

Summary of Proposed Refinements to Market-Based Rates Policies & Procedures

Notice of Proposed Rule Making
(Docket No. RM14-14)

JUNE 2014

Romkaew Broehm

Romkaew.Broehm@brattle.com
617.234.5636

Dr. Broehm is an economist whose practice is focused on the electric utility industry. She specializes in the areas of market deregulation and oversight, evaluation of demand-side management, and utility cost structures. Dr. Broehm has submitted testimony and comments before the Federal Energy Regulatory Commission (FERC) on market-based rates (MBR) and merger and acquisition (M&A) matters. She also has experience in analyzing potential market manipulation allegations. Recently, she co-authored comments to the Commodities Futures Trading Commission (CFTC) that proposed a practical definition of market manipulation.

Richard Sweet

Richard.Sweet@brattle.com
617.234.5640

Mr. Sweet is a consultant whose primary focus has been economic analysis in support of complex commercial litigation, particularly in the electric utility industry. Mr. Sweet's consulting engagements have included assisting in several market-based rate (MBR) applications before the FERC, and several Delivered Price Test analyses in support of electric utility M&A.

On June 19, 2014, six years after Order No. 697 implementation, the Federal Energy Regulatory Commission (FERC) proposes a number of refinements to its market-based rates tests and policies.¹ The NOPR is intended to reduce filing burdens of sellers in RTO markets, provide clarifications, and improve efficiency of its tests and procedures. The key changes proposed by FERC in this NOPR are highlighted below.

- Elimination of Indicative Screens Requirement of Sellers in RTO Markets:** FERC proposes to allow sellers in RTO markets to address the horizontal market power issues without conducting the two indicative screens (pivotal supplier and market share screens), if the seller relies on Commission-approved market power monitoring and mitigation to prevent the exercise of market power. Both the initial and updated triennial MBR applications would include:
 - A statement that the seller is relying on RTO mitigation to address any potential market power it might have;
 - Identification and description of generation and transmission assets; and
 - An asset appendix. In all scenarios, the Commission would retain the ability to require an updated market power analysis, including indicative screens, from any market-based rate seller at any time.²
- Elimination of Indicative Screens Requirement of Sellers with Fully-Committed Resources:** To bypass performing the indicative screens, sellers must explain in their filings that their capacity is fully committed for all seasons in order to satisfy the Commission's market-based rate requirements regarding horizontal market power. They must provide the following information:
 - Amount of generation capacity that is fully committed
 - Names of the counterparties
 - Length of the long-term contract
 - Expiration date of the contract

¹ See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities Notice of Proposed Rule Making, 147 FERC ¶ 61,232 (2014), hereafter "NOPR."

² *Id.*, P. 36

-
- e. A representation that the contract is for firm sales for one year or longer
- f. The commitment of the generation capacity cannot be limited during that 12-month consecutive period in any way, such as limited to certain seasons, market conditions, or any other limiting factor.
- g. A seller's generation would not qualify as "fully committed" if, for example, the seller has generation necessary to serve native load, provider of last resort obligations, or a contract that could allow the seller to reclaim, recall, or otherwise use the capacity and/or energy or regain control of the generation under certain circumstances (such as transmission availability clauses).
3. **Elimination of Land Acquisition Reporting:** FERC proposes to eliminate the requirement that sellers provide information on sites for generation capacity development in their market-based rate applications and triennial updated market power analyses and to similarly relieve sellers of their obligation to file quarterly land acquisition reports. FERC notes that if there is a concern that a particular seller's sites for generation capacity development may be creating a barrier to entry, the Commission can request additional information from the seller at any time.³
4. **Relevant Geographic Market for Sellers in Generation-Only Balancing Authority Areas:** For sellers with resources located in a generation-only balancing authority area (BAA), the NOPR redefines their default geographic markets as BAAs of transmission providers to which the generation-only BAA is directly interconnected.⁴ For example, if an IPP in a generation-only BAA in the Arizona desert is directly interconnected to a transmission provider at the Palo Verde trading hub at the Palo Verde and Hassayampa switchyards,⁵ then it would provide screens that study all of its uncommitted capacity in each balancing authority area that is directly interconnected at the switchyard.⁶
5. **Reporting Updates for Indicative Screens:** To provide more clarity in the two indicative screens calculation, FERC adds more rows on the two indicative screens exhibits (with the filed model being in a "workable electronic spreadsheet format"⁷) to explicitly show:
- a. Simultaneous Import Limit (SIL) values (Supporting SIL studies must be in a "workable spreadsheet format" and conform to the format prescribed in the *Puget Sound Energy* guidelines.⁸)
 - b. Long-Term Firm Purchases from outside the study area
 - c. Remote Capacity from outside the area

³ NOPR, P 90.

