

eligibility for disaggregation. If the Commission remains concerned that this accommodation will facilitate coordinated trading, it might require affiliates sharing trading data to restrict dissemination of the information to those responsible for compliance and risk-management efforts, maintaining internal firewalls to conceal the information from employees who develop or execute trading strategies.

I also welcome public comment on whether the Commission should consider modifying the proposed rule to clarify that an owner filing a notice of trading independence in order to claim an exemption from aggregation under this rule need only make subsequent filings in the event of a material change in the owner's degree of control over its subsidiary's positions. The text of the proposed rule does not appear to require periodic filings following the initial notice of trading independence, but the Commission's calculation of the proposal's costs seems to assume that such filings will be made on an annual basis.

I encourage the public to comment on my above concerns and propose potential solutions if appropriate.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 35

[Docket No. RM15-23-000]

#### Collection of Connected Entity Data From Regional Transmission Organizations and Independent System Operators

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to require each regional transmission organization (RTO) and independent system operator (ISO) to electronically deliver to the Commission, on an ongoing basis, data required from its market participants that would: first identify the market participants by means of a common alpha-numeric identifier; and secondly list their "Connected Entities," which includes entities that have certain ownership, employment, debt, or contractual relationships to the market participants, as specified in this NOPR; and finally describe in brief the nature of the relationship of each Connected Entity. Such information will assist screening and investigative efforts to detect market manipulation, an enforcement priority

of the Commission. The initiative would also assist market monitors for the RTOs and ISOs in their individual and joint investigations of potential cross-market manipulation. Unless the RTOs and ISOs request continuation of existing affiliate disclosure requirements based on a particularized need, the Commission expects that this new disclosure obligation will supplant all existing affiliate disclosures requirements contained in the RTOs and ISOs tariffs. The proposed definitional uniformity of the term "Connected Entity" across all of the RTOs and ISOs may help ease compliance burdens on market participants that are active in more than one RTO or ISO, and that are now required to submit affiliate information that may be unique to each of the organized markets in which they participate.

**DATES:** Comments on the proposed rule are due November 30, 2015.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes, pursuant to sections 222, 301(b), 307(a) and 309 of the Federal Power Act (FPA),<sup>1</sup> to amend its regulations to require each regional transmission organization (RTO) and

independent system operator (ISO) to electronically deliver to the Commission, on an ongoing basis, data required from its market participants that would: (i) Identify the market participants by means of a common alpha-numeric identifier; (ii) list their "Connected Entities," which includes entities that have certain ownership, employment, debt, or contractual relationships to the market participants, as specified in this NOPR; and (iii) describe in brief the nature of the relationship of each Connected Entity. The uniform identification of market participants, together with the listing of entities that comprise a network of common interests, would enhance the Commission's efforts to detect and deter market manipulation, a central objective of the Commission as identified in its FY 2014-2018 Strategic Plan.<sup>2</sup> Unless the RTOs and ISOs request continuation of existing affiliate disclosure requirements based on a particularized need, the Commission expects that this new disclosure obligation will supplant all existing affiliate disclosures requirements contained in the RTOs and ISOs tariffs.

2. In the Strategic Plan, the Commission cited monitoring and surveillance activities as a key function in meeting the objective of detecting and deterring market manipulation.<sup>3</sup> In recent years the Commission has greatly enhanced its capabilities in this regard, having developed automated screens of market activities and set up analytical procedures to detect potential market manipulation. Understanding the ownership, employment, debt, and contractual relationships of market participants would provide context for such data, and help determine whether there appears to be a legitimate business rationale for seemingly anomalous trading patterns, or whether there may be market manipulation, fraud, or abuse. This in turn will further the Commission's goal of detecting and deterring possible market manipulation. As we explain below, the existing affiliate disclosure requirements do not appropriately enable the Commission to identify and monitor these business relationships.

#### I. Background

3. Beginning in the late 1960s, the electric industry gradually transformed itself from one populated by mostly self-sufficient vertically integrated utilities compensated by cost-based rates, to

<sup>2</sup> Federal Energy Regulatory Commission Strategic Plan FY 2014-2018, Objective 1.2 (Mar. 2014), available at <http://www.ferc.gov/about/strat-docs/FY-2014-FY-2018-strat-plan.pdf>.

<sup>3</sup> *Id.*

<sup>1</sup> 16 U.S.C. 824v, 825(b), 825f(a), 825(h).

competitive markets characterized by open transmission access, partial disaggregation of generation and transmission, and market-based rates.<sup>4</sup> Competitive markets brought with them the potential for market manipulation, and Congress, acting in response to the abuses characterizing the Western Energy Crisis of 2000–2001, passed the Energy Policy Act of 2005 (EPA 2005).<sup>5</sup> This legislation, among other things, gave the Commission authority to address market manipulation, including the ability to assess substantial civil fines and seek criminal penalties.<sup>6</sup>

4. In 2012, utilizing the authority granted by Congress under the FPA, the Commission expanded the tools available to staff to investigate market activity for potential manipulation. In Order No. 771,<sup>7</sup> the Commission required e-Tag Authors and Balancing Authorities to ensure Commission access to their e-Tags. And in Order No. 760,<sup>8</sup> the Commission required the RTOs and ISOs to electronically deliver to the Commission, on a regular basis, their existing data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, financial transmission rights, internal bilateral contracts, uplift, and interchange pricing. These orders have provided needed tools for staff to monitor market activities.

5. The Commission has also been granted access by the Commodity Futures Trading Commission (CFTC) to its Large Trader Report, and the information contained therein has significantly added to the Commission's ability to carry out its enforcement responsibilities. In addition, on January 2, 2014, the Commission and the CFTC signed a new Memorandum of Understanding (MOU) to share information in connection with market surveillance and investigations into potential market manipulation, fraud, or abuse.<sup>9</sup> This MOU establishes

procedures for sharing information of mutual interest related to market surveillance and investigative matters, while maintaining confidentiality and data protection.<sup>10</sup>

6. Nonetheless, despite increased access to trading data, the Commission cannot fully utilize this information in order to detect and deter market manipulation because of uncertainty regarding the identity of a given market participant, which may trade under different identifiers in different markets and venues. The Commission also lacks a clear window into the relationships between market participants and other entities, which can be complex. Without an understanding of which companies share ownership or debt interests, or who may function in key employment or other contractual roles (such as asset management), it can be difficult to ascertain which individuals or companies may benefit from a given transaction or, indeed, who may be jointly participating in a common course of conduct.

7. Currently, each RTO and ISO requires market participants to provide it with a list of the participant's affiliates.<sup>11</sup> However, requirements vary as to the nature of a reportable affiliate relationship and the frequency for updating the information. In addition, for purposes of ferreting out potential market manipulation, it is important to explore relationships that extend beyond corporate affiliation. Such additional relationships may involve contractual relationships such as tolling and asset management agreements, or debt structures that are convertible to ownership interests.

8. The existing affiliate disclosure rules do not provide the tools necessary for the Commission to sufficiently monitor these increasingly complex business relationships that impact our jurisdictional markets. Thus, the Commission believes it is desirable to use a new term, one that is free of any

associations that have developed around the term “affiliate,” and one that is uniform across all of the RTOs and ISOs, to describe a relationship of interest in probing for potential market manipulation. We propose the term “Connected Entity,” and further propose to make the definition of that term uniform across the organized electric markets.

## II. Discussion

### *Need for Connected Entity Information*

9. The Commission employs a variety of screens to identify anomalous trading. When it detects such anomalies, it attempts to determine whether the behavior is legitimate market activity. It does this in large part by analyzing the circumstances surrounding the activity, including trading patterns and trader explanations. Some patterns that have emerged to date are: limited risk or riskless combinations of trades to enhance the value of a position or portfolio, such as wash trades; repetitive, uneconomic physical trading or flows to benefit a position; trading to affect the formation of an index price; withholding physical generation to benefit a financial and/or physical position; and using virtual bids to benefit a financial and/or physical position.

