted in XML format

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<sup>171</sup> Independent Generation at 12; *see also* ELCON and AFPA at 9.

<sup>172</sup> ELCON and AFPA at 9.

<sup>173</sup> NextEra at 13-14.

<sup>174</sup> EEI at 22; SoCal Edison at 1.



into the relational database, the proposal would violate the requirements of the Paperwork Reduction Act and OMB's prohibitions against duplicative collection of data.<sup>175</sup>

118. TAPS requests that the Commission require that Sellers provide information identifying and describing all upstream affiliates, including intermediate upstream affiliates, which it describes as the “trunk” of the corporate family tree. TAPS is concerned that if the relational database does not work as planned, “the Commission will be left with pieces of trees and no backup information as to whether and how they fit together.”<sup>176</sup> TAPS is also concerned that the relational database is vulnerable to the reporting errors of a few entities causing ripple effects that undermine its accuracy.<sup>177</sup> For example, TAPS describes a hypothetical where an ultimate upstream affiliate of several Sellers is a hedge fund that owns 10.1 percent of their common parent holding company. If the hedge fund sells off 0.2 percent of the parent holding company, it would fall below the 10 percent threshold under the definition of “affiliate” and would no longer be the ultimate upstream affiliate of the commonly owned Sellers. TAPS submits that not all of the affiliates Sellers may notice and report this subtle change in ownership, and, as a result, the relational database would no longer recognize the relationship between the

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<sup>175</sup> EEI at 22.

<sup>176</sup> TAPS at 9.

<sup>177</sup> *Id.* at 19.

affiliated Sellers who properly updated their ultimate upstream owner status and those that did not.<sup>178</sup>

119. Most commenters support the Commission's proposal to eliminate the organizational chart requirement, claiming that the proposal will reduce burden on Sellers.<sup>179</sup> However, TAPS requests that Sellers be required to submit an organizational chart but propose that the chart "would include only upstream affiliate owners and those affiliates required to be included in [sic] market power analysis – not all of the entities required in the organizational chart the Commission adopted in Order No. 816."<sup>180</sup>

120. Regarding the proposal to assign unique identifiers to a Seller's upstream affiliates and publish this information on the Commission's website, Designated Companies state that if the relationship of a Seller with an upstream affiliate is privileged, it is appropriate that the identity of the upstream affiliate also remain non-public.<sup>181</sup>

### **3. Commission Determination**

121. We will adopt the NOPR proposal to require that, as part of its market-based rate application or baseline submission, a Seller must identify through the relational database its ultimate upstream affiliate(s).<sup>182</sup> Because this is a characteristic the Commission will

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<sup>178</sup> *Id.* at 20.

<sup>179</sup> AVANGRID at 7; Independent Generation at 15.

<sup>180</sup> TAPS at 10.

<sup>181</sup> Designated Companies at 5.

<sup>182</sup> See revisions to §§ 35.37(a)(1) and (a)(2) of the Commission's regulations.

rely upon in granting market-based rate authority, Sellers must also inform the Commission when they have a new ultimate upstream affiliate as part of their change in status reporting obligations, consistent with the NOPR proposal, which we adopt and codify in § 35.42(a)(1)(v). Any new ultimate upstream affiliate information must also be submitted into the relational database on a monthly basis, as discussed further in the Ongoing Reporting Requirements section of this final rule.

122. Beyond a Seller's ultimate upstream affiliate(s), the Commission proposed to require Sellers to report a second category of upstream affiliates, specifically, those upstream affiliates that: (a) have a franchised service area or market-based rate authority; or (b) directly own or control 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.<sup>183</sup> We will not require submission of this second proposed category of ownership information because, as noted by commenters, any such assets, and thus their respective owners/controllers, are already captured in the Seller's narrative and asset appendix as part of the demonstrations that a Seller must make to show a lack of horizontal and vertical market power.

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Existing Sellers must submit their ultimate upstream affiliate information into the relational database as part of their baseline filings, as discussed in Initial Submissions section.

<sup>183</sup> NOPR, 156 FERC ¶ 61,045 at P 25.

123. We have considered TAPS's request to require additional upstream affiliate information, but find that this would impose an unjustified burden on Sellers in light of the ability to use information in the relational database to discover affiliates through Sellers' reporting of a common ultimate upstream affiliate. We recognize that this may present some risk of reporting errors in the case described by TAPS of a subtle change in ownership percentage resulting in new ultimate upstream affiliates that may not be universally noticed and reported by all affiliated Sellers. However, we believe that these errors can be identified and addressed when a Seller views its auto-generated asset appendix.

124. Additionally, we adopt the proposal to remove the requirement for Sellers to submit corporate organizational charts adopted in Order No. 816. Because each Seller is required to identify in the database their ultimate upstream affiliate(s), the Commission will be able to create an organizational chart for each Seller that identifies both its ultimate upstream affiliates and its affiliates with market-based rate authority. Therefore, we reject TAPS's request that the Commission maintain a requirement that Sellers provide a chart of all upstream affiliate owners in their narrative. The organizational chart that the Commission will be able to create using information in the database is sufficient to allow the Commission to understand the connection between affiliates, as well as the relevant assets for a Seller's market power analysis. The regulatory changes proposed in the NOPR and adopted herein remove references to the organizational chart requirement in 18 CFR 35.37(a)(2) and 35.42(c).

125. We disagree with EEI and SoCal Edison that the submission of ownership information in the relational database obviates the need for such information in a Seller's market-based rate narrative and that continuing to require it violates the Paperwork Reduction Act and OMB's prohibitions against duplicative collection of data. The NOPR proposals contained minimal overlap of the information submitted in the narrative and into the database, and our determinations in this final rule further reduce this overlap by requiring less ownership information in the database.

126. However, as revised in this final rule, the only ownership information that Sellers will provide to the relational database is the Seller's ultimate upstream affiliate(s), information that is necessary to generate the asset appendix, which, together with the indicative screens, constitutes a portion of the Seller's horizontal market power analysis.<sup>184</sup> A complete horizontal market power demonstration should also identify the Seller's ultimate upstream affiliate(s), which will not be evident from the asset appendix that is produced as part of the record in the market-based rate proceeding. Accordingly, we will continue to require a narrative description of a Seller's ownership structure, which identifies all ultimate upstream affiliates whenever the Seller submits a market power analysis, as set forth in revisions to § 35.37(a)(2). This information will be readily evident to the Seller and will not present an increase in burden.

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<sup>184</sup> Portions of the asset appendix are also part of the Seller's vertical market power analysis.

127. Further, although some ownership and affiliate information will be discoverable from the relational database and placed into the Seller's asset appendix, which will become part of the record in the market-based rate proceeding, it does not specifically identify all affiliates relevant to the market power analysis.<sup>185</sup> Therefore, any ownership or affiliate relationship information that has a bearing on a Seller's horizontal and vertical market power analyses – and that is not otherwise captured in the asset appendix – must be identified and described separately in the Seller's narrative. In addition, we remind Sellers of their obligation under § 35.37(e) to describe certain affiliates as part of their vertical market power demonstration.

128. We do not adopt the proposal that the first time that an entity is identified as an ultimate upstream affiliate by a Seller in an XML submission, the relational database would create a unique identifier for that entity. Sellers will identify their ultimate upstream affiliates by reporting their CIDs, LEIs, or FERC generated IDs, which must be discovered and/or obtained prior to making an XML submission. Reporting the identifiers in this manner will simplify the management of these identifiers and reduce duplication. Finally, we adopt the proposal to make available a list of unique identifiers for Sellers' ultimate upstream affiliate(s). As to TAPS's concern regarding a situation

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<sup>185</sup> For example, many times a Seller's ultimate upstream affiliate may not itself own any assets and therefore will not appear in the asset appendix. Nevertheless, the identity of the ultimate upstream affiliate is relevant to the seller's horizontal market power analysis. In addition, a Seller's description of its ownership or control of inputs to electric power production, as required to demonstrate a lack of vertical market power under 18 CFR 35.37(e), is not captured in the asset appendix.

where one affiliate's failure to update ownership information could cause affiliate relationships to be lost, as discussed in the Asset Appendix section, Sellers will have the ability to note errors in their narratives and XML submissions. In addition, we encourage Sellers to contact their affiliates if they believe that an affiliate has not provided accurate, up-to-date information in its own submissions to the relational database.

129. We disagree with Designated Companies that the relationship between the Seller and its ultimate upstream affiliate qualifies for privileged treatment. As the Commission noted in *Ambit*, "the Commission must know the identity of a [S]eller's upstream owners in order to examine the [S]eller's ability to exercise market power in coordinated interaction with other [S]ellers"<sup>186</sup> and the "public interest in transparent decision making and encouraging public participation exceeds [a Seller's] request to shield the identity of its owners."<sup>187</sup>

### C. Passive Owners

#### 1. Commission Proposal

130. With respect to any owners that a Seller represents to be passive, the Commission proposed that the Seller affirm in its market-based rate ownership narrative that its passive owner(s) own a separate class of non-voting securities, have limited consent

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<sup>186</sup> *Ambit Northeast, LLC*, 167 FERC ¶ 61,237, at P 28 (2019).

<sup>187</sup> *Id.* at P 30.

rights, do not exercise day-to-day control over the company, and cannot remove the manager without cause.<sup>188</sup>

## 2. Comments

131. APPA and TAPS object to the passive ownership proposal to the extent it eliminates the requirement that Sellers make a demonstration of passivity.<sup>189</sup> APPA and TAPS argue that Commission precedent requires a Seller to provide evidence of passivity beyond an affirmation or representation and that the Commission has not provided any reason for departing from this prior precedent.<sup>190</sup> In contrast, Independent Generation interprets and supports this part of the NOPR as proposing a more streamlined approach to reporting passive investors that avoids the need to file extensive documentation of passive investors' limited voting rights.<sup>191</sup> However, Independent Generation seeks confirmation that a Seller may rely on an affirmation made in good faith after due inquiry as long as the representations remain true to the best of the Seller's knowledge.<sup>192</sup>

132. Starwood objects to the requirement that a Seller must identify its passive owners and affirm, among other things, that the passive owners cannot remove the manager

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<sup>188</sup> NOPR, 156 FERC ¶ 61,045 at P 26.

<sup>189</sup> APPA at 11-12; TAPS at 23-25.

<sup>190</sup> APPA at 11-12; TAPS at 23-25.

<sup>191</sup> Independent Generation at 13.

<sup>192</sup> *Id.*



without cause.<sup>193</sup> Starwood argues that the Commission has recognized that passive investors are not “affiliates” of a Seller for Commission-jurisdictional purposes because passive interests with limited investor consent or veto rights to protect an investment are not considered voting securities within the definition of “affiliate” under the Commission’s regulations. Further, Starwood points out that the Commission confirmed in a declaratory order that certain of Starwood’s investors that the Commission deemed to be passive would not need to be identified in any future section 205 market-based rate application, updated market power analysis, or notice of change in status.<sup>194</sup> Thus, Starwood argues that the requirement to identify passive owners in market-based rate data is directly at odds with the Starwood Declaratory Order.

133. Starwood adds that the requirement that a Seller confirm that its passive owners cannot remove the manager without cause is also contrary to the Starwood Declaratory Order. Starwood argues that the Commission expressly confirmed in that order that certain of its investors’ interests remained passive despite their ability to remove the manager with or without cause and would thus not have to be reported in filings under

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<sup>193</sup> Starwood at 7-8. *See also* PTI at 4 (claiming that the NOPR breaks with Commission practice to not require entities to disclose details of all passive investments and contradicts the NOPR objective to avoid collecting unnecessary information on unaffiliated owners).

<sup>194</sup> Starwood at 7 (citing *Starwood Energy Group Global, L.L.C.*, 153 FERC ¶ 61,332, at P 21 (2015) (Starwood Declaratory Order)).

sections 203 and 205 of the FPA.<sup>195</sup> Starwood acknowledges that the Commission also determined that these investors would lose their passive status if they exercised their right to remove the manager, in which case they would have to be reported under sections 203 and 205 of the FPA. Starwood states that its investment decisions were informed by the Starwood Declaratory Order and that any requirement that contradicts the findings in that order would be inequitable.<sup>196</sup> Working Group also questions the NOPR proposal that Sellers must confirm that an owner that the Sellers represent to be passive cannot remove key management without cause, stating that the Commission has failed to provide any explanation or rationale supporting this requirement.<sup>197</sup>

134. Other commenters request clarification of the Commission's existing policy on what constitutes a passive owner and when changes in passive ownership trigger a change in status update.<sup>198</sup> For example, Independent Generation asks whether owners that do not own a separate class of securities but meet all the other criteria (i.e. they have limited consent rights, do not exercise day to day control over the company, and cannot remove the manager without cause) satisfy the Commission's criteria for passive owners

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<sup>195</sup> *Id.* at 8-9 (citing Starwood Declaratory Order, 153 FERC ¶ 61,332 at P 19).

<sup>196</sup> *Id.* at 10.

<sup>197</sup> Working Group at 20-21.

<sup>198</sup> *See, e.g.*, EDF at 5-8; Independent Generation at 13.

and qualify for the proposed streamlined reporting approach.<sup>199</sup> EDF seeks a similar clarification with respect to joint venture arrangements, which can include only one class of securities.<sup>200</sup> EDF also requests that the Commission confirm that a notice of change in status need not be submitted when passive interests arise in the Seller.<sup>201</sup>

135. Financial Marketers Coalition seeks clarification on how passive information will be treated and to what extent the information will be publicly available, whether it will be through the relational database or the Commission's proposed website interface.<sup>202</sup>

136. EDF observes that some enterprises have subsidiary companies that hold tax equity, passive ownership interests in unaffiliated Sellers. EDF also states that these same enterprises may also have subsidiaries that have market-based rate authority. EDF seeks confirmation that there will be no "bleed over" or connection of such interests established in the relational database.<sup>203</sup>

### **3. Commission Determination**

137. We will adopt the proposal to require Sellers to make an affirmation, in lieu of a demonstration, in their market-based rate narratives concerning their passive ownership

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<sup>199</sup> Independent Generation at 13.

<sup>200</sup> EDF at 8.

<sup>201</sup> *Id.* at 6-7.

<sup>202</sup> Financial Marketers Coalition at 16.

<sup>203</sup> EDF at 7.

interests. Such a demonstration is unnecessary given that the Commission does not make a finding of passivity in its orders granting market-based rate authority,<sup>204</sup> and doing so will ease the burden on filers. We remind Sellers of their obligation under § 35.41(b)<sup>205</sup> to provide accurate and factual information such that the Commission can rely upon an affirmation in lieu of a demonstration.

138. In light of the comments received, we clarify the nature of the proposed affirmation regarding passive owners. With respect to any owners that a Seller represents to be passive, the Seller must identify such owner(s), and affirm in its narrative that the ownership interests consist solely of passive rights that are necessary to protect the passive investors' or owners' investments and do not confer control.<sup>206</sup>

139. While some Sellers will be able to make this affirmation when they apply for market-based rate authority, other Sellers will acquire new passive owners after they have received market-based rate authority. Thus, in response to EDF's request, we clarify that we will continue to require change in status filings when passive interests arise in a Seller, so that the Seller can make the necessary affirmations. However, we clarify that,

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<sup>204</sup> As discussed below, if a Seller seeks a Commission finding as to passivity, it may file a petition for declaratory order.

<sup>205</sup> 18 CFR 35.41(b).

<sup>206</sup> See *AES Creative Resources, L.P.*, 129 FERC ¶ 61,239 (2009) (AES Creative). The Commission expects that this affirmation will be included in the narrative of initial market-based rate applications and in any other market-based rate filing (e.g., triennial update or change in status notification) where the Seller is making a passive ownership representation.

in this context, a Seller only needs to make a change in status to report and affirm the status of new passive owners as passive; it need not submit any additional information into the relational database.

140. Further, we clarify that we are not changing the Commission's existing policy regarding the definition of a passive investor, and specific clarifications on that policy are beyond the scope of this proceeding. In most circumstances, a determination as to passivity is fact-specific. If a Seller is uncertain as to whether an investment is passive, it may file a petition for declaratory order.<sup>207</sup> Nothing in this final rule is intended to overturn the Commission's case-specific determinations as to passivity and an entity's reporting obligations under previously issued declaratory orders. In response to Working Group, we note that considering whether an owner can remove the manager without cause has been the Commission's standard practice when evaluating a Seller's claim of passivity.<sup>208</sup> Therefore, absent a Commission order to the contrary, an owner who can remove the manager without cause is not considered passive. This is because an owner that can remove the manager without cause may have the ability to influence the actions taken by the manager.

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<sup>207</sup> We decline to extend any safe harbor to affirmations made in good faith. As discussed in the Due Diligence section, we do not intend to impose sanctions for inadvertent errors, but we expect that Sellers will exercise due diligence to ensure accurate reporting.

<sup>208</sup> See *AES Creative*, 129 FERC ¶ 61,239 at P 8 n.5.

141. Passive owners need not be reported in the database as ultimate upstream affiliates.<sup>209</sup> The Commission will not require that a Seller disclose the identity of its passive owners in the database, which should alleviate any concerns or confusion regarding confidentiality or collecting of unnecessary information. Further, if a Seller is able to make the requisite affirmation regarding passive ownership, it would not need to list the assets associated with any such passive owner in its asset appendix.

**D. Foreign Governments**

**1. Commission Proposal**

142. The Commission proposed that, where a Seller is directly or indirectly owned or controlled by a foreign government or any political subdivision of a foreign government or any corporation which is owned in whole or in part by such entity, the Seller identify such foreign government, political subdivision, or corporation as part of its ownership narrative.<sup>210</sup> The Commission explained that this information is useful in protecting public utility customers against inappropriate cross-subsidization and affiliate abuse concerns that are possible when controlling interests in a public utility are held by a foreign government, any political subdivision of a foreign government, or any corporation which is owned in whole or in part by such entity.

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<sup>209</sup> We clarify that Sellers should provide the identity of the new passive owner(s) in their narratives when making their passive affirmation.

<sup>210</sup> NOPR, 156 FERC ¶ 61,045 at P 26.