⁴ *Id.*, P 53

⁵ A generator interconnected to a transmission provider at a location where the transmission provider is directly interconnected to other transmission providers would also be directly interconnected to those other transmission providers. *Id.*, P 56

⁶ *Id.*, P 56

⁷ FERC proposes to post on the Commission Website a pre-programmed spreadsheet as an example that sellers may use to submit their indicative screens.

⁸ See Appendix B, *Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254 (2011).

-
6. **Competing Imports Clarification:** FERC proposes the clarification that “assuming no import capacity” means an applicant may assume that there is no *competing* import capacity from the first-tier balancing authority areas or markets. FERC further clarifies that the seller must still include any uncommitted capacity that it and its affiliates can import into the study area.⁹
7. **Calculation of Availability Factors for Renewable Resources:** For renewable resources without five years of historical generation data, FERC proposes that the applicants use the EIA-derived regional capacity factor estimates. They must also submit their calculation of the regional capacity factor as well as copies of the appropriate tables of regional generation capacity ratings from EIA’s *Annual Energy Outlook* in their filing.
- a. FERC seeks industry input in identifying additional technologies that are energy-limited generation resources, and what capacity factors should be used to rate them.¹⁰
 - b. FERC seeks comment on whether using peak hours will provide a better measure of capacity for photovoltaic solar, as compared to all hours, which would necessarily include hours in which it can be predicted output will be zero.
8. **Inclusion of Long-Term Firm Purchases:** FERC proposes to require sellers to include all of their long-term firm purchases of capacity and/or energy in their: (1) indicative screens, (2) asset appendices, and (3) 100-MW threshold Change in Status (CIS) determination, regardless of whether the seller has operational control over the generation capacity supplying the purchased power. Long-term is defined as one year or longer. “This proposed change will establish consistent treatment of long-term firm sales and long-term firm purchases in the indicative screens,”¹¹ as well as “help clarify how to classify imports of firm power and remotely-owned capacity.”¹² This proposed change appears to take back the presumption established in *Integritys*,¹³ which FERC did not require MBR sellers to report the Firm LD purchases in a CIS filing.¹⁴
9. **Clarification on CIS Reporting:** FERC clarifies that the 100 MW reporting threshold for filing a notice of change in status is not limited to markets previously studied (if a seller acquires generation that causes a cumulative net increase of 100 MW or more in *any* relevant geographic market, the seller must file a notice of change in status).

⁹ *Id.*, P 67

¹⁰ *Id.*, P 70

¹¹ *Id.*, P 82

¹² *Id.*, P 85

¹³ *See Integritys Energy Group, Inc.*, 123 FERC ¶ 61,034 at P 11 (2008).

¹⁴ *Id.*, *See also* Order No. 697-B at P 99.

10. **Inclusion of Behind-the-Meter Generation:** FERC proposes that “all assets” include behind-the-meter generation. However, it allows seller to aggregating their behind-the-meter generation by BAA or marketing into one line on the list of assets. (And can aggregate their QFs under 20 MW by BAA or market into one line on the list of generation assets).¹⁵

11. **Proposed Appendix B (Asset Appendix) Updates:**

1. Three changes to existing columns:
 - i. “Balancing Authority Area” to “Market/Balancing Authority Area”
 - ii. “Geographic Region (per Appendix D)” to “Geographic Region”
 - iii. “Nameplate and/or Seasonal Rating” to “Capacity Rating (MW): Nameplate, Seasonal, or Five-Year Average”
2. A seller must enter the entire amount of a generator’s capacity, even if the seller only owns part of the generator
3. A seller must list one of three specified uses for assets in the asset list containing electric transmission and intrastate gas assets
4. Sellers should not list assets in which passive ownership interests have been claimed
5. The “Date Control Transferred” column in both generation and transmission assets should identify the date on which a contract that transfers over a facility becomes effective.
6. FERC proposes that the “Size” column in the transmission assets refers to both the length of the transmission line, and the capability of the line in voltage.
7. Add a new column in the list of transmission assets for the citation to the Commission order accepting the OATT or granting waiver of the OATT requirement
8. The asset lists in an electronic spreadsheet format that can be searched, sorted, and accessed using electronic tools
9. FERC seeks comment whether in the future it would be beneficial to develop a comprehensive searchable public database of the information contained in the asset appendices, which would eventually replace the pre-formatted spreadsheet.¹⁶

12. **Determination of Category 1 and 2 Sellers:** To determine seller category status for power marketers and power producers: “a power marketer should include all affiliated generation in that region, while a power producer would only need to include affiliated generation capacity that is located in the same region as the power producer’s generation asset(s).”¹⁷

1. FERC proposes to clarify that a power marketer with no generation assets may qualify as a Category 1 seller in any region where
 - i. its affiliates own or control, in aggregate 500 MW or less of generation capacity
 - ii. it is not affiliated with anyone that owns, operates or controls transmission facilities
 - iii. it is not affiliated with a franchised public utility; and
 - iv. It does not raise other vertical market power issues.