10. Rather than performing a trade or other action that results in a direct benefit to itself, a market participant might instead take actions that benefit another entity that bears a financial or legal relationship to it. Entities under common control, whether by ownership, beneficial interest, or contractual relationships, might also collude to set prices by taking positions that together result in a market manipulation. An understanding of these relationships is crucial in exploring the design and possible purposes behind a trading pattern, from which inferences of intent can be drawn and investigated. The existing affiliate disclosure requirements imposed through the RTOs and ISOs tariffs do not capture all of these business relationships.

11. As evidence of intent is critical in establishing whether there has been market manipulation,<sup>12</sup> the Commission can better monitor and protect the markets from wrongdoing if these relationships are fully known.

<sup>12</sup> In Order No. 670, the Commission promulgated regulations 18 CFR 1c.1 and 1c.2, which prohibit manipulation in the natural gas and electric energy markets. In that order, the Commission stated that “any violation of the Final Rule requires a showing of scienter.” *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats. & Regs. ¶ 31,202, at P 52 (2006).

<sup>4</sup> *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators*, Order No. 760, 77 FR 26674 (May 7, 2012), FERC Stats. & Regs. ¶ 31,330, at P 2 (2012).

<sup>5</sup> Pub. L. 109–58, 119 Stat. 594.

<sup>6</sup> See 16 U.S.C. 825o (criminal penalties); 16 U.S.C. 825o-1 (civil fines).

<sup>7</sup> *Availability of E-Tag Information to Commission Staff*, Order No. 771, 77 FR 76367 (Dec. 28, 2012), FERC Stats. & Regs. ¶ 31,339 (2012), *order on rehearing and clarification*, 142 FERC ¶ 61,181 (2013).

<sup>8</sup> Order No. 760, FERC Stats. & Regs. ¶ 31,330 at PP 8–19.

<sup>9</sup> *Memorandum of Understanding Between the Commodity Futures Trading Commission and the Federal Energy Regulatory Commission Regarding*

*Information Sharing and Treatment of Proprietary Trading and Other Information* (Jan. 2, 2014), available at <http://www.ferc.gov/legal/mou/mou-ferc-cftc-info-sharing.pdf>.

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

<sup>11</sup> See, e.g., the following sections from the tariffs of the RTOs/ISOs: California Independent System Operator Corporation (CAISO): Section 39.9 and 4.10.1.5.1 (for congestion revenue rights); ISO New England Inc. (ISO-NE): Section I.3.5; Midcontinent Independent System Operator, Inc. (MISO): Attachment L.1.A.5 (credit application evaluation disclosure requirement), Attachment L.1.B.5 (ongoing credit evaluation disclosure requirement); New York Independent System Operator, Inc. (NYISO): Section 2.15; PJM: Section 216.2.1 (Interconnection customer affiliate disclosure requirement), Attachment Q 1.A.5 (credit application evaluation disclosure requirement), Attachment Q 1.B.5 (ongoing credit evaluation disclosure requirement).

Moreover, more complete information about these relationships will reduce the number of informal inquiries in response to false positive surveillance screen trips that may result from an incomplete picture of market participants' incentive structures.

#### *Sources and Completeness of Connected Entity Information*

12. Although there are a few third-party sources of public information that contain data about the affiliate relationships of entities trading in the electric energy markets, their information and manner of collection is insufficient for the Commission's market monitoring responsibilities. These sources include vendors such as Dun & Bradstreet, SNL Financial, and Ventyx. The primary service provided by these companies is tracking trading information, not compiling affiliate data, and their affiliate information is generally derived from public sources that do not cover all market participants. Further, whether such information is current or complete cannot be ascertained from the listings. Nor do such listings include entities that are connected by contractual relationships, rather than ownership. For all these reasons, an up-to-date, reliable, and complete listing of Connected Entities cannot be obtained from these third-party sources.

13. Obtaining Connected Entity data from RTOs and ISOs leaves unaddressed similar data from entities operating outside the organized electric markets. However, the Commission has estimated, using Electric Quarterly Report (EQR) data and existing affiliation information gleaned from market-based rate filings and other available sources, that approximately 90 percent of the reported wholesale sales of electricity subject to the Commission's jurisdiction are made either by market participants in one or more of the six RTOs and ISOs, or by companies related by ownership to such a market participant.<sup>13</sup> Therefore, access to Connected Entity data for all the market participants in each of the RTOs and ISOs would provide most of such data for all the transactions of interest in the Commission's electric manipulation screening. We invite comment on the desirability and

feasibility of expanding our proposal to require the submission of Connected Entity information from non-RTO/ISO market participants, and on any difficulties commentators might perceive to exist in doing so.

14. The Commission recognizes that this proposal would place additional burden on market participants to implement the new reporting requirement and to submit the Connected Entity information to the RTOs and ISOs as proposed. However, we believe that the benefits of this proposal will outweigh the additional burden imposed on market participants. Moreover, as noted above, each of the six RTOs and ISOs already requires its market participants to submit data identifying certain affiliate relationships. It is possible that some, if not all, market participants will be able to use its existing processes for reporting affiliate information to the RTOs and ISOs to lessen the burden of this proposed reporting. For market participants that are active in more than one market, it is also possible that the burden of making a uniform Connected Entity filing in all those markets, once the initial implementation period is over, would be no greater than the current burden of making multiple affiliate filings, each of which is unique to its particular RTO or ISO. For participants in only one market, we recognize that there will likely be an increase in the administrative time needed for compliance. As for the RTOs and ISOs themselves, we believe they would incur the initial implementation costs required to make compliance filings to amend their tariffs to conform the filed information to the new Commission standards, and revising their collection processes to be consistent with those standards.

#### *Authority To Acquire Connected Entity Information*

15. The Commission has the authority to require the type of record keeping and submittals contemplated in this NOPR. As discussed below, the Commission's anti-manipulation authority under section 222 of the FPA, taken together with its investigative authority under section 307(a) of the FPA, its administrative powers under section 309 of the FPA, and its inspection and examination authority under section 301(b) of the FPA, provides ample basis for accessing Connected Entity data.

16. Section 222 of the FPA grants the Commission authority over the prohibition of market manipulation in connection with the purchase or sale of electric energy and transmission subject

to the Commission's jurisdiction.<sup>14</sup> It also prohibits manipulation by "any entity," including entities exempted from the Commission's rate-related jurisdiction. Section 301(b) of the FPA provides that the Commission shall at all times have access to, and the right to inspect and examine all accounts and records of public utilities,<sup>15</sup> which includes RTOs and ISOs. Section 309 of the FPA grants the Commission the authority to "perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules and regulations as it may find necessary and appropriate to carry out the provisions of [the FPA]." <sup>16</sup> And section 307(a) of the FPA provides that the Commission has authority to investigate any facts, conditions, practices, or matters it may deem necessary or proper to determine whether any person, electric utility, transmitting utility, or other entity may have violated or might violate the FPA or the Commission's regulations.<sup>17</sup> It also has investigatory authority to aid in the enforcement of the FPA or the Commission's regulations, or to obtain information about wholesale electric energy sales or the transmission of electric energy in interstate commerce.<sup>18</sup> This investigatory authority is not limited to a particular case or controversy, but allows an agency to "investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." <sup>19</sup>

17. The Commission has already required the RTOs and ISOs to provide this type of information to the Commission. Most notably, in Order No. 760, the Commission required the RTOs and ISOs to electronically deliver to it, on an ongoing basis, data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, financial transmission rights, internal bilateral contracts, uplift, and interchange pricing.<sup>20</sup> The information sought under this NOPR would typically be provided with less frequency than that which the RTOs and ISOs submit under Order No. 760. And the submittal of Connected Entity data would be transmitted through the same channels as the RTOs and ISOs already employ for Order No. 760 data.