## 2. Comments

143. GE objects to the proposed collection of data on foreign entities, arguing that the Commission's jurisdiction does not extend to foreign companies operating outside of the United States borders.<sup>211</sup> GE also questions how this information would help the Commission to identify wrongdoing given that foreign entities are not market participants.<sup>212</sup> GE adds that advance review of foreign investments is already conducted by the Committee on Foreign Investment in the United States and that reporting on relevant investments is mandated to be delivered to the Commerce Department's Bureau of Economic Analysis.<sup>213</sup>

144. Some commenters assert that the Commission has not justified the claim in the NOPR that foreign government investment information is useful in protecting public utility customers against inappropriate cross-subsidization and affiliate abuse.<sup>214</sup> GE contends that it is not clear why such cross subsidization would be an issue since that concept is most commonly related to a regulated transmission providing utility and its unregulated affiliates.<sup>215</sup> Working Group contends that the Commission has not

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<sup>211</sup> GE at 17

<sup>212</sup> *Id.* at 17-18.

<sup>213</sup> *Id.* at 17.

<sup>214</sup> *See, e.g.*, ELCON and AFPA at 13; GE at 17-18; Working Group at 23.

<sup>215</sup> GE at 17-18.

explained why foreign government ownership requires additional scrutiny beyond the Commission's affiliate abuse rules and that any proposed changes to those rules should have been proposed through a rulemaking on affiliate abuse.<sup>216</sup>

145. ELCON, and AFPA and Working Group also argue that Sellers should have no obligation to report foreign government ownership because the Commission has not shown why such information is necessary to assess vertical and horizontal market power and to ensure just and reasonable rates under the FPA.<sup>217</sup>

### **3. Commission Determination**

146. In light of the comments received on this aspect of the NOPR, we will not adopt the proposal to require a Seller to identify its relationship with a specific foreign government. However, Sellers will still be required to identify all ultimate upstream affiliates (and file a notice of change in status for any new ultimate upstream affiliate(s)) even if such affiliates are owned or controlled by a foreign government.

#### **E. Indicative Screens**

##### **1. Commission Proposal**

147. In the NOPR, the Commission proposed that Sellers submit indicative screen information in XML format, which will enable the information to be included in the relational database. The Commission explained that once the Seller submitted the required screen information to the relational database through the XML submission, the

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<sup>216</sup> Working Group at 23.

<sup>217</sup> ELCON and AFPA at 13; Working Group at 23.



database will format the indicative screens for the inclusion in the public record in eLibrary. Therefore, the generated indicative screens will be available for public comment, as part of the Seller's filing, and data will be available to the Commission in the relational database for ease of access and analysis. Lastly, the Commission indicated that Sellers would still be required to submit all work papers underlying their indicative screens.

## 2. Comments

148. GE requests that the Commission continue to accept indicative screen data in Excel format.<sup>218</sup> GE states that these data are currently submitted in Excel format with market-based rate applications, triennial market power updates, and certain notices of change in status. GE contends that the benefits of an XML submission are unclear.<sup>219</sup> GE further contends that the process of converting Excel data to XML introduces the possibility for error, and that Excel is the desired format for final use of this information.<sup>220</sup>

149. Independent Generation states that the Commission's proposal would replace seller-generated indicative market power screens with auto-generated information based

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<sup>218</sup> GE at 30-31.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

on information submitted in the relational database. Independent Generation has concerns that this would lead to a significant number of incorrect or incomplete filings.<sup>221</sup>

### 3. Commission Determination

150. We adopt the proposal to require Sellers to submit indicative screen information in XML format, which will enable indicative screens to be incorporated into the relational database.<sup>222</sup> Furthermore, we adopt the proposal to require Sellers to continue to submit to the Commission all of their work papers underlying their indicative screens.

151. However, we have determined that the relational database will not have the capability to automatically populate indicative screens into the eLibrary record as originally proposed. Therefore, a Seller will submit its XML schema into the relational database for its indicative screens and will receive a serial number for each of its indicative screens. The Seller is then required to include these serial numbers in its associated market-based rate filing. Reporting these serial numbers will incorporate the associated indicative screens as part of the market-based rate filing and allow the

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<sup>221</sup> Independent Generation at 13-14.

<sup>222</sup> Concurrent with the issuance of this final rule, the Commission is issuing a final rule in Docket No. RM19-2-000 that relieves Sellers in certain RTOs/ISOs from the requirement to submit indicative screens. *Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets*, Order No. 861, 168 FERC ¶ 61,040 (2019). That relief is unchanged with the issuance of this final rule in Docket No. RM16-17-000 and will take effect prior to the October 1, 2020 effective date of this final rule. Accordingly, the regulatory text changes to § 35.37 that we adopt herein are based on the regulatory text as amended in the Docket No. RM19-2-000 proceeding.

Commission and the public to view the indicative screens using the systems that will support the relational database.

152. We deny GE's request to allow the use of workable electronic spreadsheets, such as Excel, as a means of submitting indicative screen data. The relational database will only accept data submitted in XML format. The Commission is requiring the use of XML instead of workable electronic spreadsheets because XML is an open source platform that allows the Commission to build a database that will meet its information collection purposes and that helps facilitate public access to the data.

153. Further, XML is more adaptable than workable electronic spreadsheets and allows for greater flexibility in the use of data, which will allow the Commission to conduct more robust analyses. Some of this flexibility will also extend to submitters who will have better access to their own information as well as limited access to other information in the relational database. Filers will also have the advantage of being able to continually update information in the relational database, while keeping track of historical data, making it easier for them to prepare their filings for submission at the Commission.

154. We disagree with GE's comment that converting workable electronic spreadsheets to XML produces the potential for error. Spreadsheet programs typically now have the capability to convert data entered into a given spreadsheet into an XML schema automatically. Moreover, XML submissions make the compilation and gathering of data into the relational database easier and provide the submitter with different layers of automated error checking, thus reducing the burden on the submitter. Finally, XML

submissions provide a stable, long-term business-to-business solution that will enable the Commission to make improvements to the relational database without affecting submitters.

155. In response to Independent Generation's comments, we clarify that the relational database will not auto-generate the indicative screens based on affiliate connections made by the relational database. Rather, the relational database's services will simply format the data the Seller submits.<sup>223</sup>

## **F. Other Market-Based Rate Information**

### **1. Commission Proposal**

156. In the NOPR, the Commission proposed that a Seller provide other market-based rate information as set forth in the NOPR data dictionary, including: (a) its category status for each region in which it has market-based rate authority, (b) markets in which the Seller is authorized to sell ancillary services, (c) mitigation, if any, and (d) the area(s) where the Seller has limited its market-based rate authority.<sup>224</sup>

### **2. Comments**

157. FMP notes in its comments on the NOPR data dictionary that information on category status, ancillary services, mitigation, and limitations is duplicative of what is

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<sup>223</sup> In contrast, the asset appendix will be generated based on data submitted by a Seller and its affiliates.

<sup>224</sup> NOPR, 156 FERC ¶ 61,045 at P 61.

already provided in a Seller's market-based rate tariff and therefore asks that the Commission delete this requirement.<sup>225</sup> GE suggests that the operating reserves authorization should only be required to be provided where relevant.<sup>226</sup> No other commenters specifically address this proposal, although several commenters note that the NOPR preamble and proposed regulatory text do not always reflect or discuss requirements set forth in the NOPR data dictionary.<sup>227</sup> Specific comments on the NOPR data dictionary are discussed in the NOPR data dictionary section.

### **3. Commission Determination**

158. We adopt the NOPR proposal to require that Sellers submit additional information into the relational database as set forth in the MBR Data Dictionary, with some modification. For example, we have not adopted a requirement for Sellers to provide information regarding ancillary services, but we have adopted the requirement, as set forth in revised § 35.37(a)(1), that Sellers provide information about their operating reserves, which are a subset of ancillary services. Revised § 35.37(a)(1) also specifies that a Seller must submit information about its category status, mitigation, and other limitations. Such information is readily known to the Seller because, as FMP observes,

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<sup>225</sup> FMP, data dictionary Appendix at 10-13; *see also* EEI at DD Appendix 10-16.

<sup>226</sup> GE at 29.

<sup>227</sup> *See* AVANGRID at 17; EEI at 2; FMP at 2; MISO TOs at 8.

this information is also included in the Seller's market-based rate tariff.<sup>228</sup> The incremental burden of providing this information to the relational database is outweighed by the benefit of having a searchable repository of information that is easily accessible by the Commission and the public through the relational database's services function.

159. We disagree that the MBR Data Dictionary must use the exact language from the preamble and regulatory text of the rule. We do not view this as any different from the eTariff filing or EQR submission requirements, which similarly are not detailed in the Commission's regulations.<sup>229</sup>

## V. Ongoing Reporting Requirements

### A. Commission Proposal

160. The Commission proposed an ongoing quarterly reporting requirement under the regulation for the change in status reporting requirement in § 35.42. However, unlike the existing change in status reporting requirement, the Commission proposed that the quarterly reporting requirement be treated as informational.<sup>230</sup> Specifically, the

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<sup>228</sup> In the event of a conflict between the Commission-accepted market-based rate tariff and the information submitted to the relational database, the language in the tariff takes precedence.

<sup>229</sup> See *Filing Requirements for Electric Utility Service Agreements*, 155 FERC ¶ 61,280, *order on reh'g*, 157 FERC ¶ 61,180.

<sup>230</sup> NOPR, 156 FERC ¶ 61,045 at P 67. The Commission typically does not notice or issue orders on informational filings. See *PSEG Services Corp.*, 134 FERC ¶ 61,080, at P 15 n.9 (2011).

Commission proposed a new § 35.42(d), which would require a Seller to make a submission updating the relational database on a quarterly basis to reflect any changes not already captured in the required change in connection submissions, change in status filings or any other market-based rate filing such as a notice of cancellation of or revision to a market-based rate tariff. The Commission provided the following list of examples of occurrences that would be reported in the quarterly updates: (1) retirement of a generation asset; (2) capacity rating changes to an existing generation asset;<sup>231</sup> (3) acquisition of a generation asset that is a reportable asset but not required to be reported in a change in status filing; and (4) loss of affiliation with an affiliate owner that has a franchised service area or market-based rate authority, or directly owns or controls generation, transmission, interstate natural gas transportation, storage or distribution facilities, physical coal supply sources, or ownership of or control over who may access transportation of coal supplies that does not trigger a change in connection submission.<sup>232</sup> The Commission explained that this requirement would help to ensure that the relational database generates an accurate asset appendix, based on current information, for

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<sup>231</sup> The Commission's change in status regulation regarding generation-related assets is limited to cumulative net increases of 100 MW or more; thus, not all changes in generation assets create a change in status filing obligation. *See* 18 CFR 35.42(a).

<sup>232</sup> NOPR, 156 FERC ¶ 61,045 at P 66.

inclusion in a Seller's market-based rate filings and organizational charts for use by the Commission.<sup>233</sup>

161. The Commission proposed to retain the requirement for Sellers to file notices of change in status, which are due no later than 30 days after a change in status occurs.<sup>234</sup>

However, the Commission did propose a change to § 35.42(a)(2) to include new ultimate upstream affiliates as an example of a change that would trigger a change in status obligation. In addition, the Commission proposed to require Sellers to update the relational database when filing a notice of change in status.

## **B. Comments**

162. Numerous commenters request that any updates to the relational database be made on a quarterly basis instead of the rolling 30-day time window that was proposed for change in connection submissions in the NOPR and that exists for change in status filings pursuant to § 35.42(b).<sup>235</sup> FIEG states that much of the data being requested as part of the change in status filing and change in connection submission is subject to frequent changes, particularly for larger institutions with many different legal and financial

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<sup>233</sup> *Id.* P 67.

<sup>234</sup> *See id.* P 65; *see also* 18 CFR 35.42(b).

<sup>235</sup> *See* AVANGRID at 22-23; EPSA at 17; FIEG at 14-15; GE at 13-14; EEI at 23 (requesting quarterly reporting for change in connection submissions); NextEra at 7-8; NRG at 8-9; Working Group at 18-19; *see also* Independent Generation at 11 (requesting that change in connection submissions be due on an annual basis or, in the alternative, on a quarterly basis).



connections. FIEG posits that if change in status and change in connection updates were required within 30 days of a change, then many participants would be filing notices weekly, if not more frequently. FIEG states that quarterly ongoing reporting updates would be less burdensome for market participants and less prone to error, while still providing the Commission the information it seeks in a timely manner.<sup>236</sup>

163. NextEra states that the Commission should consider how the relational database and simplified reporting procedures could simplify other reporting obligations. For example, NextEra notes that certain updates to the relational database could eliminate or simplify change in status filings.<sup>237</sup>

164. Commenters also question how the various updates will work in concert with each other. AVANGRID contends that the NOPR is ambiguous on how multiple data submissions would work together to ensure the continued accuracy of the relational database.<sup>238</sup>

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<sup>236</sup> FIEG at 15.

<sup>237</sup> NextEra at 10 (“under the change in status reporting requirements the affiliated entities that were each identified in the applicant’s MBR filing, must now make their own filing show they have become affiliated with the earlier MBR applicant . . . The change in status filing thus operates as a mirror version of the earlier filing. There is little efficiency in this arrangement....”).

<sup>238</sup> AVANGRID at 11.

165. MISO TOs are concerned about “the potential for repetitive filings and the ‘ripple effect’ that a filing by one entity may have on other [entities] – whether a change by one entity can lead to fifty additional filings because fifty related [entities] are affected.”<sup>239</sup>

166. TAPS notes that the proposed reporting of changes do not require the same level of comprehensive reporting of affiliate owners as the baseline and triennial filings.<sup>240</sup>

167. APPA notes that the comments submitted by TAPS show how seriatim updates could go awry – affiliate data might be lost, and the relational database permanently distorted – unless the updating protocols are clear.<sup>241</sup> APPA also requests that the final rule clarify the relational database updating protocols to ensure that an accurate picture of Seller’s affiliate relationships is maintained.<sup>242</sup>

168. AVANGRID states that it appears that each of its affiliates would be required to submit changes to the database separately, thus requiring dozens of individual filings whenever there is a change triggering a notice of change in status. Thus, making the process of submitting changes to database burdensome for companies with multiple

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<sup>239</sup> MISO TOs at 9.

<sup>240</sup> TAPS at 15 (noting that under the NOPR, Sellers would need to include ultimate affiliate owner(s) as well as affiliate owners that have a franchised service area or market-based rate authority, or that directly own or control 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).

<sup>241</sup> APPA at 9-10.

<sup>242</sup> *Id.* at 10.

affiliated Sellers. AVANGRID estimates that after initial implementation, it will take its companies with market-based rate authority approximately 90-120 hours per year to comply with the Commission's proposals, including monitoring for changes triggering a reporting obligation, submission of change in status and quarterly updates and ongoing training.<sup>243</sup> AVANGRID requests that the Commission allow information, including asset appendices for all affiliated Sellers to be submitted in a single filing.<sup>244</sup>

169. Independent Generation requests that the Commission ensure that information already provided via market-based rate related filings is only reported once and according to the existing timelines for those submissions. For example, Independent Generation notes that changes in ultimate upstream affiliate information submitted through the market-based rate program should suffice for reporting purposes under the Connected Entity regime.

170. Some commenters also question the need for quarterly updates to the relational database. ELCON and AFPA note that the requirement for quarterly updates to the relational database creates a reporting obligation for information that the Commission has already determined does not warrant a change in status or implicate a Seller's market-based rate authority, for example, changes in capacity under 100 MW. ELCON and AFPA claim that the justification for the quarterly updating to the relational database thus

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<sup>243</sup> AVANGRID at 14.

<sup>244</sup> *Id.* at 21.

“may be contradictory and inconsistent with the longstanding approach” that the Commission has taken with respect to its market-based rate program.<sup>245</sup> ELCON and AFPA state that with an obligation to report changes in connection, Sellers are already likely to see increased reporting obligations, even without the requirement to update the relational database quarterly, and they believe that the burdens of the quarterly updating requirement outweigh the benefits and the requirement should be deleted from the final rule.

### C. Commission Determination

171. After considering the comments received, we agree that there are benefits to setting the timing of the ongoing relational database updates on a fixed date, but, as discussed below, we observe the need for database updates to occur on a monthly rather than quarterly basis. Therefore, we are revising the NOPR proposal to require monthly relational database updates on the 15<sup>th</sup> day of the month following the change. In light of this modification, we will change the time for filing notices of change in status from 30 days after such event, to quarterly reporting, which will reduce the burden for Sellers considerably.

172. Quarterly database updates would not be sufficient to maintain the level of accuracy the Commission needs for market-based rates or the analytics and surveillance program. In order to fully capture the activity in a given quarter, quarterly submissions

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<sup>245</sup> ELCON and AFPA at 12.

are necessarily submitted after the end of the quarter. For example, second quarter EQR submissions are due by July 31, a month after the end of the second quarter, June 30.

Applied here, Sellers would submit their second quarter database updates on July 31, which is particularly problematic for Sellers with triennial obligations. Triennials, for Sellers who are obligated to submit them, are always due by June 30 or December 31.

173. If the Commission were to adopt a quarterly database submission requirement, the last database update prior to the submission of triennials would be due on April 30 or October 31, respectively. This means that when preparing their triennial filings, Sellers would need to rely on, and their asset appendices would contain, data that is 60 days old or older. That is too great of a time lag and could result in inaccurate asset appendices. A monthly submission requirement, with submissions due by the 15<sup>th</sup> of each month, ensures that Sellers have the most current possible data for both their triennials and change in status filings. The frequency with which changes can occur within an organization underscore the need for more frequent reporting to ensure that the information in the relational database is not stale. We also find that more frequent updates will reduce the potential for errors or discrepancies in market-based rate filings through the auto-generated asset appendix, thereby minimizing the need for corrections and/or follow-up coordination and communication with affiliates. Additionally, given our determination to not pursue the Connected Entity requirements, and specifically the monthly change in connection updates, this helps to ensure that the Commission's analytics and surveillance program has access to updated and accurate information.

174. Contrary to AVANGRID's contention, we find the updates to the relational database require *less* coordination than is currently required among affiliated Sellers within a large corporate family. Under this final rule, a Seller need only report its own asset changes into the database and not the changes of each of its market-based rate affiliates.<sup>246</sup> While the MISO TOs correctly point out that in some situations a change in information submitted into the relational database may require multiple submissions for different Sellers within a corporate family (e.g., to report a new affiliate ultimate upstream affiliate), we do not view the updating requirement as overly burdensome. The data will be readily available and the submissions will not require accompanying documents or analysis because they are not part of any market-based rate filing (e.g., initial market-based rate application, notice of change in status filing, or updated market power analysis triennial filing).