¹⁵ *Id.*, P106

¹⁶ *Id.*, P 126

¹⁷ *Id.*, P 17

-
2. A power producer may qualify as a Category 1 seller in any region in which the power producer itself owns generation and the power producer and its affiliates own or control, in aggregate, 500 MW of generation capacity or less, as long as the power producer is not affiliated with anyone that owns, operates or controls transmission facilities in that region, is not affiliated with a franchised public utility in that region, and does not raise other vertical market power issues.
 3. FERC propose to revise the regulations to clarify that to qualify for Category 1 status, a seller must meet *all* of the requirements. Failure to satisfy *any* of these requirements results in a Category 2 designation.¹⁸
13. **Corporate Organizational Charts:** FERC proposes to add a requirement in the regulations that sellers provide an organizational chart, when filing initial applications, updated market power analyses and notices of change in status involving new affiliations (similar to those filed in the Section 203 application).
14. **Single Corporate Tariff:** FERC proposes to clarify on the Commission’s Web site how a corporate family that chooses to submit a joint master corporate tariff should identify its designated filer and what each of the other filers should submit into their respective eTariff databases.¹⁹
15. **Clarifications on SIL Study:**
1. FERC confirms that the SIL calculation must be consistent with that used under the transmission providers’ OASIS practices. These include modeling assumptions of the seasonal benchmark power flow case, study solution criteria, and operating practices historically used by the first-tier and study area transmission providers to calculate and post ATC values and to evaluate requests for firm transmission service on OASIS.²⁰
 2. The seasonal benchmark power flow cases submitted with a SIL study should represent historical operating practices only to the extent that such practices are available to customers requesting firm transmission service. FERC clarifies that where there is a conflict between the transmission provider’s tariff or OASIS practices and the Commission’s directions in *Puget*, sellers should follow OASIS practices except where use of actual OASIS practices is incompatible with an analysis of import capability from an aggregated first-tier area.
 3. FERC also remind sellers that the calculated SIL value should account for any limits defined in the tariff, such as stability or voltage.
 4. FERC reiterates that sellers may use load scaling to perform a SIL study if they use load scaling in their OASIS practices as long as they submit adequate support and justification for the scaling factor used and how the resulting SIL value compares had the seller used a generation-shift methodology.

¹⁸ *Id.*, P133

¹⁹ The information can be found on the FERC website at: <http://www.ferc.gov/industries/electric/gen-info/mbr/tariff/joint.asp>.

²⁰ *Id.*, P 160

-
5. FERC also instructs sellers to subtract all long-term firm import transmission reservations, including reservations held by non-affiliated sellers, from the simultaneous total transfer capability (simultaneous TTC) value.
 6. FERC proposes to clarify that the seller should reduce the simultaneous TTC value by subtracting all wheel through transactions used to serve non-affiliated load embedded in the study area. These transactions should be accounted for as long-term firm transmission reservations and reported in Submittal 2.
 7. FERC proposes to clarify that, where a first-tier market or balancing authority area is directly interconnected to the study area only by controllable tie lines and is not interconnected to any other first-tier market or balancing authority area, sellers should follow their OASIS practices regarding calculation and posting of ATC for such areas. If sellers' OASIS practices are incompatible with the SIL study (*e.g.*, ATC is based on tie line rating), sellers may use an alternative process to account for import capability for such tie lines. FERC propose to further clarify that, in such circumstances, it will be presumed reasonable to model a controllable tie line as a single equivalent first-tier generator connected to the study area by a radial line with a rating equal to the rating of the controllable tie line. Sellers should document any instances where modeling of controllable tie lines deviates from OASIS practices, and explain such deviations, including: how tie line flow is accounted for in net area interchange; how tie line flow is scaled or otherwise controlled when calculating simultaneous incremental transfer capability; and how to account for long-term firm transmission reservations over controllable tie lines.
 8. To the extent that the study area is directly interconnected to first-tier areas by controllable merchant transmission lines (*e.g.*, Linden VFT), sellers should properly account for capacity rights on such lines. If sellers hold long-term capacity rights on such lines, these rights should be accounted for as long-term firm transmission reservations.²¹
 9. FERC proposes to clarify that where a first-tier market or balancing authority area is directly connected to the study area only by controllable tie lines and is not connected to any other first-tier market or balancing authority area, sellers should follow their OASIS practice regarding calculation and posting of ATC for such areas. If the seller's OASIS practices are incompatible with the SIL study, entities may use an alternative process to account for import capability for such tie lines.
16. **Simultaneous TTC:** FERC proposes to clarify that sellers may use the maximum sum of TTC values for any day and time during each season as long as they demonstrate that these TTC values are simultaneously feasible. If there are limited interconnections between first-tier markets, FERC will review evidence that potential loop flow between first-tier areas is properly accounted for in the underlying SIL values and clarify that simply attesting that first-tier markets or balancing authority areas are not directly interconnected is not sufficient evidence that TTC values posted on OASIS are simultaneous.