<sup>14</sup> 16 U.S.C. 824v.

<sup>15</sup> 16 U.S.C. 825(b).

<sup>16</sup> 16 U.S.C. 825(b).

<sup>17</sup> 16 U.S.C. 825f(a).

<sup>18</sup> *Id.*

<sup>19</sup> *United States v. Morton Salt*, 338 U.S. 632, 642 (1950).

<sup>20</sup> See Order No. 760, FERC Stats. & Regs. ¶ 31,330 at Summary.

<sup>13</sup> These RTOs and ISOs are: ISO-NE, NYISO, PJM, MISO, Southwest Power Pool, Inc., and CAISO. The Electric Reliability Council of Texas is non-jurisdictional and not included in the calculation. Staff determined this percentage by examining the Electric Quarterly Reports, which must be filed by all public utilities and by non-public utilities that trade above a *de minimus* amount. See 18 CFR 35.10(b) (2015).

### *Additional Benefits and Confidentiality of Connected Entity Data*

18. Establishing common identifiers and a uniform definition of Connected Entity, as is proposed in this NOPR, would have the additional benefit of assisting the RTO/ISO market monitors in their responsibilities to oversee the markets. Market monitors could assess cross-market transactions and compare their data with that produced by their neighboring market monitors, assured that the data was accurate and consistent.<sup>21</sup>

19. Understanding the relationship between connected entities can be an important aspect of the Commission's *ex post* analysis, which is a critical element of the market-based rate program. In *Lockyer*, the Ninth Circuit cited with approval the Commission's dual requirement of an *ex ante* finding of the absence of market power and sufficient post-approval reporting requirements, finding that the Commission does not rely on *ex ante* market forces alone in approving market-based rate tariffs. In particular, the court found that the ongoing oversight and timely reconsideration of market-based rate authorization under section 205 of the FPA enables the Commission to meet its statutory duty to ensure that all rates are just and reasonable.<sup>22</sup>

20. The Commission anticipates that submitting Connected Entity data would not place market participants under increased risk in relation to the disclosure of confidential or proprietary information. Some of the information to be gathered by the RTOs and ISOs from participants is already publicly available. This would include, in the case of publicly-traded companies, data found in their Securities and Exchange Commission (SEC) filings; in the case of contractual control over a jurisdictional asset, the data would generally be available through EQR reporting requirements. To the extent, however, that Connected Entity information is not already public, we intend that the collection of Connected Entity information be treated as non-public, to the same extent as is Order No. 760 data and any other investigatory material

submitted under Part 1b of the Commission's regulations.<sup>23</sup>

21. Connected Entity information that is commercially sensitive, such as all or part of the contractual arrangements among entities, may satisfy the requirements of exemption 4 of the Freedom of Information Act (FOIA), which protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."<sup>24</sup> The non-public information to be gathered under the proposed rule may also fall within the ambit of FOIA exemption 7, which protects certain "records and information compiled for law enforcement purposes."<sup>25</sup>

### *Proposed Definition of a Connected Entity*

22. Over the years, the term "affiliate" has been used frequently in tariffs and regulations, but not always with exactly the same definition. The term has also usually centered on relationships involving control by virtue of an ownership interest.<sup>26</sup> However, in carrying out the Commission's responsibility to oversee the markets for possible market manipulation, other relations may be equally worthy of examination. We thus propose an entirely new term, to be used in connection with investigatory data gathered for the purposes identified in this NOPR, that of "Connected Entity." We propose to revise 18 CFR 35.28(g)(4) to define Connected Entity as follows:

23. A Connected Entity, which includes natural persons, is one which stands in one or more of the following relationships to a market participant:

a. An entity that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the ownership instruments of the market participant, including but not limited to voting and non-voting stock and general and limited partnership shares; or an entity 10 percent or more of whose ownership instruments are owned, controlled, or held with power to vote, directly or indirectly, by a market participant; or an entity engaged in Commission-jurisdictional markets that is under common control with the market participant;

b. The chief executive officer, chief financial officer, chief compliance officer, and the traders of a market participant (or employees who function in those roles, regardless of their titles);

c. An entity that is the holder or issuer of a debt interest or structured transaction that gives it the right to share in the market participant's profitability, above a *de minimis* amount, or that is convertible to an ownership interest that, in connection with other ownership interests, gives the entity, directly or indirectly, 10 percent or more of the ownership instruments of the market participant; or an entity 10 percent or more of whose ownership instruments could, with the conversion of debt or structured products and in combination with other ownership interests, be owned or controlled, directly or indirectly, by a market participant; or

d. Entities that have entered into an agreement with the market participant that relates to the management of resources that participate in Commission-jurisdictional markets, or otherwise relates to operational or financial control of such resources, such as a tolling agreement,<sup>27</sup> an energy management agreement, an asset management agreement,<sup>28</sup> a fuel management agreement, an operating management agreement, an energy marketing agreement, or the like.<sup>29</sup>

We invite comment on the appropriate threshold for a *de minimis* share of a company's profits.

### *Legal Entity Identifiers*

24. In the past, the Commission has considered methods to ensure that there is no confusion as to the identification of entities subject to its jurisdiction. For

<sup>27</sup> Tolling agreements are common in the energy industry, and in essence function as leasing contracts or options on a generating plant wherein the "toller" has the right to the plant output at his or her discretion.

<sup>28</sup> Asset management agreements, in general, are contractual relationships where a party agrees to manage fuel supply and delivery arrangements, including transportation, for another party, and to consume the electricity produced or share in some fashion in the revenues from the sale of that electricity.

<sup>29</sup> As the Commission observed in Order No. 697, energy/asset managers provide a variety of services, including, but not limited to, operating generation plants (sometimes under tolling agreements), acting as billing agents, bundling transmission and power for customers, and scheduling transactions. *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, clarified, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, clarified, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012). Regardless of the label attached to a particular contract, all such services would fall within the ambit of the reporting requirement proposed in this NOPR.

<sup>21</sup> See *Southwest Power Pool, Inc.*, 137 FERC ¶ 61,046 at P 19 (2011) ("[T]he Commission clarifies that Market Monitoring Units, RTOs, and ISOs may communicate referral information with each other across regions . . . . The Commission strongly encourages this type of communication, as long as reasonable precautions are taken to ensure that all referral information remains non-public."); see also *New York Independent System Operator*, 136 FERC ¶ 61,116 (2011).

<sup>22</sup> *Cal. ex rel. Lockyer v. FERC*, 383 F.3d 1006 (9th Cir. 2004). See also *Cal. v. FERC*, 784 F.3d 1267 (9th Cir. 2015).

<sup>23</sup> 18 CFR part. 1b (2015).

<sup>24</sup> 5 U.S.C. 552(b)(4); *accord* 18 CFR 388.107(d) (2015).

<sup>25</sup> 5 U.S.C. 552(b)(7); *accord* 18 CFR 388.107(g) (2015).