175. Contrary to ELCON and AFPA's arguments, the requirement to update a Seller's previously submitted relational database information is necessary even when that update does not implicate a Seller's authorization to sell at market-based rates and would not rise to the level of a change in status filing. This is precisely why, unlike the change in status filing, the monthly submission is informational and does not require Commission action. These informational updates are necessary to ensure that the relational database is kept current and contains the most accurate information available, which is critical given that

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<sup>246</sup> However, Sellers will be required to report changes to the assets of non-market-based rate affiliates.

the relational database is used to create the asset appendix for all of a Seller's affiliates. As noted above, Sellers' monthly submission complements the notice of change in status filings and triennial filings by ensuring the accuracy of the asset appendices that may be included as part of those filings.<sup>247</sup> This should address APPA's concern related to how the previously proposed quarterly submission (now a monthly submission) would work with other filings to ensure accuracy of the relational database. We decline to adopt APPA's recommendation to have existing filing requirements overlap the new relational database requirements as such a requirement may pose an undue burden on filers.

176. The monthly relational database submission required of Sellers will include updates to show any changes to information previously submitted into the relational database, with the exception of the indicative screens.<sup>248</sup> Changes to data in the indicative screens will not be required as part of the monthly submission, but a Seller will submit new screen information to the relational database whenever it is making a market-based filing that includes screens, as detailed in the Submissions section.<sup>249</sup>

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<sup>247</sup> Regarding APPA's request for updating protocols to ensure the accuracy of the relational database, we discuss the mechanics of submissions and filings in greater detail on the Commission's website.

<sup>248</sup> NOPR, 156 FERC ¶ 61,045 at P 66.

<sup>249</sup> If a screen is going to apply to many Sellers, only one Seller needs to submit the screen to the database. The other Sellers can reference the screen's serial number in their filings.

177. In light of our determination to set fixed monthly updates for previously submitted relational database information, we will also change the requirement for filing notices of change in status. Instead of being due within 30 days of the change, we will move to a quarterly change in status reporting requirement, with such reports due at the end of the month following the end of the quarter in which the change occurs.<sup>250</sup> Unlike the monthly relational database updates, which are informational and submitted purely through XML into the relational database, a notice of change in status results in a docketed proceeding in which the Seller describes a change in the characteristics the Commission relied upon in granting the Seller market-based rate authority, and on which the Commission must act.

178. For example, if a Seller acquires a 150 MW generator on March 20 and on March 27 an affiliate receives authorization to sell operating reserves in a new balancing authority area, each of those entities will need to submit an update to the relational database by April 15 to reflect their respective change. In addition, the Seller (and applicable affiliates) will need to file a notice of change in status by April 30 to report the net increase in generation, assuming that there have not been any offsetting decreases in generation that brings the net increase in generation below 100 MW. The relational database will already reflect the relevant changes because they will have been submitted

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<sup>250</sup> Thus, notice of changes in status filings will be on the same timeline as Sellers' EQR reporting obligations. *See* 18 CFR 35.10b.



to the database by no later than April 15, so there should be no need to make a submission into the relational database with the notice of change in status.<sup>251</sup>

179. As noted above, although there will be a slight increase in burden to Sellers by making the requirement to update the relational database monthly instead of quarterly, we expect that any such increase in burden will be more than offset by changing the due date for notices of change in status from 30 days after such a change to a quarterly requirement. In fact, in some instances, examining the entire quarter as a whole may decrease the need to report notices of change in status at all.

180. For example, if Seller A acquires 300 MW of generation on January 15 (which under existing regulations would require a notice of change in status by February 14) and its affiliate, Seller B, sells a 250 MW generator on March 1 in the same balancing authority area, there would be no requirement for either Seller to file a notice of change in status because there would have been only a 50 MW net increase in generation capacity during the quarter.<sup>252</sup> However, both the increase of 300 MW and the decrease of 250 MW would have been submitted into the relational database by the 15<sup>th</sup> day of the month following each change. We believe that the approach adopted in this final rule

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<sup>251</sup> However, to the extent that the Seller submits indicative screens as part of a change in status, the Seller would need to submit the indicative screen information into the relational database prior to filing the notice of change in status.

<sup>252</sup>  $300 \text{ MW} - 250 \text{ MW} = 50 \text{ MW}$ , which is below the 100 MW threshold for filing notices of change in status.

regarding reporting of changes will ensure that the relational database is updated in a timely manner, while minimizing burdens on Sellers.

181. Thus, we are adding 18 CFR 35.42(d) to reflect that any reportable change to relational database information is required to be submitted by the 15<sup>th</sup> day of the month following the change. In addition, we are revising the language at 18 CFR 35.42(b) to specify that notices of change in status must be submitted on a quarterly basis with such reports due at the end of the month following the end of the quarter in which the change occurs.

## **VI. Connected Entity Information**

### **A. Commission Proposal**

182. The Commission proposed that the Connected Entity reporting requirements would apply to all Sellers and to Virtual/FTR Participants. In addition, the Commission proposed to define the term “Virtual/FTR Participants” as entities that buy, sell, or bid for virtual instruments or financial transmission or congestion rights or contracts, or hold such rights or contracts in organized wholesale electric markets, not including entities defined in section 201(f) of the FPA. Under the proposal, the phrase “organized wholesale electric markets” would include “ISOs and RTOs as those terms are defined in § 35.46 of the Commission’s regulations.” The Commission also proposed to use the same definition for “Seller” as used in the market-based rate context and defined in § 35.36(a)(1) of the Commission’s regulations. The Commission did not propose to require

entities that hold only Auction Revenue Rights (ARRs) to submit Connected Entity Information, but sought comment on that aspect of the proposal.<sup>253</sup>

## **B. Comments**

183. The Connected Entity reporting requirement proposal was among the most commented upon proposal from the NOPR. Some commenters support the Commission's proposal to collect Connected Entity Information,<sup>254</sup> while many express concerns or oppose this proposal. For example, several commenters object to the requirement that Sellers be required to submit Connected Entity Information. AVANGRID comments on the burdens of collecting Connected Entity Information from Sellers and claims that the NOPR would dramatically increase the degree of coordination required by expanding the classes of information that must be reported to the Commission.<sup>255</sup> Berkshire states that its subsidiaries with market-based rate authority do not have ready access to information about their more than 5,000 commonly owned affiliates and lack the ability to require their affiliates to provide information regarding their activities.<sup>256</sup> AVANGRID and EEI believe that the actual time required to make

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<sup>253</sup> NOPR, 156 FERC ¶ 61,045 at P 51.

<sup>254</sup> APPA at 4; New Jersey and Maryland Commissions at 3-4; Monitoring Analytics at 2.

<sup>255</sup> AVANGRID at 9-10. *See also* EEI at 18.

<sup>256</sup> Berkshire at 4.

baseline and subsequent update filings would greatly exceed the estimates provided in the NOPR.<sup>257</sup>

**C. Commission Determination**

184. After further consideration, we decline to adopt the proposal to require Sellers and Virtual/FTR Participants to submit Connected Entity Information in this final rule. We appreciate the concerns raised about the difficulties of and burdens imposed by this aspect of the NOPR. Accordingly, we will transfer the record to Docket No. AD19-17-000 for possible consideration in the future as the Commission may deem appropriate and will not amend the Commission's regulations to add Subpart K to title 18 of the CFR, as originally proposed in the NOPR, in this final rule.<sup>258</sup> We note that the determination in this final rule to collect market-based rate information in a relational database will provide value to both the Commission's market-based rate and analytics and surveillance programs.

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<sup>257</sup> AVANGRID at 13-14 (estimating that it would take each of its market-based rate companies approximately 180 to 220 hours during the initial year to comply, and 90 to 120 hours in subsequent years); EEI at 18.

<sup>258</sup> Comments pertaining to the Connected Entity proposal will be re-designated as being in both Docket No. RM16-17-000 and Docket No. AD19-17-000.

## **VII. Initial Submissions**

### **A. Commission Proposal**

185. In the NOPR, the Commission proposed that, within 90 days after publication of the final rule in the *Federal Register*, existing Sellers make a baseline submission into the database.<sup>259</sup> The Commission explained that the baseline submission is intended to populate the relational database and not to evaluate the Seller's market-based rate authority; thus, the Commission would not take action on the baseline submission.<sup>260</sup>

The Commission proposed that Sellers include the following specific information as part of the baseline submission: (1) Connected Entity ownership information; (2) the Seller's LEI; (3) "market-based rate information", including (a) Seller category status for each region in which the Seller has market-based rate authority, (b) each market in which the Seller is authorized to sell ancillary services at market-based rates, (c) mitigation if any, and (d) whether the Seller has limited the regions in which it has market-based rate authority; (4) "market-based rate ownership information" (including ultimate upstream affiliates; and affiliate owners with franchised service areas, market-based rate authority, or that directly own or control generation; transmission, intrastate natural gas

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<sup>259</sup> For purposes of this final rule, when discussing information to be included as part of a baseline submission or a monthly update to the relational database, such term does not include indicative screen information. However, where used outside of the context of the baseline submission and monthly relational database updates, indicative screen information is included.

<sup>260</sup> NOPR, 156 FERC ¶ 61,045 at PP 60, 62.

transportation, storage or distribution facilities, physical coal supply sources or ownership of or control over who may access transportation of coal supplies); and (5) asset appendix information.<sup>261</sup>

186. In the NOPR, the Commission proposed to require new Sellers to submit Connected Entity Information and other market-based rate information within 30 days of after the grant of market-based rate authority.<sup>262</sup>

### **B. Comments**

187. Most commenters argue that the baseline submission is an administrative burden on Sellers.<sup>263</sup> Commenters argue that Commission has underestimated the amount of time and labor it would take Sellers to comply with the baseline submission.<sup>264</sup> For example, FMP contends that the time estimate provided in the NOPR is extremely conservative and does not include preparatory time, time needed to learn data entry protocols, time addressing Commission staff inquiries, and other associated work. FMP suggests that the Commission underestimates the statistically demonstrable burden of the

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<sup>261</sup> *Id.* at P 61.

<sup>262</sup> *Id.* at Attachment C.

<sup>263</sup> *See, e.g.*, AVANGRID at 10; Financial Marketers Coalition 28-29; NRG at 7.

<sup>264</sup> *See* AVANGRID at 10; Financial Marketers Coalition at 28; NextEra at 13; NRG at 7.

NOPR by a factor that may approach 300 percent.<sup>265</sup> AVANGRID questions the NOPR estimates of 40-100 hours for baseline Connected Entity submissions and market-based rate filings, estimating that it will take each of its companies with market-based rate authority approximately 180-220 hours during the initial year to comply with the new requirements.<sup>266</sup>

188. As detailed more fully in the Implementation section, many entities commented on the timeline for baseline relational database submissions.<sup>267</sup> For example, Designated Companies request that the Commission increase the deadline for baseline submissions to at least 180 days after the publication of the final rule or preferably 180 days after a technical conferences on implementation. Designated Companies and EPSA also suggest a staggered implementation timeline where baseline market-based rate submissions are due after 180 days with Connected Entity data due 180 days after that.

189. NextEra proposes that the baseline requirement facilitate baseline submissions by Sellers within a large corporate family such that a submitting entity will be able to tie into

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<sup>265</sup> FMP at 5.

<sup>266</sup> AVANGRID at 8, 13 (stating that compliance will require a coordinated effort with multiple departments within each of over 50 entities that make up the AVANGRID market-based rate sellers).

<sup>267</sup> *See, e.g., id.* at 23-24; Brookfield at 10-11; Duke at 4-5; EEI at 25-26; EPSA at 6-7; MISO TOs at 9-10.

data previously submitted as part of the corporate family and reduce burden in subsequent filings.

190. Finally, IECA notes that there are some requirements set forth in the NOPR such as the requirement for the baseline submission that should be expressly included in the regulations if the requirement is adopted in the final rule.<sup>268</sup> Similarly, Berkshire notes that the baseline submission requirement is not reflected in the regulatory text.<sup>269</sup>

### **C. Commission Determination**

191. We will adopt the NOPR proposal to require Sellers to make baseline submissions to the relational database, but as discussed more fully in the Implementation section, we have adjusted the timeline for the baseline submissions in response to comments.

192. Beginning February 1, 2021, any new applicant seeking market-based rate authority will be required to make a submission into the relational database prior to filing an initial market-based rate application.

193. Although there will be some initial implementation burden associated with submitting data in the new relational database format and for collecting the new information, much of that burden would exist as part of moving to a relational database regardless of the requirement for a baseline filing. The NOPR's estimate of 40-100 hours in year one had included time spent on Connected Entity Information submissions.

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<sup>268</sup> IECA at 3.

<sup>269</sup> Berkshire at 2.



Because Connected Entity Information is not required as part of this final rule, and in light of commenters' concerns that the Commission underestimated the burden of initial compliance, we revise the time that the average Seller will spend in year one from 40-100 hours to 35-78 hours.<sup>270</sup>

194. We recognize that there may be some initial increase in burden while Sellers familiarize themselves with the new database and make their baseline submissions but note that, over time, the creation of the relational database is expected to reduce burden because Sellers will not be required to gather and report information on many of their affiliates to create their asset appendices and may have to file fewer notices of change in status. As discussed more fully in the Implementation section, we have extended the deadline for baseline submissions significantly beyond the original proposal to require Sellers to make such submissions within 90 days of publication of the final rule in the *Federal Register*. The new timeframe should alleviate some concerns and burdens associated with preparing and submitting the baseline by allowing sufficient time to have systems and software in place before the baseline submissions are due.<sup>271</sup>

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<sup>270</sup> See Information Collection Statement section for more information.

<sup>271</sup> Several commenters requested that the Commission first require a baseline submission to address the market-based rate information, with a later submission to include Connected Entity information. Given our decision to not pursue the Connected Entity information as part of this final rule, we will not address those comments.

195. Further, we expect that Sellers will already be familiar with most, if not all, of the information they will have to submit, because they have an existing requirement to provide this information.

196. With respect to NextEra's request that a Seller be able to tie together data previously submitted as part of its corporate family, the relational database will facilitate such coordination in several ways. As proposed in the NOPR, a major advantage to the relational database approach is that a Seller will only have to identify its own assets and those of other non-market-base rate affiliates that will not be making their own relational database submissions. Thus, the Seller will not have to identify any of the assets of other affiliated Sellers with market-based rate authority.

197. The elimination of the requirement to identify all affiliate assets should reduce burden in the case of Sellers within large corporate families with numerous submitters. In addition, a Seller will be able to use services that will be made available to determine whether another submitter has previously identified an entity, and if it has, to obtain information such as the CID, LEI, or FERC generated ID information on that entity. We believe that these features of the relational database will facilitate baseline submissions by Sellers in large corporate families.

198. Commenters also recommend that the Commission add the requirement for the baseline submissions to its regulations. We decline to adopt that recommendation. Given that the requirement for baseline submissions is a one-time requirement, we find that putting that requirement in the regulations may confuse future Sellers as to whether

they are required to make baseline submissions in addition to the information that they must submit as part of their market-based rate applications. The Commission is taking steps to ensure that current Sellers are aware of the new requirements created under this rule, including publication of the final rule in the *Federal Register*, and the posting of materials on the Commission's website. We do not see any additional benefit to adding the baseline requirement into our regulations given that the requirement to make a baseline submission will not have any effect beyond the initial compliance period.

199. Regarding EEI's request for clarification with respect to asset appendices, we reiterate that Sellers should report current information only and should not attempt to match their baseline submission to their last-submitted market-based rate filings.<sup>272</sup> The purpose of the baseline submissions is to populate the relational database with the most current information available rather than the set of data already on file at the Commission. The baseline submissions will be informational, i.e., they will not be noticed and the Commission will not issue orders addressing them.

200. Finally, we note that to the extent that we have modified what was proposed in the NOPR, those changes flow through to the requirements for the baseline submissions.<sup>273</sup>

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<sup>272</sup> See NOPR, 156 FERC ¶ 61,045 at P 61 (Sellers "should submit current information, even if different from information included in their most recent [market-based rate] filing with the Commission.")

<sup>273</sup> As noted in the Ownership Information section, we are no longer requiring Sellers to submit information on upstream affiliates with franchised service areas, market-based rate authority, or that directly own or control generation; transmission, intrastate natural gas transportation, storage or distribution facilities, physical coal supply

## **VIII. Data Dictionary**

### **A. Overview**

#### **1. Commission Proposal**

201. In the NOPR, the Commission stated that as part of the final rule, a data dictionary, along with supporting documentation and specifications, would be posted on the Commission website to define the framework for Sellers to follow when submitting information. The NOPR data dictionary was also included as an attachment to the NOPR.<sup>274</sup>

202. Just as the NOPR specified the information that must be submitted, the NOPR data dictionary described the specific tables and fields that must be submitted to satisfy the requirements of the NOPR. The NOPR data dictionary also described data types, formats, and validation rules that would be used to ensure the quality of the data being submitted (e.g., if the field should be a date, the specific date format is provided and the validation rule checks to ensure a valid date has been entered).

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sources or ownership of or control over who may access transportation of coal supplies. However, as discussed in the Market-Based Rate Ownership Information section, a Seller must still submit information on its ultimate upstream affiliate as part of the relational database baseline submission and a new Seller will have to submit ultimate upstream ownership information as part of its relational database submission that precedes and is incorporated in part into the Seller's market-based rate application.

<sup>274</sup> NOPR, 156 FERC ¶ 61,045, Attachment D at 75-100. In addition, the Commission stated that any minor or non-material changes to the data dictionary would be posted to the website and reporting entities would be alerted to the changes via email.

203. The Commission sought comment on the specific content for the relational database as set forth in the NOPR data dictionary. Prior to the due date for comments, Commission staff held a technical workshop to review the NOPR data dictionary in considerable detail.<sup>275</sup>

## 2. Comments

204. Commenters provided general comments on the Commission's proposed publication, implementation, and maintenance of the NOPR data dictionary as well as comments on specific tables and fields contained within the NOPR data dictionary.

205. Commenters suggest that inadequate notice and opportunity to comment were provided because the NOPR data dictionary contained tables and specific fields that were not explicitly referenced in the preamble or regulatory text of the NOPR.<sup>276</sup> Examples provided include: (1) field specific details such as start and end date for connected entities relationships;<sup>277</sup> (2) the signed date for PPAs;<sup>278</sup> and (3) the date and docket number reflecting an entity's market-based rate authorization.<sup>279</sup> In addition,

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<sup>275</sup> The notes from this workshop are available at <http://www.ferc.gov/CalendarFiles/20160909154402-staff-notes.pdf>.