²¹ *Id.*, P 168

-
17. **BAA Load for Net SIL Calculation:** FERC proposes to amend Submittal 1²² to revise Row 8 to read “Adjusted Historical Peak Load.” FERC also proposes the inclusion of all load associated with the BAA(s) within the study area, including non-affiliated load. Submittal 1 requires sellers to use FERC Form No. 714 load values or explain the source of the data used. FERC seeks comment on the appropriate source of historical peak load data.²³
18. **Parts 101 and Part 141 Waivers Do Not Apply to Hydro Projects:** FERC clarifies that any waiver of Part 101 granted to a market-based rate seller is limited such that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. FERC notes that a licensee’s status as a market-based rate seller under Part II of the Federal Power Act (FPA) does not exempt it from accounting responsibilities as a licensee under Part I of the FPA. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 CFR Part 101 to the extent necessary under Part I of the FPA.²⁴ The Commission further directs that, to the extent that a hydropower licensee has been granted waiver of Part 101 as part of its market-based rate authority, the licensee’s market-based rate tariff limitations and exemptions section should be revised to provide that the seller has been granted waiver of Part 101 of the Commission’s regulations with the exception that waiver of the provisions that apply to hydropower licensees has not be granted with respect to licensed hydropower projects. Similarly, hydropower licensees that have been granted waiver of Part 141 as part of their market-based rate authority, should ensure that the limitations and exemptions section of their market-based rate tariffs specify that waiver of Part 141 has been granted, with the exception of §§ 141.14 and 141.15.²⁵
19. **Barriers to Entry Representation:** FERC proposes to revise the regulations to make it clear that the obligation to make the affirmative statement applies to both the seller and its affiliates.²⁶
20. **Regional Reporting Schedule:** NOPR includes an updated regional filing schedule (and map) for Category 2 sellers (see Appendices C & D).²⁷

²² Note: Submittal 1 is a summary spreadsheet of the SIL components used to calculate the SIL values and is currently posted on the Commission’s Web site. *Id.*, P 59

²³ *Id.*, P 26

²⁴ Example: Under Section 14 of the FPA, the Federal government may take over a project upon expiration of the project’s licensee, conditioned upon the government’s payment to the licensee of the ‘net investment of the licensee in the project or projects taken.’ *Id.*, P 176

²⁵ *Id.*, P 178

²⁶ *Id.*, P 181

²⁷ *Id.*, P 179

Comment Procedures: The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 60 business days after publication in the FEDERAL REGISTER. Comments must refer to Docket No. RM14-14-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

About The Brattle Group

The Brattle Group provides consulting services and expert testimony related to economic, financial, regulatory, and strategic issues to corporations, law firms, and public agencies worldwide. We provide expert testimony on regulatory economics, environmental matters, financial risks, economic damages, antitrust, and competitive analyses. The industry practice areas in which we specialize are electric power, natural gas, petroleum, financial institutions, pharmaceuticals, healthcare, telecommunications and media, and transportation.

Our largest industry practice area is in electric power. In our electric power work, we assist regional entities, electric utilities, power producers, customers, regulators, and policy makers with planning, regulation, and litigation support. Our team offers a range of planning, analytical, operational, and financial tools for simulating, forecasting, and evaluating market structures, and the implications of proposed policies. We have the capability to model all aspects of the electric power sector including wholesale energy, ancillary service, and capacity markets, retirement and investment decisions, interstate power flows, and state-level or regional carbon markets. We have a depth of experience in restructured and traditionally-regulated wholesale power markets across all regions of the U.S. and Canada, as well as a number of other international markets.

The Brattle Group originated in 1990 with five principals dedicated to integrity and excellence in economic and financial consulting. In 1995, Brattle combined with Incentives Research, Incorporated to strengthen its expertise in energy matters and opened its first office in Cambridge. Since then we have grown to a staff of more than 200 and have opened offices in London, Rome, Madrid, Washington, DC, San Francisco, and New York City.