<sup>26</sup> See, e.g., 18 CFR 35.36(a)(9) (2015).

example, it formerly required usage of the DUNS identification system in EQR filing requirements. However, the Commission found that system to be an imprecise tool for the purpose, and removed the requirement in 2012.<sup>30</sup> At that same time, it considered various alternatives to the use of DUNS numbers, but found none that would be adequate.<sup>31</sup>

25. However, a relatively new system is rapidly becoming the globally accepted method to ensure accurate identification of legal entities. That system involves the establishment of Legal Entity Identifiers (LEIs), which are unique IDs assigned to single entities. In this country, adoption of the LEI system has been accelerated in response to the Dodd-Frank Act, which mandated initiatives to improve the quality of financial data available to regulators and others.<sup>32</sup> The Office of Financial Research (OFR), which was created under the Dodd-Frank Act, is leading the effort to establish uniform LEIs and several federal agencies involved in the regulation of financial transactions have, or are in the process of, mandating the use of LEIs for certain purposes. Among these are the CFTC and the SEC, which now require their use for certain swaps-related activities.<sup>33</sup>

26. LEIs are issued by Local Operating Units (LOUs) of the Global LEI System, and as of December 31, 2014, over 330,000 entities from 189 countries had obtained LEIs from 20 operational issuers endorsed by the LEI Regulatory Oversight Committee (ROC). The Global LEI Foundation was established in June of 2014 as a not-for-profit organization overseen by the ROC to act as its operational arm, and which maintains a centralized database of LEIs and corresponding reference data.

27. Obtaining an LEI is relatively inexpensive (approximately \$250, with annual upkeep fees of approximately \$150). Application is made by a legal entity, such as a corporation or partnership, and the LOU verifies authenticity of the entity by checking official governmental records. It then

assigns to it an LEI, a 20-digit alphanumeric code unique to that entity. A given alpha-numeric string is thus a permanent identifier, and is also exclusive; that is, no other entity is assigned that LEI, and the entity itself may not obtain another LEI.<sup>34</sup>

28. We believe that the establishment of a reliable, standard identification system will greatly benefit staff's ability to conduct investigations of trading patterns in the energy markets. It appears to us that the use of LEIs is the best method to achieve this goal. We therefore propose that the RTOs and ISOs require their market participants to obtain LEIs, and to report in their Connected Entity Data filing their own LEI and the LEI of each of their Connected Entities, if the Connected Entity has obtained one. However, the LEI system is still relatively new, and we invite comments on the feasibility of its use, on whether any other system besides LEIs would be a preferable method of achieving uniform identification, and on whether waivers might be appropriate in given situations.

### III. Requirements for Collection of Connected Entity Data

29. As part of this rulemaking, we propose to require the submission from the RTOs and ISOs of Connected Entity information pertaining to each of its market participants.<sup>35</sup> To meet this obligation, we propose that each RTO and ISO make a compliance filing setting forth in its tariff the requirement that its market participants submit to it a list of their Connected Entities, in the format approved by the Commission. This list would include all of a market participant's Connected Entities, as defined above. The Connected Entities need not be engaged in activities in the same markets as the market participant for their inclusion to be required. The RTOs and ISOs would in turn transmit this information to the Commission in its native format.

30. As a condition of participating in any of the RTO/ISO markets, the market participants would have to have on file with that RTO or ISO their Connected Entity data, which must be updated within 15 days of a change in status of the data. In addition, it would be a condition of participation for each market participant to certify, on a yearly

basis, that its Connected Entities filed data is comprehensive and accurate.

31. We propose that the RTOs and ISOs include in their tariffs the authority (although not the obligation) to audit market participants to determine if their submitted Connected Entity data is accurate, complete, and up to date. Commission staff may also from time to time conduct audits for this purpose.

32. As discussed above, we also propose that each market participant be required to acquire an LEI, and include its own LEI and the LEIs of each of its Connected Entities (if known) on its submitted Connected Entity list.

33. We further propose that the information requested be delivered to the RTOs and ISOs in a form and manner acceptable to the Commission. By way of illustration, we envision that the following formats for submission of Connected Entity data would be mandated:

- A table that contains rows with columns identifying the market participant by LEI, legal name, RTO or ISO, and RTO/ISO assigned identifier, if any. If there is more than one RTO/ISO identifier, there would be a separate row for each, with the preceding columns remaining the same. If the market participant participates in more than one RTO or ISO, there would be additional rows setting forth all the categories mentioned for each RTO/ISO. Thus, a row would appear as follows (columns separated by a star):

LEI of market participant (MP)\* Legal Name of MP \* RTO/ISO \* RTO/ISO Identifier of MP

- A table or tables that disclose the market participant's relationships with each of its Connected Entities. Each row would address a single Connected Entity and the type of relationship with the market participant (ownership, employee, debt, contract). The LEI and the legal name of the market participant would be placed in the first two columns, respectively, and the LEI and the legal name of the Connected Entity in the third and fourth columns, respectively, and the type of relationship in the fifth column. For ownership, the date the direct, indirect or beneficial ownership reached 10 percent would be stated, as well as the total ownership as of the date of the report. For employees, which might be set forth in a separate table, the full legal name of the employee would be stated and the person's title and date of hire. For debt, the date the debt was incurred would be stated, and the debt holder and indebted party identified. For contracts, the start and end date of the

<sup>30</sup> *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336, at P 171 (2012); *orders on reh'g and clarification*, Order No. 768-A, 143 FERC ¶ 61,054 (2013) and *order on reh'g*, Order No. 768-B, 150 FERC ¶ 61,075 (2015).

<sup>31</sup> Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 171.

<sup>32</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5301, at 5343 (a).

<sup>33</sup> See, e.g., 17 CFR 45.4, 45.6 (2015) (CFTC); *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information*, 80 FR 14564, 17 CFR part 242 (2015) (SEC) (published in the **Federal Register** as a final rule on March 19, 2015, with an effective date of May 18, 2015).

<sup>34</sup> See the LEI ROC Web site for further information on the LEI identifier system. The Legal Entity Identifier Regulatory Oversight Committee—LEI ROC, <http://www.leiroc.org>.

<sup>35</sup> For this purpose, the term "market participant" includes all entities that participate in any of the various markets of the RTO and ISO in question, whether as a seller or a buyer.

contract would be stated as well as a brief descriptor of the contract type (tolling, asset management, etc.). If there are multiple relationships with the same Connected Entity, separate rows would be used for each. Thus, a row would appear as follows:

LEI of MP \* Legal Name of MP \* LEI of Connected Entity \* Legal Name of Connected Entity \* relationship type (ownership, employee, debt, contract).

This table would also provide, whether by footnote or other reference means, a more detailed description of the particular relationship given. For a contract, for instance, the major provisions of the contract would be listed, such as effective date, term, renewal provisions, and matters pertinent to the type of contract, such as heat rate curve for a tolling agreement, the MW or MWh curves for a power purchase agreement, together with identification of the generator or plant involved, the nature of any output sharing, and the like.

34. The repetition of cells necessitated by the foregoing format, while it will make the document physically longer than might otherwise be the case, is needed so that the appropriate pairing of entities can be presented in a machine-readable manner. An appendix is included with this NOPR to provide some examples of how these submittals might be structured. We invite comments on formatting suggestions, as well as on the substantive matters set forth in this Notice of Proposed Rulemaking.

35. Finally, we propose that in their compliance filings, RTOs and ISOs list all affiliate information disclosure requirements. As we anticipate that the Connected Entity submissions will provide the RTOs and ISOs with as much and more information as they currently receive from the existing affiliate disclosures, we propose eliminating all existing affiliate disclosure requirements. However, if there is some particularized need that would not be met by the Connected Entity submissions, the RTOs and ISOs may request in their compliance filings to retain any such disclosure requirements, in which case they would need to include justifications for such retention. Insofar as possible, duplicative information submission should be avoided. We also solicit comments as to whether it would be feasible and more efficient for the RTOs and ISOs to utilize the Connected Entities information that would be submitted through this proposal for the same purposes that they currently use the information provided through their

existing affiliate disclosure requirements. In particular, we solicit comments regarding whether replacing existing affiliate disclosure requirements in the RTO and ISO tariffs with the Connected Entity submission obligations will adversely affect implementation of other provisions of the RTO and ISO tariffs. If so, then how? Such comments may also address whether any changes should be made to the data table formats to allow RTOs and ISOs to utilize Connected Entities information for other purposes.