<sup>276</sup> AVANGRID at 17; Duke at 3; EEI at 2, 21-23, and 25; GE at 29, 32; FMP at 7.

<sup>277</sup> Berkshire at 11.

<sup>278</sup> EEI at DD Appendix 16-18; FMP at DD Appendix 15.

<sup>279</sup> EEI at DD Appendix 6-10; FMP at DD Appendix 6-8.

AVANGRID requested additional opportunity for Sellers to review and comment on the data dictionary prior to finalization.<sup>280</sup>

206. Other commenters request that the Commission publish a guidance document developed with industry input.<sup>281</sup> Duke suggests that the Commission follow these procedures for the development of such a document: (1) issue a guidance order to address issues raised; (2) host several collaborative meetings on the NOPR data dictionary to further enhance the NOPR data dictionary and to draft a user's guide; (3) issue a final rule with the NOPR data dictionary; and (4) finalize the user guide based on that rule.<sup>282</sup>

207. Several commenters state that the NOPR data dictionary was too complex,<sup>283</sup> and that the proposed data collection required data that was irrelevant or unduly burdensome to collect.<sup>284</sup> For example, FMP states that the NOPR data dictionary contains tables and fields that “exhibit no explained relationship to either market-based rate eligibility ... nor to the identification or documentation of any particular type of transactions of even

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<sup>280</sup> AVANGRID at 18.

<sup>281</sup> Duke at 2-4; EEI at 28.

<sup>282</sup> Duke at 3.

<sup>283</sup> AVANGRID at 11; GE at 26.

<sup>284</sup> Brookfield at 8.

theoretical interest to the Commission”<sup>285</sup> or “seek[s] highly subjective and interpretative information that is not susceptible to the kind of abbreviated, administrative reporting that the NOPR suggests.”<sup>286</sup> Some commenters express concern about the precision with which individual fields need to be reported. For instance, if the format of a date is ‘yyyy-mm-dd’, for dates sufficiently far in the past it may be excessively burdensome or impossible to identify a date, month, or in some cases even the year.<sup>287</sup>

208. For all fields, commenters generally request that the Commission make explicit whether the field is nullable,<sup>288</sup> clarify which fields will be populated by the relational database (rather than supplied by the filer/submitter),<sup>289</sup> clarify validation rules, and provide standardized formatting for date fields and docket numbers. Duke notes that this additional information is necessary for submitters and those developing software for this process.<sup>290</sup>

### **3. Commission Determination**

209. In this final rule, we adopt the NOPR proposal to post the MBR Data Dictionary (with supporting documentation) to the Commission website. We have made changes to

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<sup>285</sup> FMP at 7.

<sup>286</sup> *Id.*

<sup>287</sup> Brookfield at 8-10; Berkshire at 11.

<sup>288</sup> Designated Companies at 17-28; EEI DD Appendix; FMP DD Appendix.

<sup>289</sup> Designated Companies at 17.

<sup>290</sup> Duke at 2.

the NOPR data dictionary in response to comments as described below. In addition, other changes were made to the NOPR data dictionary to address technical aspects of developing the relational database and to account for the differences between the NOPR and this final rule. Any subsequent minor or non-material changes to the MBR Data Dictionary will be posted to the website and reporting entities will be alerted to the changes via email. Significant changes to the MBR Data Dictionary will be proposed in a Commission order or rulemaking, which will provide for an opportunity to comment.

210. As an initial matter, we disagree with commenters that there was inadequate notice and opportunity to comment on the MBR Data Dictionary. The NOPR provided adequate notice and opportunity to comment on the proposed reporting requirements, while the NOPR data dictionary described the implementation of collection of the proposed requirements, including identifying specific data fields and their characteristics that would be necessary for satisfying the requirements of the NOPR. While the NOPR data dictionary was presented as an attachment with detailed tables and fields that were not explicitly referenced in the preamble or regulatory text of the NOPR, industry participants were provided notice and an opportunity to comment on those documents. For example, the preamble and the regulatory text provided sufficient notice to market participants that the Commission was proposing that Sellers be required to report into the relational database information on ultimate upstream owners,<sup>291</sup> generator plant name,

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<sup>291</sup> NOPR, 156 FERC ¶ 61,045 at P 28.



plant code, generator ID, and unit code using EIA Form EIA860,<sup>292</sup> and generator telemetered location.<sup>293</sup> In response, numerous commenters provided detailed suggestions and requests for clarifications to improve the NOPR data dictionary, including comments that tracked in chart form the tables and fields of the NOPR data dictionary. We therefore find no lack of notice or opportunity to comment on the proposed reporting requirements, including the NOPR data dictionary.

211. Moreover, prior to comments being due, staff held a technical workshop with industry participants to discuss the NOPR data dictionary, providing further notice and opportunity for comment and attendees were informed that they should submit any concerns, either general or technical in nature, in the form of written comments on the NOPR by the due date.

212. Therefore, we do not find a need for additional notice and opportunity for comment on the MBR Data Dictionary, including the additional processes suggested in the comments to develop the MBR Data Dictionary or guidance document(s). However, we note that Sellers may reach out to Commission staff for further information.

213. We have considered all of the comments received regarding the NOPR data dictionary, including those comments that the NOPR data dictionary specified data fields irrelevant to the reporting requirements, that certain fields are unduly burdensome, and

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<sup>292</sup> *Id.* P 35.

<sup>293</sup> *Id.* P 36.

that it is structured in an overly complex way. In response, we have made numerous changes to the NOPR data dictionary that are reflected in the MBR Data Dictionary.

214. We disagree that the MBR Data Dictionary is structured in an overly complex way and find that the structure and all of the tables and fields set forth in the MBR Data Dictionary are relevant for implementing the final rule. In fact, most of the information required to be submitted under this final rule is already being collected by the Commission, albeit in largely unstructured formats (e.g., in narratives and footnotes in routine current submissions). The MBR Data Dictionary provides tables and fields for capturing this same information from Sellers in a standardized format. Some fields (e.g., CID, LEI, FERC generated ID) have been added to provide a consistent way in which to identify an entity, a feature that is missing in the current system. Certain fields are populated by internal systems and serve to create connections across tables. As discussed in the subsections below, we have made some changes to individual tables for clarity and feasibility.

215. In addition, certain tables that were present in the NOPR data dictionary are not being published with the MBR Data Dictionary because these tables are entirely populated by internal systems and require no additional input from reporting entities. These include the entities, genassets, and submission information tables (formerly termed Filing Information Table). However, the MBR Data Dictionary does include tables that report relationships between the data in the unpublished tables (e.g., the

entities\_to\_entities, entities\_to\_genassets, entities\_to\_vertical\_assets, and entities\_to\_ppas tables.) and will require submitter input.

216. In finalizing the MBR Data Dictionary, we reevaluated each field in every table of the NOPR data dictionary and, where possible, we have removed fields or clarified definitions so as to further reduce the burden and subjectivity associated with compliance. In general, the specific fields and definitions in the MBR Data Dictionary serve to sharpen and clarify the reporting requirements. For this reason, the MBR Data Dictionary should reduce subjectivity where aspects of current information collections (e.g., current market-based rate filings) lacks a specific structure. For commenters concerned that a high-level of precision may not be possible for some fields (e.g., dates sufficiently far removed), the precision of reported information is subject to the standards described in the Due Diligence section. In addition, as noted above, we have provided default dates for many applicable fields and clarified, on a field-by-field basis, the level of precision required.<sup>294</sup>

217. To the extent that the MBR Data Dictionary may appear complex, we believe this reflects the complexity of the subject matter, and the flexibility of the MBR Data

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<sup>294</sup> Unless otherwise specified, if submitters do not know and cannot ascertain with reasonable due diligence the actual day of the month for when a relationship (or other required date field) begins or ends, they may assume the first day of the month for when a relationship begins and the last day of the month for when a relationship ends. Similarly, if they know only the year, but not the month or day, they may assume a relationship began at the beginning of the year, i.e., on January 1 (and if it is the end of a relationship they are reporting, they may assume the end of the year (December 31)).

Dictionary allows it to capture the necessary information from a wide range of Sellers. In this regard, however, we address commenters' proposals to improve the NOPR data dictionary by explicitly marking where every field is nullable, clarifying which fields will be automatically populated by the relational database, clarifying validation rules and providing clear, consistent formatting guidance in the MBR Data Dictionary.

## **B. Updates to the Data Dictionary**

### **1. Commission Proposal**

218. The Commission proposed that minor or non-material changes to the MBR Data Dictionary and other supporting documentation, such as the XML, XSD, and associated documents, would be publicly posted to the Commission's website.

### **2. Comments**

219. EEI "encourages the Commission not to take this approach."<sup>295</sup> Commenters generally proposed alternative approaches. Designated Companies request that the Commission establish a regular stakeholder meeting to discuss non-material changes before posting them to the website, which Designated Companies claim can also help determine whether a given change is material and therefore should be noticed for comment.<sup>296</sup> FMP and EEI express concern that the proposal to post changes to the website does not satisfy the Commission's obligations under the FPA or Administrative

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<sup>295</sup> EEI at DD Appendix 1.

<sup>296</sup> Designated Companies at 3.

Procedure Act for notice and comment,<sup>297</sup> and, for this reason, the Commission should make subsequent changes subject to public notice and comment.<sup>298</sup> EEI expresses concern that without notice and comment, there will be too many questions from affected entities for each minor, non-material change. EPSA suggests an approach where all formatting instructions and technical guidance proposing changes to the MBR Data Dictionary or submission process should be published in the docket with a comment period of no less than 15 days and any Technical Workshops should be followed by a minimum 15-day comment period commencing on the date on which staff notes are published in the docket.<sup>299</sup>

### **3. Commission Determination**

220. As discussed above, we adopt the proposal in the NOPR to post minor or non-material changes to the MBR Data Dictionary/XML/XSD and associated documents to the Commission website. This is the same method provided in § 35.10b of the Commission's regulations, which states that EQRs "must be prepared in conformance with the Commission's guidance posted on the FERC Web site (<http://www.ferc.gov>)."<sup>300</sup> As with EQR, any significant changes to the MBR Data Dictionary will be proposed in a

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<sup>297</sup> FMP at 7; EEI at DD Appendix 1-2.

<sup>298</sup> AVANGRID at 18; FMP at 7.

<sup>299</sup> EPSA at 13.

<sup>300</sup> 18 CFR 35.10b.

Commission order or rulemaking, which would provide an opportunity for comment.<sup>301</sup>

We emphasize that the intent of posting future minor or non-material changes to the MBR Data Dictionary/XML/XSD and associated documents to the Commission's website is not to preclude feedback, but to streamline the reporting process. In response to EEI's concerns, submitters will still have the ability to seek guidance from staff.

### C. Filing Information Table

221. The NOPR data dictionary Filing Information table was designed to accommodate the reporting of metadata for each filing made by a Seller.<sup>302</sup> This metadata consisted of, inter alia, for whom the submission is being made, when the submission is being made, and the reason for the submission (e.g., initial application, information update). The Filing Information table from the NOPR data dictionary also contained fields for concurring to screens submitted by other participants and a field for referring to eTariff.

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<sup>301</sup> See, e.g., *Filing Requirements for Electric Utility Service Agreements*, 155 FERC ¶ 61,280 at P 5, *order on reh'g*, 157 FERC ¶ 61,180 at PP 40-43.

<sup>302</sup> Metadata is data that provides information about other data. For example, in the XML schema for eTariff, one required element is a proposed effective date and another element is the text of the tariff provision. The proposed effective date is considered to be metadata relative to the tariff text. See Order No. 714, 124 FERC ¶ 61,270 at P 12 & n.10.

## 1. Comments

222. Commenters asked that the Commission clarify: (1) if multiple submission reasons are allowed,<sup>303</sup> (2) the process for identifying references to concurrences in tables;<sup>304</sup> and (3) how to include references to eTariff.<sup>305</sup>

## 2. Commission Determination

223. We have removed the entire Filing Information table because it no longer contains any fields required to be populated by reporting entities. For example, we have eliminated fields requiring the reason and type of filing being made. We have also eliminated fields for concurrences and for referencing eTariff, because the two systems will not be linked at this time. Therefore, we need not address the requests for further clarification. The submissions table requires no submitter input and therefore will not be published in the MBR Data Dictionary.

### D. Natural Persons Table

224. The NOPR data dictionary Natural Persons table was designed to accommodate the reporting of information regarding traders and natural person affiliates (e.g., first name, last name). The table contained fields for flagging a natural person as an affiliate (in the case where a natural person is a reportable owner), trader, or both. The NOPR data dictionary also provided a brief overview of the validation rules for contact

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<sup>303</sup> EEI at DD Appendix 3; FMP at DD Appendix 2.

<sup>304</sup> EEI at DD Appendix 3; FMP at DD Appendix 2.

<sup>305</sup> Designated Companies at 17; EEI at DD Appendix 3; FMP at DD Appendix 2.

information for natural persons, which served to ensure the quality of individual submissions as well as consistency between multiple submissions.

### 1. Comments

225. FMP states that the affiliate and trader flags which distinguish natural person affiliates from other affiliates are not necessary and require “substantial editorial judgment.”<sup>306</sup> Several commenters request clarification regarding what validation rules will be applied to contact information.<sup>307</sup> GE requests that the Commission clarify that it is adhering to the various labor, employment laws, rules, and regulations regarding the collection of this information and that it will remain non-public and subject to formal document retention and disposition protocols.<sup>308</sup>

### 2. Commission Determination

226. In response to commenters and for technical reasons, we have determined not to collect information in a separate “Natural Persons” table and instead determined to collect relevant information for natural persons on the entities\_to\_entities table. Although we are not collecting information on traders, we recognize that some ultimate upstream affiliates can be natural persons. Since we will not be collecting information on

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<sup>306</sup> FMP at DD Appendix 4.

<sup>307</sup> Designated Companies at 17; EEI at DD Appendix 5; FMP at DD Appendix 4.

<sup>308</sup> GE at 27.



traders or employees, we need not address GE's comments about adherence to labor and employment laws.

**E. Entities Table**

227. The NOPR data dictionary Entities table was designed to accommodate the reporting of information regarding individual reporting entities and reportable entities.

The Entities table utilized CID, LEI and/or, FERC generated ID as the principal means to uniquely identify a reporting or reportable entity.

**1. Comments**

228. Commenters sought clarification on the process for obtaining an FERC generated ID for entities that have neither a CID nor an LEI.<sup>309</sup>

**2. Commission Determination**

229. We have determined that FERC generated IDs, which are required for all reportable entities that do not have a CID or LEI (including natural persons), will be created through a service provided by the Commission upon request by Seller.<sup>310</sup> As discussed above, the entities table requires no submitter interaction and will not be included in the MBR Data Dictionary.

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<sup>309</sup> *Id.*

<sup>310</sup> As noted above, the Commission will provide more details on the FERC generated ID process on its Website.

**F. Generation Assets Table**

230. The NOPR data dictionary Generation Assets table was designed to accommodate the reporting of information on reportable generation assets including in-service date, capacity ratings, and location. The Generation Assets table also contained a field for flagging information submitted on a generation asset as public or non-public.

**1. Comments**

231. EEI and FMP request clarification on why this table is separate from the Entities to Generation Assets table because, in their view, a separate table may increase reporting burden. Both EEI and FMP regard the publication flag for each generation asset as superfluous.<sup>311</sup>

**2. Commission Determination**

232. We have determined that certain changes are appropriate for the Generation Assets table (re-labeled here as the gen\_assets table) to allow for the appropriate level of flexibility when reporting generation assets. Like the entities table, the gen\_assets table will not require direct submitter interaction and will be excluded from the MBR Data Dictionary. As described in the Asset Appendix section above, the gen\_assets table will store the basic information for all of the generators in the database. This table will initially be populated with information from the EIA-860. If a Seller wishes to add a generator to this table, they will be able to do so by requesting an Asset ID.

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<sup>311</sup> EEI at DD Appendix 10-13; FMP at DD Appendix 6-8, 10.

233. In response to EEI and FMP's requests for clarification on the gen\_assets table and why it must exist separately from the entities\_genassets table, we note that the tables serve different purposes. The gen\_assets table will contain basic, descriptive information about each generation asset in the database, while the entities\_genassets table will allow Sellers to identify their relationships with such assets. Many Sellers can have a relationship with the same generation asset; however, each Seller will have a different relationship with that asset. For example, two Sellers may attribute different amounts of capacity to themselves for market power purposes, use a different de-rating methodology, or pseudo-tie the energy to a different market/balancing authority area. Because these attributes are unique to a specific Seller, it is preferable to capture the relationship-specific information on a separate table.

234. As noted above, we have removed the requirement to provide certain information (e.g., in-service dates) given that the Commission will be able to access that information either from EIA or through the pre-submission process Sellers will use to identify and obtain FERC Asset IDs for generators that are not part of the EIA database. Further, we have removed the field for flagging whether information submitted on a generation asset as public or non-public. As noted elsewhere, all information in this database will be considered public.

#### **G. MBR Information Tables**

235. The NOPR data dictionary MBR Information tables were a collection of similar tables designed to accommodate the reporting of up-to-date records of current MBR

authorizations and related details for all Sellers. They included tables for MBR Authorization Information, Category Status by Region, Mitigations, Self-Limited MBR Authorization, Ancillary Services Authorization, and Operating Reserves Authorization.

### 1. Comments

236. EEI and FMP state that the Commission should consider deleting information already included in MBR Tariffs so as not to collect the same data twice. They also state that the Commission maintains a spreadsheet on the Commissions' website with information that includes much of the information included in the MBR Authorization Information table, and therefore, submitting that information is unnecessary.

237. GE suggests that the Commission set a default of 'no such authorization' for every participant with regard to the operating reserves market-based rate authorization. Since this authorization is relatively rare, only those participants so authorized would be required to submit information for this table. EEI agrees with GE and recommends renaming the table to indicate the optionality.<sup>312</sup>

238. EEI also recommends renaming the Self-Limited MBR Authorization table similarly. Regarding specific fields, Designated Companies request that the Commission clarify which docket number should be used for the Authorization Docket Number

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<sup>312</sup> GE at 29; EEI at DD Appendix 9-16.

Field.<sup>313</sup> EEI asks why multiple LEIs should not be allowed for the Filer LEI in the same table.<sup>314</sup>

## 2. Commission Determination

239. We determine that, while aspects of these tables duplicate information contained in market-based rate tariffs, the inclusion of this data herein is critical to the success of moving market-based rate information into database form. Submitting this information in tabular form is largely a one-time effort that will make the information more accessible to all parties and avoids potential errors from staff inputting this information. The information contained in these tables, such as the regions where certain activities are authorized, constitute key inputs in the analysis of a market-based rate filing. When integrated into the relational database, this information provides access to crucial threshold-level determinants regarding the applicability of an analysis. We believe the analytical benefits resulting from including threshold information about a Seller's market-based rate authority in the relational database outweigh the burden.

240. Similarly, we determine that the data in the `mbr_authorizations` table needs to be included in the relational database. The spreadsheet on the Commission's website to which EEI and FMP refer is not automatically generated or updated.<sup>315</sup> Rather, it is a

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<sup>313</sup> Designated Companies at DD Appendix 19.

<sup>314</sup> EEI at DD Appendix 13.

<sup>315</sup> *Id.* at DD Appendix 9-16; FMP DD Appendix 9.

staff-generated product that relies on information from orders, requires frequent updates, and can easily become out-of-date. The `mbr_authorizations` table both integrates relevant descriptive data into the relational database and provides a source to automate the production of the spreadsheet that EEI and FMP cite. We further clarify that the appropriate docket number to use for the Docket Number field on the `mbr_authorizations` table is the docket number under which the filing entity, or its predecessor company, was first granted market-based rate authorization.<sup>316</sup> Further, we note that in the event of a conflict between the Commission-accepted market-based rate tariff and the information submitted to the relational database, the language in the tariff takes precedence.

241. While we retain most of the MBR Information Tables set forth in the NOPR data dictionary, we are eliminating the Ancillary Services Authorization table because we do not find it necessary to have this information in the relational database.

242. Regarding the `mbr_self_limitations` and the `mbr_operating_reserves` tables, we recognize that not every Seller will have information relevant to these tables and clarify that these tables should only be submitted if that information relevant. We do not adopt EEI's recommendation that we rename these tables to reflect reporting optionality. Table names exist as a high-level description of the information contained in the table not policies about who is required to report the information.

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<sup>316</sup> That is, a Seller should not provide the docket number where it succeeded the market-based rate tariff of another Seller. Rather, it should provide the first docket number under which that tariff received market-based rate authorization.

243. EEI's proposal to submit multiple LEIs is addressed in the section on Submission on Behalf of Multiple Entities.

244. We have added date fields to the mbr\_cat\_status, mbr\_mitigations, mbr\_self\_limitations, and mbr\_operating\_reserves tables. Sellers will populate these fields with the effective date of the tariff, or tariff revision, when the Commission accepted the provision. Including these dates will ensure that the Commission can accurately understand the status of Sellers at any given point of time. Existing Sellers may use January 1, 2020 as the default date for the effective date fields when making their baseline submissions.<sup>317</sup>

## **H. PPAs Table**

245. The NOPR data dictionary ppa\_table was designed to accommodate the reporting of information on long-term firm power purchases and sales agreements.

### **1. Comments**

246. GE, FMP and EEI comment that the NOPR data dictionary includes fields that were not explained or justified in the NOPR, such as Source/Sinks and Keys and

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<sup>317</sup> We note that Sellers may not use this default date to populate the authorization\_effective\_date field in the mbr\_authorization table. As explained above, each Seller must provide the docket number under which the filing entity, or its predecessor company, was first granted market-based rate authorization. This information is easily discoverable through the spreadsheet list of Sellers currently published on the Commission's website.

Types.<sup>318</sup> EEI and FMP state that these fields should be eliminated, and if they are retained that the NOPR should be reissued with discussion of additional burden regarding collection of this information and an explanation as to why it is needed.<sup>319</sup> GE asks that the Commission clarify which point should be captured as the sink for contracts used as hedges that may specify different delivery and settlement pricing points.

247. Berkshire recommends that the Date of Last Change/Amendment field be removed because it is already reported by Sellers in EQR.<sup>320</sup> Similarly, Manitoba Hydro recommends eliminating the contractual details field because it is far too open to interpretation, therefore burdensome to report, and ultimately will not serve the Commission's objectives because information entered therein will be inconsistent and unusable.<sup>321</sup> Commenters also request further information on how the multi-lateral contract identifier should be used<sup>322</sup> and what should be reported in the Source Key and Sink Key fields.<sup>323</sup>

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<sup>318</sup> EEI at DD Appendix 16-17; FMP at DD Appendix at 15; GE at 29.

<sup>319</sup> EEI at DD Appendix 16-17; FMP at DD Appendix at 15; GE at 29.

<sup>320</sup> Berkshire at 17.

<sup>321</sup> Manitoba Hydro at 5-6.

<sup>322</sup> EEI at DD Appendix 18; FMP at DD Appendix 15.

<sup>323</sup> Designated Companies at 21-23.



248. GE notes that in regards to contracts reported in the EQR, the Commission has clarified that only material changes to contracts should trigger updates, whereas the PPAs table seeks the date of last change to a contract regardless of materiality. Berkshire recommends that an amendment date only be required of sellers when reporting contracts in EQR, and not required as an element of reporting power purchase agreements in market-based rate filings. Commenters also suggest clarifying or eliminating date signed field because there may be many signatures over many days.<sup>324</sup>

## **2. Commission Determination**

249. We have revised and clarified the PPA table in response to comments and have implemented other changes to provide clarity. Since this table captures the relationship of an entity to a particular PPA, we are re-naming the table as the entities\_to\_ppas table. The entity associated with the PPA will be the Seller or the Seller's non-market-based rate affiliate, as reflected in the new reference fields. Where the Seller is reporting its own PPA, it should not provide its own identifier, and the Commission will assume that it is reporting its own PPA. Where the PPA reference is to a non-market-based rate affiliate, the reporting entity must enter either a CID, LEI, or a FERC generated ID.<sup>325</sup> Additional changes to the way Sellers will report their PPAs are discussed above in the Asset Appendix section.

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<sup>324</sup> EEI at DD Appendix 18; FMP at DD Appendix 15.

<sup>325</sup> As noted elsewhere, the identifiers in order of preference are CID, LEI and FERC generated ID.

250. In response to GE and Berkshire's comments regarding the date of last change field and materiality, we clarify that the date of last change field should only be populated when making a required update to a previously submitted PPA and we will not adopt a materiality threshold as GE suggests.<sup>326</sup> Required updates to a PPA include any change to the information that Sellers have previously submitted or required information in regard to that PPA. Because we are gathering only the basic information necessary to understand a PPA, changes to any of the fields will be considered material. Further, if a Seller makes a submission to update the amount field of a PPA, but fails to provide information on the date of last change the information in the relational database may become unclear or incorrect.

251. We accept commenters' recommendations that we drop the date signed field. Upon consideration, we do not believe this field will provide the Commission with information essential to the market power analysis.

252. We have replaced the source and sink key fields with source and sink balancing authority area fields, respectively. Sellers will populate these fields with the foreign key that corresponds to the appropriate market/balancing authority area.<sup>327</sup>

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<sup>326</sup> We have renamed this field "Date\_of\_last\_change."

<sup>327</sup> Similar to EQR reporting, Sellers will be able to choose "Hub" as the Source or Sink. Accordingly, we have added source\_baa\_hub and sink\_baa\_hub fields that Sellers will use to indicate which Hub, when the Source or Sink is a Hub.

## **I. Indicative Screens Tables**

253. The NOPR data dictionary Indicative Screens tables were designed to accommodate the reporting of the same content as what is reported now in market-based rate filings, but, instead of being submitted as a workable electronic spreadsheet, the information is formatted to be loaded and maintained in a relational database.

### **1. Comments**

254. EEI comments that the tables should allow the entry of multiple identifiers to associate a screen with multiple filers.<sup>328</sup> GE prefers the Excel template currently used for submitting this information because conversion into a new format introduces the potential for error.<sup>329</sup>

### **2. Commission Determination**

255. We have not modified the Indicative Screen tables to allow the entry of multiple identifiers to associate a screen with multiple filers. However, we clarify in response to comments that when multiple Sellers are on a filing that requires indicative screens, only one Seller needs to submit the indicative screens into the relational database. As noted above, each screen will receive a serial number that the Sellers can refer to in their filing. We further address EEI's multiple identifier request below, in the section on Submitting on Behalf of Multiple Entities.

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<sup>328</sup> EEI at DD Appendix 21

<sup>329</sup> GE at 30-31.

256. Additionally, we have updated the Indicative Screens tables to better organize and streamline the information. Specifically, on both the `indicative_pss` and the `indicative_mss` tables we condensed the individual value fields into a `study_parameter` field and a `study_parameter_value` field in order to reduce the complexity and length of these tables. We have also added separate reference fields to allow Sellers to indicate whether the screen they are submitting is amending or relying on a previously submitted screen, and added a “`scenario_type`” field for Sellers to indicate whether the screen they are submitting is a base case scenario or a sensitivity analysis. Additionally, on the `indicative_mss` table we added the “`mss_group_id`” column to allow Sellers to properly associate the separate parameters for the four seasons of a market share screen.

257. While acknowledging GE’s preference for the Excel template currently used, we do not adopt this proposal because we are adopting a standardized method of data submission that does not utilize Excel. The risk of error is much greater when each filer submits its own spreadsheet rather than using a standardized data package that is vetted through validation routines. The validation routines that are part of the submission process will verify that the structure of any filing is accurate and that the simple math that was part of the spreadsheets is correct. Because such errors, when they occur, will be identified more quickly and reliably, it should be easier for filers to correct them. In addition, as noted above, spreadsheet programs typically now have the capability to convert data entered into a given spreadsheet into an XML automatically.

**J. Entities to Entities Table and Natural Person Affiliates to Entities**

258. The NOPR data dictionary Entities to Entities table and Natural Person Affiliates to Entities table were designed to accommodate the reporting of relationship information between and among reporting and reportable entities. This relationship information is distinct from information about the entities (or natural persons) found on the Entities table and the Natural Persons table.

**1. Comments**

259. Commenters note that the description and field names do not adequately capture sibling-type relationships, such as when entities are commonly held, owned, or controlled. EEI recommends breaking the table into two tables, one for Connected Entities and one for other affiliates.<sup>330</sup> EEI also notes that the focus of this table is on establishing Ownership/Control relationships, but that control relationships among entities are not required to be reported per the regulatory text (though they note that control is reported when reporting generation assets).<sup>331</sup> EEI also asks, if only Affiliate Owners are to be reported as affiliates for purposes of § 35.36(a)(9), whether the option to report owning and controlling relationships is necessary because reportable Affiliate Owners will always be controlling entities.<sup>332</sup>

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<sup>330</sup> EEI at DD Appendix 21; Berkshire at 10-11 also suggests modifications.

<sup>331</sup> EEI at DD Appendix 21.

<sup>332</sup>*Id.*

## 2. Commission Determination

260. We adopt with revisions the Entities to Entities table and combine attributes from the “Natural Person Affiliates to Entities” table referenced in the NOPR to form a single entities\_to\_entities table. This revised single table will capture a Seller’s relationship with its ultimate upstream affiliate.

261. We have modified field descriptions and names to address concerns regarding sibling relationships; fields that were identified with the terms “Ownership” or “Control” have been changed to indicate a “Relationship.” We have also removed the Ownership Percentage field from this table. We do not adopt EEI’s suggestion to split the table because doing so would add unnecessary complexity requiring two separate tables for the same types of data. EEI’s assertion that “control relationships among entities are not required to be reported per the regulatory text” is inaccurate. Under § 35.36(a)(9) of the Commission’s regulations, affiliate status can be based on owning, controlling or holding “10 percent or more of the outstanding voting securities.” Also, we are removing the control flag field; thus, questions regarding this field are no longer relevant.

### **K. Entities to Generation Assets Table**

262. The NOPR data dictionary entities\_to\_genassets table<sup>333</sup> was designed to accommodate the reporting of information about how reporting entities were connected

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<sup>333</sup> As noted above, we have renamed the “Entities to Generation” table as “entities\_to\_genassets.”

to generation assets. It was intended to allow analysts to see when multiple entities are related to a single generation asset and how particular relationships change over time.

## 1. Comments

263. GE states that the requirement to report connections between entities and generating assets does not currently exist and was not part of the NOPR.<sup>334</sup> GE states that the Commission has not justified its need for information regarding generation decreases.<sup>335</sup> It further notes that, even if the Commission explains its need for generation decreases, it is unclear why the Commission would only be interested in the end of ownership rather than events such as decommissioning of the asset.<sup>336</sup> EEI states that the “ownership end date” field is a new requirement not discussed in the NOPR.<sup>337</sup> Designated Companies request clarification on the meaning of “control” for generation assets.<sup>338</sup>

## 2. Commission Determination

264. We have made adjustments to the entities\_genassets table to better accommodate the reporting of generation assets. As discussed above in the Asset Appendix section, Sellers will use the entities\_genassets table to provide all of the details specific to its, or

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<sup>334</sup> GE at 32.

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

<sup>337</sup> EEI at DD Appendix 27.

<sup>338</sup> Designated Companies at 25.

its non-MBR affiliate's, relationship to a generation asset. Through this table, a Seller will be able to indicate the following information regarding its relationship to a generation asset: (1) whether it, or its non-MBR affiliate, owns or controls the asset; (2) where the asset is located; (3) the de-rated capacity and methodology it uses to perform the de-rate; (4) the amount of capacity that should be attributed to it or its non-MBR affiliate; and (5) any explanatory notes. The information to be provided in these tables is currently required in Appendix B to Subpart H of Part 35 of the Commission's regulations, and therefore the collection of this information falls within the scope of the NOPR. The NOPR data dictionary essentially proposed to change the format of the reported information from a spreadsheet format to the XML format for inclusion in the relational database. Regarding Designated Companies' request for clarification of the term "control," we note that there has been no change to the meaning of "control" for the purpose of this final rule.

265. We disagree with GE's assertion that the Commission has not explained the need for information on generation decreases. In the NOPR, the Commission explained that maintaining the accuracy of the database is not only important to ensure the usefulness of the relational database for the Commission's analytics and surveillance program, but is also necessary to generate accurate asset appendices for Sellers to reference in their filings.



266. In response to GE, for decommissioned generators, Sellers can indicate “zero” in the amount field and use the explanatory notes field to indicate that the generator is decommissioned.

267. While we acknowledge that an end date field is not required in the current asset appendix, we deem this information necessary in order to provide the Commission with up-to-date information about generation asset ownership/control and to permit Sellers to remove generation assets that they no longer own or control from the asset appendices generated by the relational database.

#### **L. Vertical Assets Table**

268. The NOPR data dictionary Vertical Assets table was designed to accommodate the reporting of connections between reporting entities and various “vertical assets” that were necessary for Commission determinations regarding market-based rate filings.

##### **1. Comments**

269. EEI notes that at the data dictionary workshop, Commission staff stated that this table must include Vertical Assets of any affiliates that are not also reporting entities. Also, EEI states that the Commission should have separate tables for reporting the vertical assets of the Seller and non-reporting affiliates. EEI requests that a designated person be able to submit one submission on behalf of multiple reporting entities with separate LEIs rather than requiring individual submissions on behalf of each separate

entity.<sup>339</sup> Designated Companies and EEI request clarification on the definition for the “region” and “other inputs” fields.<sup>340</sup>

## 2. Commission Determination

270. In this final rule, we simplify the vertical asset requirements as discussed in the Vertical Assets section, and the MBR Data Dictionary reflects these new requirements. In response to EEI’s comments and consistent with our determinations with respect to generation assets and PPAs, we will require Sellers to report the vertical assets of their non-market-based rate affiliates, as this will ensure that the asset appendix contains all affiliated assets. Since this table captures the relationship of an entity to vertical assets, we are re-naming the table as the entities\_to\_vertical\_assets table. The entity associated with the vertical asset will be the Seller or the Seller’s non-market-based rate affiliate, as reflected in the new ref\_cid, ref\_lei, and ref\_fid fields. Where the Seller is reporting its own vertical asset, it will not separately report any identifier, and the Commission will assume that the asset is attributable to the Seller. Where the vertical asset reference is to a non-market-based rate affiliate, the reporting entity must enter the affiliate’s CID, LEI or FERC generated ID. We will not address the meaning of “other inputs,” as the Commission did not propose, and this final rule does not adopt, any changes to the definition. Finally, we have renamed the region field to balancing authority area. As

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<sup>339</sup> EEI at DD Asset Appendix 27.

<sup>340</sup> *Id.* at DD Asset Appendix 28; Designated Companies at 26.

discussed above in the Asset Appendix section, knowing the balancing authority area will allow the Commission to determine the region in which an asset is located.

**M. Posted Changes to the Reference Tables**

**1. Commission Proposal**

271. The NOPR data dictionary contained descriptions of several tables that will be available for submitting entities to use for standard references when reporting information (e.g., RTO/ISO names, balancing authority areas).

**2. Comments**

272. GE states that in the event the Commission makes any changes to the reference tables, reporting entities should not be required to include any posted changes in their submissions until 60 days after the changes and posting notice of the changes. GE also recommends that the Commission provide notice and opportunity to comment on any changes.<sup>341</sup>

**3. Commission Determination**

273. We decline to require notice and opportunity to comment on any minor, non-material change(s) to reference tables as for the same reasons described in the Updates to the Data Dictionary section above. Minor, non-material changes to the tables will be posted to the Commission's website. Upon the posting of the changes, submitters will be able to make submissions that conform to the most recent changes to the table. However,

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<sup>341</sup> GE at 32-33.

Sellers will not be required to make submissions using the revised tables until the next time that the Seller is required to update its relational database information. In other words, the Commission's revision of a table alone would not necessitate an update to the relational database for each Seller.

**N. Submission on Behalf of Multiple Entities**

**1. Commission Proposal**

274. The Commission proposed that reporting entities submit information in the prescribed format to the Commission.

**2. Comments**

275. Commenters request the ability for a reporting entity to designate a person to make submissions on behalf of the reporting entity.<sup>342</sup> In addition, commenters seek allowance for a designated person to make submissions on behalf of multiple reporting entities. In particular, commenters seek allowance for a designated person to make submissions on behalf of multiple reporting entities with only one submission.<sup>343</sup>

**3. Commission Determination**

276. With this final rule, we are leveraging the current eFiling infrastructure. This will allow reporting entities to designate a person to make submissions into the relational database on their behalf. The same person may be designated to make submissions on

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<sup>342</sup> Designated Companies at 14 (Commission could use authentication for filings (similar to EQR) to permit filer to control who can file on its behalf).