#### IV. Information Collection Statement

36. The collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). We solicit comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Respondents subject to the filing requirements of this proposed rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

37. The proposed rule does not require entities other than RTOs/ISOs to report information to the Commission. The RTOs/ISOs will gather the required data from the market participants directly. However, we include burden estimates not only for RTOs/ISOs but also for market participants and Connected Entities.<sup>36</sup>

38. We recognize that there will be an initial implementation burden associated with providing the Commission the requested data. This includes submitting a compliance filing to the Commission. We estimate 30 hours for each RTO/ISO to prepare the filing at a cost of \$3,896 per filer.

<sup>36</sup> The estimated hourly cost (salary plus benefits) provided in this section are based on the figures for May 2014 posted by the Bureau of Labor Statistics for the Utilities sector (available at [http://www.bls.gov/oes/current/naics2\\_22.htm#13-0000](http://www.bls.gov/oes/current/naics2_22.htm#13-0000)). The hourly estimates for salary plus benefits are: Legal (code 23-0000), \$129.87, computer and mathematical (code 15-0000), \$58.25, information systems manager (code 11-3021), \$94.55, IT security analyst (code 15-1122), \$63.55, auditing and accounting (code 13-2011), \$51.11, information and record clerk (Referred to as administrative work in the body) (code 43-4199), \$37.50.

39. Each RTO and ISO already submits electronic market data to the Commission in accordance with Order No. 760. We propose that these same channels be used to handle the relatively small increase in data submission proposed under this rulemaking. RTO/ISO staff will need to add additional tables to their databases and make provisions for those tables to be included in regular transmissions. We estimate eight hours for each RTO/ISO to make these additions at an average cost of \$624 per filer.<sup>37</sup>

40. Each RTO/ISO will also need to modify its current process for accepting information from market participants. We estimate 320 person-hours (costs weighted as previously described) for each RTO/ISO to make these changes at an average cost of \$24,960 each.

41. Incremental, ongoing maintenance costs for RTOs/ISOs are assumed to be minimal. We estimate maintenance to require 40 person-hours per year at an average annual cost per RTO/ISO of \$3,120.

42. This NOPR also proposes that RTOs/ISOs have the option to audit market participants to verify the accuracy and completeness of their submissions. If each of the six RTOs/ISOs chooses to audit an average of 10 market participants per year, we estimate this to require 40 hours per audit for a total annual auditing burden per RTO/ISO of 400 hours and annual cost of \$20,444.

43. Market participants, through their affiliate disclosures, already submit information about some of their Connected Entities to the RTOs/ISOs. This proposed rule enlarges the information to be collected and standardizes its format. It is estimated that for multi-market participants, the additional cost of initial compliance and the ongoing costs of maintaining that information will be somewhat offset by the savings of standardization across the several RTOs/ISOs. This NOPR proposes that market participants obtain and maintain an LEI, which we understand currently costs about \$250 to obtain and \$150 per year thereafter to maintain. While there will be an initial implementation burden associated with providing the RTOs/ISOs the requested data, these costs may vary widely from participant to participant largely in proportion to the size of the entity. Since the data related to the Connected Entity is information readily available to the market participant, the costs of

<sup>37</sup> The following weightings were applied to estimate the average hourly cost (salary plus benefits) of \$78.00; legal staff, 1/6, information systems manager, 1/6, computer and mathematical, 1/3, information security analyst, 1/3.

gathering the data is expected to be largely administrative in nature with some minimal review by legal staff.<sup>38</sup> We estimate that the average market participant will initially require four hours to register for an LEI and to collect, standardize, and provide the requested data to the RTO/ISO. We estimate the four hours of burden to cost \$168 annually per market participant. (The cost of obtaining and maintaining the LEI is separate.)

44. The proposed rule requires market participants to update and submit Connected Entity data after material changes and annually. We estimate that this ongoing burden will require less time than the initial collection but may occur more than once per year. We estimate three hours for each market

participant to maintain their LEI registration and to collect, update, standardize, and transmit the requested data to the RTO/ISO. This burden would be largely administrative (95 percent) with some minimal review by legal staff (5 percent). We estimate the total burden to be \$126 per participant.

45. Market participants or Connected Entities may, from time to time, seek to confirm the accuracy of information concerning them that has been submitted to an RTO/ISO by other market participants. We conservatively estimate that one-fourth of market participants and Connected Entities will seek to confirm such information. Such confirmations would be largely administrative (95 percent) with some minimal review by legal staff (5

percent). We estimate that these confirmations will take approximately one hour for an average burden of \$42 per market participant or Connected Entity seeking confirmation. Connected entities may also respond to requests for information from market participants. We estimate that each Connected Entity will spend one hour responding to these requests. Such responses would be largely administrative (95 percent) with some minimal review by legal staff (5 percent). We estimate that this activity will take approximately one hour for an average burden of \$42 per Connected Entity.

46. The following table summarizes the estimated burden and cost increases rounded to the nearest dollar in FERC-921, due to the proposed rule:

| FERC-921 modifications in NOPR in RM15-023 on Connected Entity Reporting                               |                       |   |                           |                           |                          |                   |                                   |                           |                           |                   |
|--|-----------------------|---|---------------------------|---------------------------|--------------------------|-------------------|-----------------------------------|---------------------------|---------------------------|-------------------|
| Respondent Burden Category   | Number of Respondents | Annual Number of Responses per Respondent | Total Number of Responses | Burden hours per Response | Hourly Cost per Response | Cost Per Response | Total Burden Hours Per Respondent | Total Cost Per Respondent | Total Annual Burden Hours | Total Annual Cost |
|  | (1)                   | (2)                                       | (3) (2) × (3)             | (4)                       | (5)                      | (6) (5) × (6)     | (7) (4) × (7)                     | (8) (6) × (8)             | (9) (7) × (9)             | (10) (9) × (10)   |
| RTO/ISO compliance filing (tariff change)  | 6                     | 1   | 6                         | 30                        | \$ 129.87                | \$ 3,896          | 30                                | \$ 3,896                  | 180                       | \$ 23,377         |
| RTOs/ISOs initial implementation cost for receipt, storage, and transmission of connected entity data  | 6                     | 1   | 6                         | 328                       | \$ 78.00                 | \$ 25,584         | 328                               | \$ 25,584                 | 1,968                     | \$ 153,504        |
| RTOs/ISOs ongoing maintenance and transmission of connected entity data to FERC                        | 6                     | 4   | 24                        | 40                        | \$ 78.00                 | \$ 3,120          | 160                               | \$ 12,480                 | 960                       | \$ 74,880         |
| RTOs/ISOs, periodic auditing of connected entity information (1% of participants per year)             | 6                     | 10  | 60                        | 40                        | \$ 51.11                 | \$ 2,044          | 400                               | \$ 20,444                 | 2,400                     | \$ 122,664        |
| Sub total for RTO/ISOs   |                       |   |                           |                           |                          |                   | 918                               | \$ 62,404                 | 5,508                     | \$ 374,425        |
| Market participant LEI registration, initial development, and reporting connected entities to RTO/ISO  | 6000                  | 1   | 6000                      | 4                         | \$ 42.12                 | \$ 168            | 4                                 | \$ 418                    | 24,000                    | \$ 2,510,880      |
| Market Participant optional confirmation of data about them  | 6000                  | 0.25                                      | 1500                      | 1                         | \$ 42.12                 | \$ 42             | 0.25                              | \$ 11                     | 1,500                     | \$ 63,180         |
| Market participant LEI maintenance, connected entity list maintenance, periodic updates, and reporting | 6000                  | 1.5                                       | 9000                      | 3                         | \$ 42.12                 | \$ 126            | 5                                 | \$ 340                    | 27,000                    | \$ 2,037,240      |
| Sub total for Market Participants  |                       |   |                           |                           |                          |                   | 9                                 | \$ 769                    | 52,500                    | \$ 4,611,300      |
| Connected entity optional confirmation of and response to requests for data about them                 | 9000                  | 1.25                                      | 11250                     | 1                         | \$ 42.12                 | \$ 42             | 1.25                              | \$ 53                     | 11,250                    | \$ 473,850        |
| Sub total for Connected entities   |                       |   |                           |                           |                          |                   | 1.25                              | \$ 53                     | 11,250                    | \$ 473,850        |
| Changes, due in RM15-023   |                       |   |                           |                           |                          |                   |                                   | Totals                    | 69,258                    | \$ 5,459,575      |