<sup>343</sup> EEI at 2, 24.

behalf of multiple reporting entities. However, the submission system for this database will not be able to accommodate a single submission to be made on behalf of multiple reporting entities. Stated another way, a designated person would not be able to submit an XML that updates the database information of multiple Sellers. Rather the designated person would need to submit separate XMLs for each Seller.

277. Nonetheless, certain features of the relational database and eFiling system are available to minimize any burden on a designated person making submissions on behalf of multiple, related reporting entities. In particular, the standardized formatting in the MBR Data Dictionary of reportable information readily allows such information to be “cut and pasted” into multiple submissions. Furthermore, nothing in this final rule affects the ability for multiple Sellers to be docketed on the same filing. Currently, Sellers with a shared reporting requirement, such as a triennial obligation, will often make a single filing that is placed into the dockets of all relevant Sellers. Moving forward, once Sellers have submitted the relevant information into the database and retrieved the serial numbers, they will still be able to make a single filing, i.e. their triennial, which goes into the docket of all relevant Sellers. Further, we note that indicative screens that will apply to multiple Sellers on the same filing will only need to be submitted into the database by one of the Sellers.

**IX. Confidentiality****A. Commission Proposal**

278. In the NOPR, the Commission explained that information required to be submitted for market-based rate purposes would be made public via publication in eLibrary, and potentially through other means, such as the asset appendix, unless confidential treatment was requested pursuant to the Commission regulations.<sup>344</sup> The Commission stated that to the extent a Seller submits its relationship with an affiliate owner as privileged under § 388.112 of the Commission's regulations, the Seller-affiliate owner relationship would remain confidential if it qualifies for such treatment.

**B. Comments**

279. Independent Generation requests that the Commission provide a more detailed explanation of how it intends to protect confidential affiliate ownership information while still providing adequate public information to facilitate proper reporting by other entities that may share common relationships -- e.g., given the apparent tension between the proposal to publish a list of affiliate owners and the commitment to confidentiality of certain affiliate owner relationships.<sup>345</sup>

280. Financial Marketers Coalition requests that the Commission clarify how much information will be available to the public and whether filers will have a mechanism to

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<sup>344</sup> See 18 CFR 388.112.

<sup>345</sup> Independent Generation at 12.

request confidential treatment on the various parts of their market-based rate XML submissions. Financial Marketers Coalition also inquires whether the entirety of a company's XML submission will be available for public view and the security measures taken to keep sensitive data protected and the website secure.<sup>346</sup> Financial Marketers Coalition also requests clarification as to how passive investor information will be treated, including to what extent such information will be publicly available, either through the relational database or the proposed website interface.<sup>347</sup>

281. Several commenters noted that any final rule should address how confidentiality will be maintained in response to requests under Freedom of Information Act (FOIA), including the standard the Commission will apply in considering whether to grant a request for disclosure under FOIA.

282. Similarly, EPSA suggests that submitters could request protection from public disclosure under the FOIA but notes that such protections are subject to third-party disputes, potentially requiring filers to participate in disputes about the *continued* applicability of the exemption even as the information was confidentially submitted at the outset. EPSA thus requests that the Commission consider specific protections which

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<sup>346</sup> Financial Marketers Coalition at 29-30.

<sup>347</sup> *Id.* at 16; *see* NOPR, 156 FERC ¶ 61,045 at P 26.

ensure this information is protected when it is being sought outside of the context of an investigation.<sup>348</sup>

283. Working Group and others state that Sellers must not be required to violate foreign privacy laws, employment laws, confidentiality requirements in contracts, or other regulatory regimes that are intended to protect information that otherwise would be reportable.<sup>349</sup> GE urges the Commission to consider the most limited means of obtaining the information and to make publicly available its current privacy protocols or to consider performing a Privacy Impact Assessment with respect to this data.<sup>350</sup>

### **C. Commission Determination**

284. Consistent with the proposal in the NOPR, we clarify that certain aspects of a Seller's market-based rate filing can appear in eLibrary as either public or non-public. A Seller, like anyone else submitting information to the Commission, may request privileged treatment of its filing if it contains information that is claimed to be exempt from FOIA's mandatory public disclosure requirements.<sup>351</sup> While aspects of a Seller's

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<sup>348</sup> EPSA at 33.

<sup>349</sup> Working Group at 32-33.

<sup>350</sup> GE at 19; PTI at 7-8 (“MBR Sellers should not be required to share/gather information with/from affiliates where standards of conduct or other legal requirements could limit or preclude them from sharing such information. Under any final rule, the Commission should not require MBR Sellers...to violate foreign privacy laws, contractual confidentiality requirements, or other regulation designed to protect information that would otherwise be reportable under the Data Collection NOPR.”).

<sup>351</sup> For example, a seller may request confidential treatment of workpapers and



filing may qualify for privileged treatment, we do not expect that the information required to be submitted into the database will qualify for privileged treatment. As discussed in the Ownership section of this rule, the Commission has determined that the relationship between the Seller and its ultimate upstream affiliate(s) does not qualify for privileged treatment under the Commission's regulations, particularly given that this affiliate relationship informs the horizontal and vertical market power analyses.<sup>352</sup> Similarly, other information that must be submitted into the database will not qualify for privileged treatment because it is either: (1) already publicized in the Seller's tariff; (2) part of the Seller's asset portfolio, which informs the Commission's market power analysis; or (3) part of the indicative screens, which informs the Commission's market power analysis. Accordingly, we are not incorporating any confidentiality safeguards to the database.

285. Financial Marketers Coalition request clarification regarding the treatment of passive investor information. As discussed in the Passive Ownership section, the Commission will not be collecting information on passive owners in the relational database.

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other proprietary information in support of its application.

<sup>352</sup> See *Ambit*, 167 FERC ¶ 61,237 at PP 26, 30.

**X. Due Diligence****A. Commission Proposal**

286. In the NOPR, the Commission explained that with respect to any inadvertent errors in the data submission process, it would accept corrected submittals and would not impose sanctions where due diligence had been exercised.<sup>353</sup> However, the Commission also stated that the intentional or reckless submittal of incorrect or misleading information could result in the imposition of sanctions, including civil penalties, as has occurred in other contexts.<sup>354</sup> The Commission stated that an entity can protect itself against such a result by applying due diligence to the retrieval and submission of the required information.<sup>355</sup>

**B. Comments**

287. Several commenters argue that the Commission should grant a special “safe harbor” for good faith mistakes in the information reported by Sellers. Commenters are concerned that legitimate, good-faith mistakes in market-based rate submissions will be subject to penalties for reporting erroneous information under a strict liability standard and request a “safe harbor,”<sup>356</sup> including a safe harbor for when other laws or regulations,

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<sup>353</sup> NOPR 156 FERC ¶ 61,045 at P 58.

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

<sup>356</sup> Designated Companies at 7 (Commission should establish a safe harbor specifying what will constitute sufficient due diligence for reporting Connected Entity data, with explicit parameters similar to the Commission’s safe harbor presumption in

such as under foreign privacy laws or the Commission's Standards of Conduct, would prevent disclosing the data to the Commission.<sup>357</sup>

288. For example, AVANGRID requests that the Commission establish an express safe harbor for the submission of market-based rate information to: (1) establish a presumption of good faith on the party of entities submitting market-based rate information; and (2) expressly provide that the Commission will not bring an enforcement action against any entity for the accuracy of such data absent evidence demonstrating that the entity intentionally submitted inaccurate or misleading information to the Commission.<sup>358</sup> EPSA requests that the Commission clearly state in the final rule that errors discovered in good faith by a reporting entity may be corrected in its next submission upon discovery post-submission either by the reporting entity, its affiliate, or Commission staff, without incurring penalty for not having reported these minor errors to the Commission at an earlier date.<sup>359</sup>

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price reporting); FIEG at 13 (“[T]he Commission should provide an explicit safe harbor in its regulations for instances where there is a demonstration of good faith effort to comply with the regulations – even if a report contains omissions or mistakes.”); PTI at 7; Working Group at 28-29 (requesting good faith mistake safe harbor and citing safe harbor to entities that make legitimate, good-faith mistakes or errors in index price reporting).

<sup>357</sup> Working Group at 30-31.

<sup>358</sup> AVANGRID at 21-22.

<sup>359</sup> EPSA at 32-33.

289. While the Commission stated in the NOPR that it expects affiliates “to work together to have the correct information submitted into the relational database,”<sup>360</sup> commenters further assert that the reporting entity should not have a duty to verify the data collected from its affiliates, when the information is outside its control and cannot be verified; rather, such reporting entity should be permitted to rely upon representations from their affiliates that such information is accurate absent any reasonable basis suggesting otherwise. Working Group questions how a Seller would be able to verify market-based rate data that was submitted by an affiliate as confidential and asserts that a Seller cannot be responsible for the accuracy of its affiliates’ or any other third-party data submissions that are incorporated by reference based on data in the Commission’s relational database.<sup>361</sup>

290. Some commenters recommend that the Commission confirm that a Seller has a duty only to notify the affiliate of a perceived error in data submitted by the affiliate if the Seller should discover one, and the affiliate, only if it agrees with the Seller, has a duty to submit corrected information within 30 days, while no such duty would apply if the Seller does not know the source of the data.<sup>362</sup> Working Group further asserts that the

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<sup>360</sup> NOPR, 156 FERC ¶ 61,045 at n.40.

<sup>361</sup> Working Group at 28-29 (asserting “data outside of a reporting entity’s control cannot be attributed to it”); *see also* FIEG at 14 (“an entity providing Connected Entity data would need to rely upon information from multiple sources within a market participant’s corporate family”).

<sup>362</sup> Working Group at 29-30; PTI at 7 (recommending that Sellers have a duty only

Seller's market-based rate authority should not be conditioned upon or rescinded if the Commission suspects or determines the Seller's data submissions are incorrect and that requiring corrected submissions would be more appropriate.<sup>363</sup> EEI requests that the Commission clarify that self-reports to Office of Enforcement for minor errors do not need to be made, and that the next quarterly submission should be used to correct these types of errors once discovered.<sup>364</sup>

**C. Commission Determination**

291. We provide the following clarifications as to how the Commission will apply the due diligence standard included in § 35.41(b) with respect to inadvertent errors, misstatements, or omissions in the data submission process. The Commission generally will not seek to impose sanctions for inadvertent errors, misstatements, or omissions in the data submission process. We expect that Sellers will apply due diligence to the retrieval and reporting of the required information by establishing reasonable practices and procedures to help ensure the accuracy of their filings and submissions, which should minimize the occurrence of any such inadvertent errors, misstatements, or omissions. However, the intentional or reckless submittal of incorrect or misleading information could result in the imposition of sanctions, including civil penalties.

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to notify the affiliate of a perceived error, and the affiliate have 30 days to submit the corrected information to the Commission only if it agrees).

<sup>363</sup> Working Group at 30.

<sup>364</sup> EEI at 6.

292. Accuracy and candor by Sellers in their respective filings and submissions under the final rule are essential to the Commission's mandate of ensuring just and reasonable rates and its ability to monitor for anomalous activity in the wholesale energy markets.

293. We appreciate that when extensive data must be submitted to a regulatory agency some data may, occasionally, despite an entity's best efforts to achieve accuracy, turn out to be incomplete or incorrect. In the case of inadvertent errors, the Commission's usual practice is simply to require that a corrected submittal be made without sanctions of any kind. Likewise, any necessary corrections to a submission under the final rule should be submitted on a timely basis, as soon as practicable after the discovery of the inadvertent error or omission, and should not be delayed until the next periodic reporting requirement. However, under certain circumstances, the submittal of incorrect, incomplete, or misleading information could result in a violation and the imposition of sanctions, including civil penalties. These circumstances might include, for example, systemic or repeated failures to provide accurate information and a consistent failure to exercise due diligence to ensure the accuracy of the information submitted. Any entity can protect itself against such a result by adopting and following timely practices and procedures to prevent and remedy any such failures in the retrieval and submission of accurate and complete information.

294. We decline to adopt a "safe harbor" or a "presumption of good faith" or "good faith reliance on others defense," nor do we limit bringing enforcement actions to only when there is evidence demonstrating that an entity intentionally submitted inaccurate

or misleading information to the Commission, as urged by some commenters.

Section 35.41(b) does not have a scienter requirement, and we decline to adopt one in this final rule. Rather, the Commission will continue to evaluate the circumstances surrounding the submission of erroneous information to determine whether the entity submitting information exercised due diligence. While we expect that most inadvertently erroneous or incomplete submissions will be promptly corrected by reporting entities without the imposition of any penalty, the Commission will continue to exercise its discretion based on the particular circumstances to determine whether erroneous or incomplete submissions warrant a sanction.

295. As the Commission has stated, a due diligence standard provides the Commission with sufficient latitude to consider all facts and circumstances related to the submission of inaccurate or misleading information (or omission of relevant information) in determining whether such submission is excusable and whether any additional remedy beyond correcting the submission is warranted.<sup>365</sup>

296. Therefore, establishing adequate due diligence practices and procedures ultimately depends on the totality of facts and circumstances, and can vary case to case, depending

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<sup>365</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Authorizations*, 107 FERC ¶ 61,175, at P 96 (2004) (order denying reh'g and granting, in part, clarification of *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003)) (“While we agree that a false or misleading communication (or omission of relevant information) may, in a given case, be excusable based on the facts and circumstances presented, we are not convinced that our due diligence standard would be inadequate for the purpose of considering such a defense.”).

upon the evidence presented and whether, for example, reliance on third-parties or affiliates is justified under the specific circumstances. For example, most Sellers necessarily have knowledge of their affiliates' generation portfolios because they must submit this information for purposes of generating the indicative screens. To the extent the auto-generated asset appendix is clearly incongruous with the screens, presumably due to an incorrect submission by the Seller's affiliate, we expect that the Seller will make note of the perceived error in the transmittal letter.

297. However, if a Seller does not have accurate or complete knowledge of its affiliates' market-based rate information, in most cases it should be able to rely on the information provided by its affiliates about such information, unless there is some indication or red flag that the information the affiliate supplies is inaccurate or incomplete. In response to Working Group's concern about the difficulty in verifying confidential information, we note that most of the information that a Seller would need to rely upon from its affiliate (e.g., ownership and asset information) generally should not be submitted as non-public. In the event that it is, a Seller should contact the affiliate for additional information.

298. While Sellers should not ignore obvious inaccuracies or omissions, relying on information from affiliates should be sufficient to satisfy the due diligence standard, provided there is reasonable basis to believe that such information obtained from affiliates (or other third-parties) is reliable, accurate, and complete.



## **XI. Implementation and Timing**

### **A. Commission Proposal**

299. In the NOPR, the Commission proposed that, within 90 days of the date of the publication of a final rule in the *Federal Register*, existing Sellers submit an informational baseline submission to the relational database that includes certain information in order to establish a baseline of information in the relational database to be used for purposes of future filings.<sup>366</sup>

### **B. Comments**

300. Numerous commenters state that the Commission's proposal to have baseline filings submitted 90 days after publication of the final rule in the *Federal Register* is unrealistic.<sup>367</sup> Duke states that there are "fairly significant substantive issues that must be resolved and clarified" before a data dictionary and User Guide can be prepared and recommends that the Commission issue a guidance order and conduct collaborative meetings with industry prior to finalizing the MBR Data Dictionary and User Guide.<sup>368</sup> Duke references EEI's comments regarding conflicts between the NOPR data dictionary

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<sup>366</sup> NOPR, 156 FERC ¶ 61,045 at PP 60-62. The Commission proposed that it would not act on these baseline submissions. *Id.* P 62.

<sup>367</sup> See, e.g., AVANGRID at 23-24; Brookfield at 10-11; Duke at 4-5; EEI at 25-27; EPSA at 6-7; MISO TOs at 9-10.

<sup>368</sup> Duke at 3-4.

and the NOPR text and for issues regarding need for certain data.<sup>369</sup> Brookfield states that filing format and structure issues will need to be resolved before filers and software vendors can begin to take the steps necessary to implement the relational database submission requirements.<sup>370</sup> Similarly, FMP states that there are “fundamental questions about filing contents, timing, processes, and even about the identification of inapplicable disclosure requirements” that were not addressed in the NOPR and recommends that the Commission treat the NOPR as an advanced notice of rulemaking or non-rulemaking notice of inquiry.<sup>371</sup> FMP states that even if the Commission can resolve all of the issues in the final rule that “the answers would constitute amendments to the NOPR, and affected parties would have no clear, final NOPR proposal to address.”<sup>372</sup> EPSA also notes that absent resolution of pending issues, filers would have to build a system without knowing precisely to what they are building.<sup>373</sup>

301. Numerous commenters allege that the NOPR did not take into account the time needed to develop and test software needed to implement the relational database and,

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<sup>369</sup> *Id.* at 3.

<sup>370</sup> Brookfield at 11.

<sup>371</sup> FMP at 3-4 (stating that the NOPR “is nowhere near ready for adoption as a final rule”).

<sup>372</sup> *Id.* at 4.

<sup>373</sup> EPSA at 7-8.

where necessary, to purchase such software.<sup>374</sup> EEI notes that filers often need to budget for new software a year before such expenditures.<sup>375</sup> Commenters also note the need for employees to be trained to use the software.<sup>376</sup>

302. Commenters also note the need to adjust and/or develop internal processes and train staff regarding how to capture and report the required information.<sup>377</sup> EEI notes that business practices will need to be developed to get relevant information from a variety of business units to the persons trained to use the software.<sup>378</sup> Designated Companies note the need to establish new controls, coordination, and to allow for due diligence review of initial submission by internal legal, risk management and compliance departments, which they estimate will take at least 45 days.<sup>379</sup> IECA states that the NOPR requirements

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<sup>374</sup> *See, e.g.*, AVANGRID at 23-24; EEI at 25-26 (“[o]nce the data dictionary is finalized and the XML schema is developed for submitting data to the relational database, software will need to be developed in consultation with the industry and tested by the software producers which will likely take one to two years”), EPSA at 34 (“need for adequate time to develop internal software capability should account for the fact that companies may need well over 180 days from the date of a finalized XXL format’s publication, to develop cost-effective, internal-facing software tools to capture the necessary information, rather than relying solely on a series of vendor solutions.”).