47. The table above contains estimates of the number of market participants

and the number of Connected Entities per market participant. We estimate that

there are 6,000 market participants in the RTO/ISO markets, based on an

<sup>38</sup> Using the average hourly cost of salary plus benefits provided above, the following weightings

were applied to estimate the average hourly cost of

\$42.12: 95 percent information and record clerk, 5 percent legal.



analysis of data submitted by the RTOs/ISOs in accordance with Order No. 760. We estimate the number of Connected Entities to be an additional 9,000 companies, based on an analysis of data from Ventyx, a third party vendor which supplies ownership information about market participants.

**Information Collection Costs:** We estimate the initial and ongoing cost of compliance with the NOPR's proposed requirements for each type of respondent as follows:

#### RTO/ISO

- Initial Burden: 358 hours, \$29,480.
- Ongoing Burden (starting year one): 560 hours, \$32,924.

#### Market Participant

- Initial Burden: 4 hours, \$168 plus \$250 to acquire LEI.
- Ongoing Burden (starting year two): 5 hours, \$201, plus \$150 to maintain LEI.

#### Connected Entity

- Ongoing Burden (starting year one): 1.25 hours, \$53.

**Title:** FERC-921.<sup>39</sup> Ongoing Electronic Delivery of RTO/ISO Data.

**Action:** Proposed revisions to existing information collection.

**OMB Control No.:** 1902-0257.

**Respondents for this Rulemaking:** RTOs and ISOs; market participants; Connected Entities.

**Frequency of Information:** Initial implementation, compliance filing, and periodic updates (at least annually).

48. **Necessity of Information:** As wholesale electricity markets continue to develop and evolve, new opportunities arise for anti-competitive or manipulative behavior. The Commission's market monitoring and surveillance capabilities and associated data requirements must keep pace with market developments and evolve along with the markets. The data discussed in this NOPR will allow the Commission to more effectively identify and address such behavior; to identify ineffective market rules; to better inform Commission policies and regulations; and thus to help ensure just and reasonable rates.

49. **Internal Review:** The Commission has made a preliminary determination that the proposed revisions are necessary to keep pace with ever-changing possibilities for anti-

competitive or manipulative behavior and to better inform Commission policies and regulations, and thus to ensure that rates are just and reasonable. 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.

50. 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, email: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), phone: (202) 502-8663, fax: (202) 273-0873].

51. Comments concerning the information collections proposed in this NOPR, and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Please reference FERC-921 and OMB Control No. 1902-0257 in your submission.

## V. Environmental Analysis

52. 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>40</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>41</sup> The actions proposed here fall within a categorical exclusion in the Commission's regulations, *i.e.*, they involve information gathering, analysis, and dissemination.<sup>42</sup> Therefore, environmental analysis is unnecessary and has not been performed.

## VI. Regulatory Flexibility Act

53. The Regulatory Flexibility Act of 1980 (RFA)<sup>43</sup> 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 rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards is responsible for the definition of a small business.<sup>44</sup> These standards are provided on the SBA Web site.<sup>45</sup> We reviewed the SBA's current size standards with respect to the three classes of entities covered in the proposed rule: RTOs/ISOs, market participants, and their Connected Entities.

54. The SBA classifies an entity as an electric utility if it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale. Under this definition, RTOs/ISOs are considered electric utilities. The size criterion for a small electric utility is having 500 or fewer employees.<sup>46</sup> Since every RTO and ISO has more than 500 employees, none are small entities.<sup>47</sup>

55. Market participants and their Connected Entities are likely to be in several market sectors and therefore subject to a variety of SBA size standards. We have identified a broad cross-section of the most likely SBA market sectors for participants and their Connected Entities. Industries in these subsectors include utilities, oil and gas production, mining, finance, and leasing. Among these sectors, there are various criteria and thresholds for determining whether a business is small, but the numbers of employees do not exceed 1,000, and the revenues do not exceed \$38.5 million.<sup>48</sup>

56. While many market participants and Connected Entities are some of the largest businesses in the United States (for example, large electric utilities and commercial banks), other market participants, such as individual power plants or small trading firms, would qualify as small under the SBA standards. It is difficult to estimate the size of all the entities affected by this proposed rule since many of smaller entities may be privately held with little public information available. However,

<sup>39</sup> 13 CFR 121.101 (2015).

<sup>40</sup> U. S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (effective July 14, 2014), available at [https://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](https://www.sba.gov/sites/default/files/Size_Standards_Table.pdf).

<sup>41</sup> 13 CFR 121.101 (Sector 22, Utilities). Of note, the SBA recently revised its size standard for electric utilities (effective January 22, 2014) from a standard based on megawatt hours to one based on the number of employees, including affiliates.

<sup>42</sup> For five of the RTOs/ISOs, full-time employee estimates are based on human resources reports published on the Web site of each RTO/ISO. For the sixth RTO/ISO, the full-time employee estimate was obtained from the Chief Financial Officer.

<sup>43</sup> 13 CFR 121.101.

<sup>39</sup> OATT compliance filings (like the one-time compliance filing here) are normally included under FERC-516 (OMB Control No. 1902-0096). However, the reporting requirements (including the compliance filing) contained in this proposed rule in Docket No. RM15-23-000 will be included in FERC-921.

<sup>40</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897, FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>41</sup> 18 CFR 380.4 (2015).

<sup>42</sup> See 18 CFR 380.4(a)(5).

<sup>43</sup> 5 U.S.C. 601-12.



if every market participant and Connected Entity identified above were assumed to be small under SBA standards, a substantial number of small businesses, as many as 15,000, would be impacted by this proposed rule.

57. The economic impact of this proposed rule is directly related to the complexity of the organization, that is, the more entities to which a company is related, the more information that must be reported. The data from Ventyx indicates that complexity of this type correlates with the organization's size: larger entities will have more reportable relationships than smaller ones. Therefore, it is reasonable to believe that the cost of complying for small entities will be significantly less than the cost for large ones. The analysis of connectedness based on Ventyx data suggests that, on average, each market participant has 1.5 Connected Entities. However, this average likely overstates the number of connections for small entities since the analysis also found the median number of connections to be zero. This is also intuitively correct since concentrations of connections are typical only for large organizations.<sup>49</sup> This analysis indicates that if an entity is truly small and its connections are related to its size, the number of Connected Entities that it would need to report is likely to be zero or one.

58. Using these assumptions, we estimate that small businesses will be required to report few, if any, Connected Entity relationships. We estimate the initial burden for small companies to be \$418<sup>50</sup> with an annual maintenance burden of \$213.<sup>51</sup> According to SBA guidance, the determination of significance of impact "should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors."<sup>52</sup> Based on the above analysis, the reporting requirements proposed in this NOPR should not have a significant economic

impact on a substantial number of small entities.

## VII. Comment Procedures

59. 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 November 30, 2015. Comments must refer to Docket No. RM15-23-000, include the commenter's name, the organization they represent, if applicable, and their address in their comments.

60. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

61. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

62. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## VIII. Document Availability

63. 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 business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426.

64. 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.

65. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the

Commission's 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. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

## List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner LaFleur is concurring with a separate statement attached.

Dated: September 17, 2015.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend 18 CFR part 35 to read 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 § 35.28 by revising paragraph (g)(4) to read as follows:

### § 35.28 Non-discriminatory open access transmission tariff.

\* \* \* \* \*

(g) \* \* \*

(4) *Electronic delivery of data.* Each Commission-approved regional transmission organization and independent system operator must electronically deliver to the Commission, on an ongoing basis and in a form and manner acceptable to the Commission, data related to the markets that the regional transmission organization or independent system operator administers. The submittal shall include information concerning each market participant's Connected Entities, together with the Legal Entity Identifiers of the market participants and their Connected Entities (if known), as submitted to the regional transmission organization or independent system operator by the market participants. Connected Entity is defined as follows:

(i) An entity that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the ownership instruments of the market participant, including but not limited to voting and non-voting stock and general and limited partnership shares; or an entity 10 percent or more of whose ownership instruments are owned, controlled, or held with power to vote,

<sup>49</sup> In our analysis, the top 100 most connected market participants, almost all of which are not considered small, account for 20 percent of all relationships.

<sup>50</sup> This includes the initial LEI registration (\$250) plus four hours of largely administrative work (95 percent) with some minimal review by legal staff (5 percent), (\$168, at \$42.12 per hour (salary plus benefits)).

<sup>51</sup> This includes annual LEI maintenance fee (\$150) plus 1.5 hours of largely administrative work (95 percent) with some minimal review by legal staff (5 percent) (\$63 at \$42.12 per hour (salary plus benefits)).

<sup>52</sup> U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act*, at 18 (May 2012), available at [https://www.sba.gov/sites/default/files/advocacy/rfaguide\\_0512\\_0.pdf](https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf).

directly or indirectly, by a market participant; or an entity engaged in Commission-jurisdictional markets that is under common control with the market participant;

(ii) The chief executive officer, chief financial officer, chief compliance officer, and the traders of a market participant (or employees who function in those roles, regardless of their titles);

(iii) An entity that is the holder or issuer of a debt interest or structured transaction that gives it the right to share in the market participant's profitability, above a *de minimus* amount, or that is convertible to an ownership interest that, in connection with other ownership interests, gives the entity, directly or indirectly, 10 percent or more of the ownership instruments of the market participant; or an entity 10 percent or more of whose ownership instruments could, with the conversion of debt or structured products and in combination with other

ownership interests, be owned or controlled, directly or indirectly, by a market participant; or

(iv) Entities that have entered into an agreement with the market participant that relates to the management of resources that participate in Commission-jurisdictional markets, or otherwise relates to operational or financial control of such resources, such as a tolling agreement, an energy management agreement, an asset management agreement, a fuel management agreement, an operating management agreement, an energy marketing agreement, or the like.

\* \* \* \* \*

#### Appendix: Table Structures for Connected Entity Reporting

The proposed rule requires RTOs and ISOs to submit tables identifying market participants by their Legal Entity Identifier (LEI), any RTO/ISO specific identifiers, and designated relationships between those market participants and their connected

entities. The body of the proposed rule describes the relationships to be reported; this appendix suggests the structure of the tables that would be suitable for compliance.

#### Companies Table

The first table will indicate in which markets each entity and Connected Entity (or entities) participates as well as any and all market identifiers used by those entities in each market. The columns of the table will contain at least the standard company name, LEIs, and market identifiers for all Connected Entities in a given submission. Each row will associate an LEI with a company name, market, and market identifier. In some cases, entities will trade using different market identifiers in the same market, in which case the entity will add a row for every market and for each unique market identifier used by that company. In the case where multiple entities are using the same market identifier, this can be indicated in a similar manner. If a Connected Entity does not participate in jurisdictional markets, then no market identifier is available and is not required.

Here is a sample table indicating the cases described above

| Standard company name | LEI | Market | Market identifier |
|-----------------------|-----|--------|-------------------|
| ACME Energy .....     | 001 | MISO   | 328502            |
| ACME Energy .....     | 001 | PJM    | 00034253          |
| ACME Energy .....     | 001 | PJM    | 00098345          |
| ACME Renewables ..... | 002 | PJM    | 00034253          |
| Smith Company .....   | 123 | NYISO  | 3362000012        |
| Johnson Inc .....     | 999 | None   | None              |

■ **Standard Company Name:** The full name of the company which conforms in spelling and punctuation to all previous filings done by or on behalf of the same company.

■ **Legal Entity Identifier (LEI):** The unique alpha-numeric identifier conforming to ISO 17442:2012 assigned to the legal entity.

■ **Market:** Standard code for jurisdictional markets: PJM, NYISO, MISO, SPP, CAISO, ISONE, NON-RTO, None (*i.e.*, does not participate in any electric markets).

■ **Market Identifier:** Market identifiers are the alpha-numeric codes used by markets to associate a market participant with their bids, offers, and settlements.

#### Connected Entities

Connected Entities are those entities which are related to the reporting entity by (a) ownership or control, (b) key employees, (c) debt holders or issuers, or (d) contractual relationships. Since employee identification is significantly different from that of non-person entities, a subtable for employee information is suggested and described below.

#### Employees

The key employee positions to be included will be set forth in the RTOs/ISOs tariff, in conformity with the final adopted Commission regulation. The employee table will indicate the designated employees who are employed by each organization, their

reportable roles, and the period of time they have held those positions. Persons employed by multiple entities will be indicated with multiple rows for different companies.

Reportable roles that are jointly filled (*e.g.* Co-CEO) should be indicated as such (same company, same job but different employees). Employees who are no longer in reportable roles shall have at least one filing where the end date is not null. Employees changing reportable roles for a given company will appear twice in at least one filing (made in a timely manner): one row will indicate an end date for the employee/role and another row will contain a start date for a different reportable role. Individual employees filling multiple reportable roles will be indicated with multiple rows, one for each role.

| Standard company name | LEI | First name   | Middle        | Last         | Role           | Start date | End date   |
|-----------------------|-----|--------------|---------------|--------------|----------------|------------|------------|
| ACME Energy ....      | 001 | Jane .....   | Doe .....     | Smith .....  | Trader .....   | 2010/01/01 | 2015/01/01 |
| ACME Energy ....      | 001 | Jim .....    | William ..... | Jones .....  | CEO .....      | 2009/01/03 |            |
| ACME Energy ....      | 001 | Jim .....    | William ..... | Jones .....  | Chairman ..... | 2015/01/01 |            |
| ACME Renewables.      | 002 | Aaron .....  | Jerome .....  | Case .....   | CEO .....      | 2012/05/01 |            |
| Smith Company .....   | 123 | Xavier ..... | Horatio ..... | Martin ..... | CEO .....      | 2007/01/01 |            |
| Johnson Inc .....     | 999 | Jane .....   | Doe .....     | Smith .....  | CEO .....      | 2010/06/01 |            |

The column definitions are self-explanatory.

#### Relationships

The relationships table is intended to provide a map (or graph) to the remaining

three types of Connected Entities of the market participant, which include both its corporate family as well as outside entities

connected by debt or contractual relationships. The relationships to be included are described in the body of the Notice of Proposed Rulemaking.

#### Relationship

Relationships should be classified based on the broad categories defined above. Relationships may fall into the following general categories (omitting employees, category (b), who are reported in a separate subtable):

- owns (a)
- controls (a)
- has voting power (a)
- is under common control with (a)
- other ownership or control relationship with (a)
- owns debt of (c)
- owns convertible debt of (c)

- has a structured transaction with (c)
- other debt relationship with (c)
- has a management agreement with (d)
- has an operating agreement with (d)
- has a marketing agreement with (d)
- has a tolling agreement with (d)
- has a fuel management agreement with (d)
- other kind of agreement with (d).