<sup>375</sup> EEI at 27.

<sup>376</sup> *See, e.g.*, AVANGRID at 23-24; Duke at 5; EEI at 25-26; Independent Generation at 16; MISO TOs at 9-10; NRG at 7.

<sup>377</sup> AVANGRID at 23-24; Brookfield at 10-11; Duke at 5; EEI at 25-26; MISO TOs at 9-10; NextEra at 14-15.

<sup>378</sup> EEI at 26.

<sup>379</sup> Designated Companies at 9-10.

could cause structural changes to commodities trading to ensure that trading or hedging processes are re-aligned with the NOPR and may require revisions to trading strategies to prevent inadvertent violations.<sup>380</sup> NextEra estimates that, given the Commission's estimate of 40-100 hours to collect and provide the relational database information, it would take NextEra's portfolio of over 125 Sellers between 5,000-12,500 hours to prepare and submit their filings.<sup>381</sup>

303. In addition, commenters note the need to provide adequate time and an opportunity for filers to test the software to ensure that submissions can be made on a timely basis.<sup>382</sup> EEI states that once the test period has ended the Commission should provide sufficient time for final implementation.<sup>383</sup>

304. Many commenters propose timelines tied to particular milestones to ensure realistic and reasonable compliance deadlines. Commenters also identify the need for technical conferences prior to implementation and recommend that the Commission extend the deadline for baseline filings, proposing deadlines ranging generally from 12 months to 24 months after issuance or publication of the final rule.<sup>384</sup> GE states that

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<sup>380</sup> IECA at 21-22.

<sup>381</sup> NextEra at 14.

<sup>382</sup> EEI at 28.

<sup>383</sup> *Id.*

<sup>384</sup> *See, e.g.*, Brookfield at 11 (18 to 24 months after issuance of final rule); GE at 11 (12-18 months after final rule effective date); EEI at 26 (two-years to implement), EPSA at 6-7 (at least one year after the Commission releases final XML format); FIEG

the Commission's implementation plan should include a detailed technical review of the MBR Data Dictionary by stakeholders led by Commission staff.<sup>385</sup> EEI states that the Commission needs to take into account discussions at technical workshops when preparing the XML schema and draft guidance/user documents.<sup>386</sup> EPSA states that the Commission needs to provide the opportunity for filers to share concerns about nomenclature and the need for clarity regarding various prongs of Connected Entity definition.<sup>387</sup> EPSA also recommends that the Commission explore implementation possibilities in a technical workshop focusing on submission issues prior to issuance of the final rule.<sup>388</sup>

305. Designated Companies, EEI and GE all recommend some form of staggered implementation.<sup>389</sup> "EPSA proposes a 180-day initial period to prepare [market-based

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at 15 (at least 180 days after finalization of data dictionary and completion of technical conferences); Independent Generation at 16 (minimum of 180 days); NRG at 8 (minimum of 18 months after issuance of final rule); Working Group at 19-20 (at least 18 months).

<sup>385</sup> GE at 3-4.

<sup>386</sup> EEI at 28; *see also* MISO TOs at 7.

<sup>387</sup> EPSA at 9.

<sup>388</sup> *Id.* at 10-11; *see also* Designated Companies at 10 (adequate time for technical conferences and workshops is necessary before finalizing the requirements and deadline for submission of baseline filings in order to maximize data quality and usefulness); PTI at 9 (requesting workshops on the scope of regulatory definitions and on enforcement).

<sup>389</sup> Designated Companies at 9-10 (stagger implementation with first compliance date (Sellers' baseline submissions) due at 180 days with deadline of an additional 180 days for all submitters to submit Connected Entity Information ); EEI at 27; GE at 11-12

rate] baseline filings subsequent to the date that XML format and MBR Data Dictionary terms have been finalized, with a subsequent 180-days to prepare and submit the new Connected Entity data. The second compliance period deadline should also be the due date for filers to replace their FERC-issued unique identifiers with [LEIs].”<sup>390</sup> Some commenters recommend phasing in relational database submission either based on geographic regions or by type of information, with several commenters recommending requiring market-based rate information be submitted to the relational database before requiring any Connected Entity Information because most of the market-based rate information is already being collected and reported.<sup>391</sup>

306. Similarly, some commenters recommend that the Commission have a parallel system whereby market-based rate filers continue to submit certain information, e.g., ownership information, as part of the old style filing and simultaneously submit the same information to the relational database.<sup>392</sup> Specifically, APPA states that it would be prudent to temporarily continue elements of existing filing requirements after the new

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(recommend baselines submissions be submitted on a regional basis).

<sup>390</sup> EPSA at 5.

<sup>391</sup> *See, e.g., id.* at 9 (proposing requiring “known” market-based rate requirements as part of the relational database before migrating “unknown” Connected Entity requirements); Working Group at 19-20 (recommending market-based rate relational database submissions occur six months prior to initial Connected Entity submissions).

<sup>392</sup> *See, e.g.,* APPA at 12.

requirements are rolled out, and that once the new filing regime is working as intended, the Commission can discontinue the old filing requirements.<sup>393</sup>

307. Finally, Financial Markets Coalition requests that the Commission provide a process for requesting an extension to the initial submission deadlines and the ongoing reporting deadlines.<sup>394</sup>

### **C. Commission Determination**

308. The submitted comments, feedback received at the August 2016 workshop, and other outreach with the industry and software vendors, indicate a clear concern with regard to the implementation schedule as set forth in the NOPR. In light of these concerns, after further consideration, we are revising the implementation schedule as set forth below. At the outset, we revise the NOPR proposal, such that baseline submissions will be due February 1, 2021, as discussed below.

309. After issuance of this final rule, documentation for the relational database will be posted to the Commission's website, including XML, XSD, the MBR Data Dictionary, and a test environment user guide. Additionally, after issuance of this final rule, a basic relational database test environment will be available to submitters and software developers. The Commission intends to add to the new test environment features on a prioritized, scheduled basis until complete. We note that the Commission will inform the

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<sup>393</sup> *Id.*

<sup>394</sup> Financial Marketers Coalition at 26.

public of when releases will be made publicly available. This will allow internal and external development to occur contemporaneously as new features are made available for outside testing.

310. During this development/testing phase, we encourage feedback from outside testers. To facilitate such feedback, we anticipate that staff will conduct outreach with submitters and external software developers, and make any necessary corrections to available requirements and/or documentation, thereby allowing for the relational database to be fine-tuned prior to the submission of baseline submittals. By so doing, we expect that when the relational database is launched, it will be well-vetted and robust enough to handle the submission of the required data and to appropriately generate reports and respond to queries as needed. Therefore, contrary to commenters' suggestions, once the relational database is launched, existing filing procedures will be altered to require all applicable data to be submitted into the database.

311. In spring 2020,<sup>395</sup> the Commission will make available on its website a User Guide and a list of Frequently Asked Questions regarding the process for preparing and submitting information into the relational database.

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<sup>395</sup> The dates provided with respect to implementation are the expected dates for such milestones. However, in the event that unforeseen issues develop, the Commission may extend any such dates as necessary.



312. Lastly, although the effective date of this part of the final rule will be October 1, 2020, submitters will have until close of business on February 1, 2021 to make their initial baseline submissions.

313. In fall 2020, submitters will be required to obtain FERC generated IDs for reportable entities that do not have CIDs or LEIs, as well as Asset IDs for reportable generation assets without an EIA code. Specifically, submitters will need to ensure that every ultimate upstream affiliate or other reportable entity has a CID, LEI, or FERC generated ID and that all reportable generation assets have an EIA code or Asset ID. More information on discovering or obtaining these IDs will be published on the Commission's website. Subsequent to the receipt of all necessary IDs, submitters must then submit their baseline submissions into the relational database.

314. Sellers that have received market-based rate authority by December 31, 2020, must make a baseline submission into the relational database by close of business on February 1, 2021. Sellers that have filed for market-based rate authority, but have not received an order granting market-based rate authority as of January 1, 2021, must make a baseline submission into the relational database by close of business on February 1, 2021. The information requirements for these submissions are described above. We note that although Sellers with market-based rate applications filed between the October 1, 2020 effective date of the final rule and February 1, 2021 are required to submit their information into the relational database during this interim period, this information will

not be used to process their filings.<sup>396</sup> Thus, such Sellers are also required to submit their indicative screens and asset appendices as attachments to their filings through the eFiling system.

315. As of February 1, 2021, prior to filing an initial market-based rate application, a new Seller will be required to make a submission into the relational database. This will allow the relational database to create the asset appendices and indicative screens and provide the Seller with the serial numbers that it needs to reference in its transmittal letter as discussed above. We affirm that after January 31, 2021, no asset appendices or indicative screens are to be submitted as attachments to filings through the eFiling system.

316. Additionally, in light of this implementation schedule, any changes to the facts and circumstances upon which the Commission relied when granting a Seller market-based rate authorization that take place between October 1, 2020 and December 31, 2020, will need to be filed as a notice of change in status by February 28, 2021, rather than February 1, 2021, thereby allowing for the relational database to be fully populated prior to the filing of such notices of changes in status. Thereafter, future notice of change in status obligations will align with the timeline used for EQRs as described in Ongoing Reporting Requirements section.

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<sup>396</sup> Sellers are required to submit this information by February 1, 2021 so that their affiliates' asset appendices will be correct and complete.

317. With regard to recommendations that we explore implementation possibilities in a technical workshop focusing on submission issues prior to issuance of the final rule, we note that staff hosted two technical workshops in 2016 and will conduct regular outreach as the database is developed. Thus, we do not find there is a need to hold additional workshops prior to issuance of this final rule. To the extent that the Commission finds that workshops would be helpful after publication of the final rule, it will provide for such workshops.

318. With regard to Financial Marketers Coalition's request that the Commission provide a process for requesting an extension to the initial submission deadlines and the ongoing reporting deadlines, we note that such a request can be submitted similar to the way in which a current request for extension of time would be submitted to the Commission for consideration.<sup>397</sup>

## **XII. Information Collection Statement**

319. OMB regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.<sup>398</sup> Upon approval of a collection(s) of information, OMB will assign an OMB control number and expiration date.

Respondents subject to the filing requirements of this rule will not be penalized for

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<sup>397</sup> 18 CFR 385.212.

<sup>398</sup> 5 CFR 1320.11.

failing to respond to these collections of information unless the collections of information display a valid OMB control number.

320. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The NOPR solicited comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Comments received were addressed in their respective sections of this final rule. The final rule adopts data collection requirements that will affect Sellers. The reporting requirements will be included in the FERC-919A information collection.<sup>399</sup> Burden and cost estimates are provided for the information collection.<sup>400</sup> The total number of Sellers has increased

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<sup>399</sup> The new reporting requirements and burden that would normally be submitted to OMB under FERC-919 (OMB Control No 1902-0234) will be submitted under a "placeholder" information collection number (FERC-919A). FERC-919 is currently under OMB review for an unrelated FERC activity.

<sup>400</sup> The estimated hourly cost (salary plus benefits) provided in this section are based on the figures for May 2018 posted by the Bureau of Labor Statistics for the Utilities sector (available at [http://www.bls.gov/oes/current/naics2\\_22.htm](http://www.bls.gov/oes/current/naics2_22.htm)) and updated March 2019 for benefits information (at <http://www.bls.gov/news.release/ecec.nr0.htm>). The hourly estimates for salary plus benefits are:

Legal (code 23-0000), \$142.86

Computer and Information Systems Managers (code 11-3021), \$98.81

Computer and Mathematical (code 15-0000), \$62.89

Information Security Analysts (code 15-1122), \$63.54

since the NOPR was issued; this increase is reflected in the estimates for FERC-919A in the burden chart below.

321. As proposed in the NOPR and adopted in the final rule, the Commission recognizes that there will be an initial implementation burden associated with providing the Commission with the required data. While Sellers already submit most of the requested information to the Commission as part of their initial applications, notices of change in status, and triennial updated market power analyses, we acknowledge that there will be an initial increase in burden associated with providing this information in the new format for submission into the database. Thus, we estimate that the average Seller will spend 35 to 78 hours collecting and providing this information in the first year, mostly as part of the baseline submission requirement. After the initial baseline submission, Sellers will generally only need to make submissions to the database to correct errors in their submissions, update previously submitted information, or submit the indicative screens, submissions that are significantly less burdensome than the baseline submission. Further, we expect that many Sellers will not need to make any submissions to the database after their baseline submissions because they will not have any updates to report and will not

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Information and Record Clerks, All Other (referred to as administrative work in the body) (code 43-4199), \$40.84

The following weights were applied to estimate the average hourly costs:

\$46  $[(.05*\$142.86)+(.95*\$40.84)]$

\$82  $[(.16*\$142.86)+(.16*\$98.81)+(.33*\$62.89)+(.33*\$63.54)]$

need to provide indicative screens. Thus, we estimate that the average Seller will experience an ongoing yearly burden of approximately 1.5 to 6 hours.

322. In contrast to the NOPR, the final rule adopts the requirement that Sellers are required to report changes in status quarterly. This will reduce burden from current change in status filing requirements because Sellers are no longer required to file each change as it occurs, but are required to file the net change that has occurred at the end of the quarter. This reduction in burden is not large enough to properly quantify in the burden chart included below, so we conservatively exclude this reduction from the calculations. Additionally, the reduction in burden from reporting less ownership information than currently required in market-based rate applications is not reflected quantitatively in the calculations below. We estimate that Category 1 sellers will spend close to half of the hours that Category 2 sellers will spend on first year incremental and ongoing burden incurred from this final rule according to comments received about burden to Sellers. Additionally, because Category 1 sellers are not typically affiliated with much generation, we estimate that about one-third of Category 1 sellers will report ongoing monthly and quarterly information.

323. The following table summarizes the estimated burden and cost changes due to the final rule:

Burden Changes in RM16-17-000											
Respondent/ Incremental Burden Category	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Burden Hours per Response (4)	Hourly Cost per Response (5)	Total Burden Cost Per Response (6)	Total Burden Hours Per Respondent (2)*(4)=(7)	Total Burden Cost Per Respondent (2)*(6)=(8)	Total Annual Burden Hours (1)*(7)=(9)	Total Annual Burden Cost (1)*(8)=(10)	
<b>First year, incremental costs associated with the collection of Market-Based Rate information</b>											
Category 1 Sellers	1,000	1	1,000	5	\$ 46	\$ 230	5	\$ 230	5,000	\$ 230,000	
Category 2 Sellers	1,500	1	1,500	8	\$ 46	\$ 368	8	\$ 368	12,000	\$ 552,000	
<b>First year, incremental cost of formatting changes and initial filing</b>											
Category 1 Sellers	1,000	1	1,000	30	\$ 82	\$ 2,460	30	\$ 2,460	30,000	\$ 2,460,000	
Category 2 Sellers	1,500	1	1,500	70	\$ 82	\$ 5,740	70	\$ 5,740	105,000	\$ 8,610,000	
<b>Ongoing monthly and quarterly reporting of additional Market-Based Rate information</b>											
Category 1 Sellers	1,000	0.33	333	4	\$ 46	\$ 184	1.3	\$ 61	1,332	\$ 61,272	
Category 2 Sellers	1,500	1	1,500	6	\$ 46	\$ 276	6	\$ 276	9,000	\$ 414,000	
<b>Sub total for Market-Based Rate</b>							<b>First year (Cat. 1)</b>	<b>35</b>	<b>\$ 2,690</b>	<b>35,000</b>	<b>\$ 2,690,000</b>
							<b>First year (Cat. 2)</b>	<b>78</b>	<b>\$ 6,108</b>	<b>117,000</b>	<b>\$ 9,162,000</b>
							<b>Ongoing (Cat. 1)</b>	<b>1.3</b>	<b>\$ 61</b>	<b>1,332</b>	<b>\$ 61,272</b>
							<b>Ongoing (Cat. 2)</b>	<b>6</b>	<b>\$ 276</b>	<b>9,000</b>	<b>\$ 414,000</b>
<b>Total burden changes due to Final Rule RM16-17-000</b>								<b>First year</b>	<b>152,000</b>	<b>\$11,852,000</b>	
								<b>Ongoing</b>	<b>10,332</b>	<b>\$ 475,272</b>	

324. We estimate that there are 2,500 Sellers based on the number of market-based rate filings; of those approximately 1,000 are Category 1 in all regions and 1,500 are Category 2 in one or more regions. The total Paperwork Reduction Act related cost for Year 1 implementation is \$11,852,000 and ongoing cost (starting Year 2) is \$475,272.

325. Titles: Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities (FERC-919A)

326. Action: Revisions to existing information collection.

327. OMB Control No.: 1902-TBD

328. Respondents for this Rulemaking: Market-based rate sellers.

329. Frequency of Responses: Initial implementation, compliance filing, and periodic updates (monthly and quarterly).

330. Necessity of Information: The Commission's data collection requirements and processes must keep pace with market developments and technological advancements. Collecting and formatting data as discussed in this final rule will provide the Commission with the necessary information to identify and address potential manipulative behavior, better inform Commission policies and regulations, and generate asset appendices and organizational charts, all while eliminating duplicative reporting requirements. The new process will also make the information more usable and accessible to the Commission in the least burdensome manner possible.

331. Internal Review: The Commission has made a determination that the adopted revisions are necessary in light of technological advances in data collection processes. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

332. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, e-mail: DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873].

333. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission, and to



the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-4638, fax: (202) 395-7285].

334. For security reasons, comments should be sent by e-mail to OMB at the following e-mail address: oira\_submission@omb.eop.gov. Comments submitted to OMB should include Docket Number RM16-17-000 and/or, FERC-919A.

### **XIII. Environmental Analysis**

335. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>401</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>402</sup> The actions proposed here fall within a categorical exclusion in the Commission's regulations because they involve information gathering, analysis, and dissemination.<sup>403</sup> Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required for this final rule and has not been performed.

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<sup>401</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 41 FERC ¶ 61,284 (1987).

<sup>402</sup> Order No. 486, 41 FERC ¶ 61,284.

<sup>403</sup> 18 CFR 380.4.

**XIV. Regulatory Flexibility Act**

336. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities. In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.

337. Sellers. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>404</sup> The SBA size standard for electric utilities is based on the number of employees, including affiliates.<sup>405</sup> Under SBA's current size standards, an electric utility (one that falls under NAICS codes 221122 [electric power distribution], 221121 [electric bulk power transmission and

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<sup>404</sup> 13 CFR 121.101.

<sup>405</sup> 13 CFR 121.201.

control], or 221118 [other electric power generation])<sup>406</sup> are small if it, including its affiliates, employs 1,000 or fewer people.<sup>407</sup>

338. Of the 2,500 affected entities discussed above, we estimate that approximately 74 percent of the affected entities (or approximately 1,850) are small entities. We estimate that each of the 1,850 small entities to whom the proposed modifications apply will incur one-time costs of approximately \$4,741 per entity to implement the approved revisions, as well as the ongoing paperwork burden reflected in the Information Collection Statement (approximately \$190 per year per entity). We do not consider the estimated costs for these 1,850 small entities to be a significant economic impact. Accordingly, we propose to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

#### **XV. Document Availability**

339. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal

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<sup>406</sup> The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, *North American Industry Classification System*, <https://www.census.gov/eos/www/naics/>.

<sup>407</sup> 13 CFR 121.201 (Sector 22 - Utilities).

business hours (8:30 a.m. to 5:00 p.m. Eastern Time) at 888 First Street, NE, Room 2A, Washington DC 20426.

340. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

341. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (Toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

#### **XVI. Effective Dates and Congressional Notification**

342. These regulations are effective October 1, 2020. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is being submitted to the Senate, House, Government Accountability Office, and Small Business Administration.

#### **List of subjects in 18 CFR Part 35**

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

Docket No. RM16-17-000

- 179 -

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

Commissioner McNamee is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35 Chapter I, Title 18, *Code of Federal Regulations*, as follows.

### **Part 35 – FILING OF RATE SCHEDULES AND TARIFFS**

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r; 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Amend § 35.36 to add paragraph (a)(10). The revision reads as follows:

(a) \* \* \*

(10) *Ultimate upstream affiliate* means the furthest upstream affiliate(s) in the ownership chain. The term “upstream affiliate” means any entity described in § 35.36(a)(9)(i).

\* \* \* \* \*

3. Amend § 35.37 to revise paragraph as follows:

a. Revise paragraph (a)(1) and (a)(2).

b. Remove paragraph (c)(4)

c. Redesignate paragraphs (c)(5), (c)(6), and (c)(7) as (c)(4), (c)(5), and (c)(6), respectively.

The revisions read as follows:

#### **§ 35.37 Market power analysis required.**

(a)(1) In addition to other requirements in subparts A and B, a Seller must submit a market power analysis in the following circumstances: when seeking market-based rate

authority; for Category 2 Sellers, every three years, according to the schedule posted on the Commission's Web site; or any other time the Commission directs a Seller to submit one. Failure to timely file an updated market power analysis will constitute a violation of Seller's market-based rate tariff. The market power analysis must be preceded by a submission of information into a relational database that will include a list of the Seller's own assets, the assets of its non-market-based rate affiliate(s) and identification of its ultimate upstream affiliate(s). The relational database submission will also include information necessary to generate the indicative screens, if necessary, as discussed in paragraph (c)(1). When seeking market-based rate authority, the relational database submission must also include other market-based information concerning category status, operating reserves authorization, mitigation, and other limitations.

(2) When submitting a market power analysis, whether as part of an initial application or an update, a Seller must include a description of its ownership structure that identifies all ultimate upstream affiliate(s). With respect to any investors or owners that a Seller represents to be passive, the Seller must affirm in its narrative that the ownership interests consist solely of passive rights that are necessary to protect the passive investors' or owners' investments and do not confer control. The Seller must also include an appendix of assets and, if necessary, indicative screens as discussed in paragraph (c)(1). A Seller must include all supporting materials referenced in the indicative screens. The appendix of assets and indicative screens are derived from the

information submitted by a Seller and its affiliates into the relational database and retrievable in conformance with the instructions posted on the Commission's Web site.

\* \* \* \* \*

3. Amend § 35.42 by:
  - a. Revising paragraphs (a)(2)(iii) and (iv).
  - b. Adding (a)(2)(v).
  - d. Revising paragraphs (b) and (c).
  - e. Adding paragraph (d).

The revisions and additions read as follows:

**§ 35.42 Change in status reporting requirement.**

- (a) \* \* \*
- (2) \* \* \*
- (iii) Owns, operates or controls transmission facilities;
- (iv) Has a franchised service area; or
- (v) Is an ultimate upstream affiliate.

\* \* \* \* \*

(b) Any change in status subject to paragraph (a) of this section must be filed quarterly. Power sales contracts with future delivery are reportable once the physical delivery has begun. Sellers shall file change in status in accordance with the following schedule: for the period from January 1 through March 31, file by April 30; for the period from April 1 through June 30, file by July 31; for the period July 1 through



September 30, file by October 31; and for the period October 1 through December 31, file by January 31. Failure to timely file a change in status constitutes a tariff violation.

(c) Changes in status must be prepared in conformance with the instructions posted on the Commission's website.

(d) A Seller must report on a monthly basis changes to its previously-submitted relational database information, excluding updates to the horizontal market power screens. These submissions must be made by the 15<sup>th</sup> day of the month following the change. The submission must be prepared in conformance with the instructions posted on the Commission's website.

**Appendix A to Subpart H of Part 35**

[Removed]

4. Remove Appendix A to Subpart H of Part 35.

**Appendix B to Subpart H of Part 35**

[Removed]

5. Remove Appendix B to Subpart H of Part 35.

**Note: The following appendix will not appear in the Code of Federal Regulations.**

**Appendix  
List of Commenters and Acronyms**

Commenter Short Name/Acronym

American Public Power Association	APPA
AVANGRID, Inc.	AVANGRID
Berkshire Hathaway Energy Company	Berkshire
Designated Companies (Macquarie Energy LLC, DC Energy, LLC and Emera Energy Services, Inc.)	Designated Companies
Duke Energy Corporation	Duke
EDF Renewable Energy, Inc.	EDF
Edison Electric Institute	EEI
Electricity Consumers Resource Council (ELCON) and The American Forest and Paper Association (AFPA)	ELCON and AFPA
Energy Ottawa, Inc.	Energy Ottawa
Financial Institutions Energy Group	FIEG <sup>408</sup>
Financial Marketers Coalition	Financial Marketers Coalition <sup>409</sup>
Fund Management Parties	FMP <sup>410</sup>

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<sup>408</sup> FIEG is comprised of financial institutions that provide a broad range of services to all segments of the U.S. and global economy. Its members and their affiliates play a number of roles in the wholesale power markets, including acting as power marketers (with market-based rate authority), lenders, underwriters of debt and equity securities, and providers of investment capital.)

<sup>409</sup> Financial Marketers Coalition include financial market participants who trade a variety of physical and/or financial products in the organized wholesale electric markets.

<sup>410</sup> FMP includes Ares EIF Management, LLC Monolith Energy Trading LLC and its public utility affiliates,

Futures Industry Association	FIA
GE Energy Financial Services, Inc.	GE
Independent Generation Owners & Representatives	Independent Generation
International Energy Credit Association	IECA
Manitoba Hydro	Manitoba Hydro
MISO Transmission Owners	MISO TOs
New Jersey Board of Public Utilities and the Maryland Public Service Commission	New Jersey and Maryland Commissions
NextEra Energy, Inc.	NextEra
Old Dominion Electric Cooperative; The National Rural Electric Cooperative Association; East Kentucky Power Cooperative, Inc.	Joint Cooperatives
Southern California Edison Company	SoCal Edison
Starwood Energy Group Global, L.L.C.	Starwood
The Brookfield Companies	Brookfield
The Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California	CA Cities
The Commercial Energy Working Group	Working Group <sup>411</sup>
The Electric Power Supply Association, Independent Power Producers of New York, Inc., and PJM Power Providers Group	EPSA
The Independent Market Monitor for PJM	PJM Monitor
The NRG Companies	NRG
The Power Trading Institute	PTI
Transmission Access Policy Group	TAPS

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<sup>411</sup> Working Group includes commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of Working Group are producers, processors, merchandisers, and owners of energy commodities.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Data Collection for Analytics and Surveillance and  
Market-Based Rate Purposes

Docket No. RM16-17-000

(Issued July 18, 2019)

GLICK, Commissioner, *dissenting in part*:

1. I support the aspects of today's final rule that streamline collection of the data needed to regulate market-based rates by creating a relational database and revising certain information requirements. I dissent in part, however, because the Commission is declining to finalize a critical aspect of the underlying notice of proposed rulemaking<sup>1</sup> (NOPR) that would have required Sellers<sup>2</sup> and entities that trade virtual products or that hold financial transmission rights (Virtual/FTR Participants)<sup>3</sup> to report information regarding their legal and financial connections to various other entities (Connected Entity Information). That information is critical to combatting market manipulation<sup>4</sup> and the Commission's retreat from the NOPR proposal will hinder our efforts to detect and deter such manipulation.

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<sup>1</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (2016) (NOPR).

<sup>2</sup> "Seller means any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act." 18 C.F.R. § 35.36(a)(1) (2018).

<sup>3</sup> As explained in the final rule, the Commission proposed to define the term "Virtual/FTR Participants" as entities that buy, sell, or bid for virtual instruments or financial transmission or congestion rights or contracts, or hold such rights or contracts in organized wholesale electric markets, not including entities defined in section 201(f) of the FPA. *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 168 FERC ¶ 61,039, at P 182 (2019) (Final Rule).

<sup>4</sup> See, e.g., *Cal. ex rel. Lockyer v. FERC*, 383 F.3d 1006, 1013 (9th Cir. 2004) (recognizing the role that "strict reporting requirements" play in ensuring that rates are just and reasonable and that the markets are not subject to manipulation).

2. When it comes to policing market manipulation, context matters. A transaction that seems benign when viewed in isolation may raise serious concerns when viewed with an understanding of the relationships between the transacting parties and/or other market participants.<sup>5</sup> Unfortunately, information regarding the legal and contractual relationships between market participants is not widely available and may, in some cases, be impossible to ascertain without the cooperation of the participants themselves. That lack of information can leave the Commission in the dark and unable to fully monitor wholesale market trading activity for potentially manipulative acts.

3. That problem is particularly acute when it comes to market participants that transact only in virtual or FTR products. Virtual/FTR Participants are very active in RTO/ISO markets and surveilling their activity for potentially manipulative acts consumes a significant share of the Office of Enforcement's time and resources. It may, therefore, be surprising that the Commission collects only limited information about Virtual/FTR Participants and often cannot paint a complete picture of their relationships with other market participants. Similarly, the Commission has no mechanism for tracking recidivist fraudsters who deal in these products and perpetuate their fraud by moving to different companies or participating in more than one RTO or ISO. And, perhaps most egregiously, the Commission's current regulations do not impose a duty of candor on Virtual/FTR Participants, meaning that bad actors can lie with impunity, at least insofar as the Commission is concerned.<sup>6</sup> The abandoned aspects of the NOPR would have addressed all three deficiencies, among others.

4. Those deficiencies have real-world consequences. Consider a recent example from a Commission order of how an individual involved in one manipulative scheme was able to move, rather seamlessly, to allegedly perpetuate a similar scheme at another entity. On July 10, 2019, the Commission issued an Order to Show Cause with an accompanying report and recommendation from the Office of Enforcement that detailed how Federico Corteggiano allegedly engaged in a cross-product market manipulation

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<sup>5</sup> See NOPR, 156 FERC ¶ 61,045 at P 43.

<sup>6</sup> In contrast, section 35.41(b) of the Commission's regulations requires a Seller to "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission," market monitors, RTOs/ISOs, or jurisdictional transmission providers, unless the "Seller exercises due diligence to prevent such occurrences. Virtual/FTR Participants are not subject to this duty of candor. The Connected Entity portion of the NOPR proposed to add a new section 35.50(d) to the Commission's regulations that would require the same candor from Virtual/FTR Participants in all of their communications with the Commission, Commission-approved market monitors, RTOs, ISOs, and jurisdictional transmission providers. *Id.* at P 20.

scheme in the California Independent System Operator's (CAISO).<sup>7</sup> As described in that order, this alleged scheme used techniques that were similar to another manipulative scheme involving Corteggiano while he was employed at Deutsche Bank.<sup>8</sup> Without the Connected Entity reporting requirements contemplated in the NOPR, the Commission lacks any effective means of tracking individuals who perpetrate a manipulative scheme at one entity and then move locations and engage in similar conduct elsewhere, as Corteggiano is alleged to have done. That makes no sense. We should not be leaving the Office of Enforcement to play "whack-a-mole," addressing recidivist fraudsters only when evidence of their latest fraud comes to light.

5. Alternatively, consider the recent example of GreenHat Energy, LLC's (GreenHat) default on its FTRs in PJM Interconnection, L.L.C. (PJM), at least as it is described in an independent report prepared for PJM's Board.<sup>9</sup> That report alleges that GreenHat told PJM it had bilateral contracts that would provide a future revenue stream, alleviating the need for additional collateral.<sup>10</sup> The report further contends that PJM mistakenly relied on GreenHat's representations and the contracts in question did not provide the promised revenue stream, significantly exacerbating GreenHat's collateral shortfall.<sup>11</sup> Under the Commission's current regulations, no duty of candor attached to

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<sup>7</sup> *Vitol Inc. and Federico Corteggiano*, 168 FERC ¶ 61,013, at App. A (2019) (Enforcement Staff Report and Recommendation at 1).

<sup>8</sup> Enforcement investigated Corteggiano's conduct at Deutsche Bank, which resulted in the settlement of manipulation allegations with Deutsche Bank for a civil penalty of \$1.5 million and disgorgement of \$172,645, plus interest, in January 2013. *See Deutsche Bank Energy Trading, LLC*, 142 FERC ¶ 61,056 (2013) (approving a settlement agreement in which Deutsche Bank neither admitted nor denied alleged violations). Although Corteggiano was not identified by name in the Order to Show Cause in the Deutsche Bank enforcement matter, the public Enforcement Staff Report attached to the order explained his central role in the trading scheme and referred to him by name. *Deutsche Bank Energy Trading, LLC*, 140 FERC ¶ 61,178, at App. A (2012).

<sup>9</sup> I take no position on the accuracy of the events as discussed in that report or whether, even if true, the actions described therein would be improper. I use this report only as an illustrative example of what could occur in the absence of a duty of candor.

<sup>10</sup> Robert Anderson & Neal Wolkoff, *Report of the Independent Consultants on the GreenHat Default* 23-25 (Mar. 26, 2019), available at <https://www.pjm.com/-/media/library/reports-notice/special-reports/2019/report-of-the-independent-consultants-on-the-greenhat-default.pdf>.

<sup>11</sup> *Id.* (the report refers to this as "a seductive but problematic pledge").

GreenHat's allegedly misleading statements. It is, of course, impossible to know how a duty of candor for Virtual/FTR Participants would affect potential misstatements. But, if there were a duty of candor for Virtual/FTR Participants, it would give the Commission a basis for investigating potentially misleading statements and, if appropriate, sanctioning that conduct.<sup>12</sup>

6. Although the Commission does not dispute the benefits that the Connected Entities Information would provide, it “declines to adopt” this aspect of the NOPR without any real analysis or explanation and based only on its “appreciat[ion]” of the “difficulties of and burdens imposed by this aspect of the NOPR.”<sup>13</sup> Nothing in the record suggests that any burdens associated with this reporting obligation would outweigh its considerable benefits. As an initial matter, the NOPR already paired back the scope of Connected Entity Information compared to the previous NOPR addressing this issue.<sup>14</sup> The Commission could have further explored ways to limit the impact of this rule if it were truly concerned about that burden by, for example, eliminating the inclusion of contracts for defining connected entities, which received strong pushback

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<sup>12</sup> There is an open Office of Enforcement investigation into GreenHat's alleged misconduct. *PJM Interconnection, L.L.C.*, 166 FERC ¶ 61,072, at P 36 (2019) (noting that “the Commission’s Office of Enforcement began a non-public investigation under Part 1b of the Commission’s regulations into whether Green Hat engaged in market manipulation or other potential violations of Commission orders, rules, and regulations”).

<sup>13</sup> Final Rule, 168 FERC ¶ 61,039 at P 184. The Commission also notes that the creation of the relational database for market-based rate purposes will provide value for the Commission’s analytics and surveillance program. While true, that will not provide the distinct and critical Connected Entity Information needed to aid the Commission in detecting and deterring market manipulation. Without this information, the Commission continues to have little visibility into Sellers’ and Virtual/FTR Participants’ affiliates with solely financial market participants.

<sup>14</sup> For example, in the initial proposal, the Commission proposed to collect information concerning ownership, employee, debt, and contractual connections, while this proposal replaced “employee” with the much narrower “trader” definition and eliminated the reporting of debt instruments. *Compare Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 152 FERC ¶ 61,219, at P 23 (2015) (defining “Connected Entity”) with NOPR, 156 FERC ¶ 61,045 at P 17 (explaining changes from the 2015 proposal to the 2016 proposal); *see also Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 156 FERC ¶ 61,046 (2016) (withdrawing and terminating the proposed 2015 notice of proposed rulemaking).

from industry. Alternatively, the Commission could have established a phased-in implementation schedule to provide industry time to adjust to the new reporting requirements.

7. Instead, the Commission makes only a conclusory statement based on an unspecified burden to industry. It makes no effort to explain why that burden outweighs the benefits that Connected Entities Information would provide to the Commission's ability to carry out its enforcement responsibilities. Without such information, the predictable result of today's order is that market participants are more likely to find themselves subject to a manipulative scheme than if we had proceeded to a final rule on these aspects of the NOPR.

\* \* \*

8. Identifying, eliminating, and punishing market manipulation must remain one of the Commission's chief priorities, as it has been since Congress vested the Commission with that responsibility when it enacted the 2005 amendments to the FPA in the wake of the Western Energy Crisis.<sup>15</sup> In addition to the financial losses directly attributable to a particular instance of fraud, market manipulation erodes participants' confidence in wholesale electricity markets—a dynamic that has serious deleterious consequences for the long-term health and viability of those markets. Although I appreciate the importance of avoiding unnecessary regulatory burdens, the record in this proceeding indicates that the Connected Entity Information is necessary and would, in the long-term, benefit all market participants, including those subject to the regulations, by helping to ensure confidence in the integrity of wholesale electricity markets.

For these reasons, I respectfully dissent in part.

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Richard Glick  
Commissioner

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<sup>15</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, § 1283, 119 Stat. 979.



Document Content(s)

RM16-17-000.DOCX.....1-192