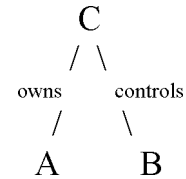
Contractual agreements between two parties regarding a third party should be entered as a multilateral relationship as described below.

#### Relationship Description

Each table will include a field for the filing entity to summarize any pertinent relationship details which may not be captured in the standardized fields.

#### Simple Relationship Structures

A relatively straightforward corporate family of three companies that all participate in MISO and PJM might be as follows:



If C owns A and C controls B, the entity and relationships tables would be reported as follows:

| Standard company name | LEI | Market | Market identifier |
|-----------------------|-----|--------|-------------------|
| A .....               | 001 | MISO   | 0001              |
| B .....               | 002 | MISO   | 0002              |
| C .....               | 003 | MISO   | 0003              |
| A .....               | 001 | PJM    | ABC               |
| B .....               | 002 | PJM    | BCD               |
| C .....               | 003 | PJM    | DCE               |

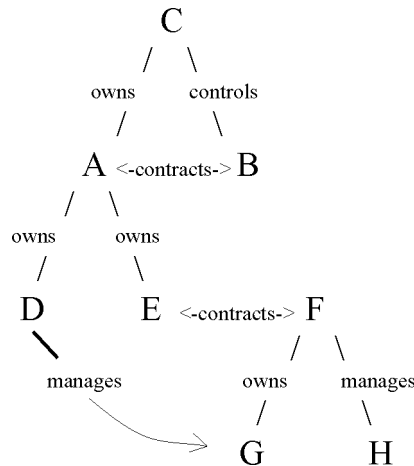
| LEI 1     | LEI 2 | Relationship       | Start date | End date | Relationship description                        |
|-----------|-------|--------------------|------------|----------|---|
| 003 ..... | 001   | OWNS (a) .....     | 2015/12/04 | .....    | Wholly owned subsidiary.                        |
| 003 ..... | 002   | CONTROLS (a) ..... | 2015/02/01 | .....    | Exercises discretion over key market functions. |

In the event several Connected Entities are market participants in the same RTO or ISO, a combined filing of the structural relationships, but not the debt and contracts, could be made, disclosing on one form all of the connected entities. In such case, each Connected Entity must consent to the combined filing and verify the accuracy of the information.

#### More Complex Structures

Relationships within the electric industry can be very complex. The illustrated method of reporting pairwise

relationships based on LEIs extends to relationships of arbitrary complexity.



| Standard company name | LEI |
|-----------------------|-----|
| A .....               | 001 |
| B .....               | 002 |
| C .....               | 003 |
| D .....               | 004 |
| E .....               | 005 |
| F .....               | 006 |
| G .....               | 007 |
| H .....               | 008 |

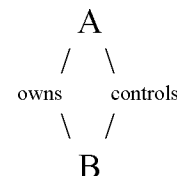
| LEI 1     | LEI 2 | Relationship                      | Start date | End date   | Relationship description  |
|-----------|-------|-----------------------------------|------------|------------|---|
| 003 ..... | 001   | OWNS (a) .....                    | 2015/12/04 | .....      | Wholly owned subsidiary.  |
| 003 ..... | 002   | CONTROLS (a) .....                | 2015/02/01 | .....      | Exercises discretion over key market functions.   |
| 001 ..... | 002   | HAS A TOLLING AGREEMENT WITH (c). | 2010/01/01 | 2020/01/01 | 1 will provide raw materials to 2 under an agreement that 2 will return electricity at a specified heat rate. |
| 001 ..... | 004   | OWNS (a) .....                    | 2011/05/02 | .....      | Wholly-owned subsidiary.  |
| 001 ..... | 005   | OWNS (a) .....                    | 2000/01/05 | .....      | Wholly-owned subsidiary.  |

| LEI 1     | LEI 2 | Relationship                                | Start date | End date   | Relationship description  |
|-----------|-------|---|------------|------------|---|
| 005 ..... | 006   | HAS A FUEL MANAGEMENT AGREEMENT WITH (d).   | 2005/01/01 | .....      | Procures gas and transport on behalf of 2.                          |
| 006 ..... | 007   | OWNS (a) .....                              | 2005/01/01 | .....      | Wholly-owned subsidiary   |
| 006 ..... | 008   | HAS AN ASSET MANAGEMENT AGREEMENT WITH (d). | 2001/10/01 | .....      | Manages fleet operations.   |
| 004 ..... | 007   | HAS AN ENERGY MARKETING AGREEMENT WITH (d). | 2010/01/01 | 2015/01/01 | Fee-based marketing agreement of the energy produced by 2's assets. |

The entity in the LEI 1 column is understood to be the entity on the left hand side of the relationship and the entity in the LEI 2 column is understood to be the entity on the right hand side.

### Multiple Relationships

In some cases there may be multiple relationships between two market participants. Multiple relationships can be filed as follows:



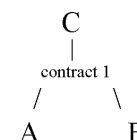
| LEI 1     | LEI 2 | Relationship   | Other fields |
|-----------|-------|----------------|--------------|
| 001 ..... | 002   | OWNS .....     | .....        |
| 001 ..... | 002   | CONTROLS ..... | .....        |

### Multilateral Relationships

Multilateral relationships have three or more parties. Such relationships are reportable using a relationship identification field, as long as all pairwise relationships that are party to the relationship are reported and each

multilateral relationship is assigned a unique relationship identifier. The relationship identifier will be assigned by the reporting entity, each reportable relationship will have a unique relationship identifier, the identifier will be a numeric sequence (*i.e.* no names, no punctuation, etc.), and when

possible, relationship identifiers should be consistent between filings.



| LEI 1     | LEI 2 | Relationship   | Contract ID | Other fields |
|-----------|-------|----------------|-------------|--------------|
| 003 ..... | 002   | CONTRACT ..... | 1           | .....        |
| 003 ..... | 001   | CONTRACT ..... | 1           | .....        |
| 002 ..... | 001   | CONTRACT ..... | 1           | .....        |

These fields can be used to report any number of participants, contracts, or relationships, regardless of complexity.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY  
COMMISSION

Collection of Connected Entity Data  
from Regional Transmission  
Organizations and Independent System  
Operators

(Issued September 17, 2015)

LaFLEUR, Commissioner, *concurring*: Today's order proposes to amend the Commission's regulations by establishing a newly defined term, "Connected Entity," and to require the collection of information regarding Connected Entities, to allow the Commission to better monitor complex business relationships that could be utilized to engage in manipulative conduct in our jurisdictional markets. I support this proposal because it is important that the Commission, in accordance with our statutory mandate, have the tools to protect customers from

manipulative behavior, and the collection of this information would assist the Commission with that effort.

However, the Commission should always consider carefully whether the benefits offered by new compliance obligations outweigh the burdens that will be faced by market participants. I believe that the requirements in the Noticed of Proposed Rulemaking would create a significant new reporting regime for all market participants, as well as the RTOs and ISOs. I therefore encourage market participants to submit comments on today's proposed rulemaking that address the benefits of this proposed regulation, as well as the incremental costs or burdens that would be created by this new reporting requirement. I will carefully consider these issues as I decide whether to support the final rule.

Accordingly, I respectfully concur.

Cheryl A. LaFleur,

Commissioner.

[FR Doc. 2015-24281 Filed 9-28-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 35

[Docket No. RM15-24-000]

#### Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators

AGENCY: Federal Energy Regulatory  
Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise its regulations to require that each regional transmission organization (RTO) and independent system operator (ISO) settle energy