

Client Alert

Proposed FERC Reporting Requirements to Significantly Impact Electricity Market Participants

October 9, 2015

The Federal Energy Regulatory Commission (FERC) has issued a Notice of Proposed Rulemaking (NOPR) that would require entities participating in regional electricity markets (*i.e.*, regional transmission organizations and independent system operators) to disclose detailed information about their ownership and contractual relationships, signaling FERC's intent to significantly expand the reach of its market manipulation enforcement oversight. Under the NOPR, companies selling or buying electricity at wholesale in FERC-regulated regional electricity markets, that currently operate in 36 states, would have to provide to the regional market operator information about their "Connected Entities." Connected Entities would include their owners and affiliates, management personnel and traders, lenders, and companies that provide management or operations services to the market participants. The NOPR would require each regional market operator to share this information with FERC.

Market participants in FERC-regulated markets are already subject to affiliate disclosure requirements, which focus on relationships involving control and ownership interests relevant to the regional market operator's governance rules and creditworthiness requirements. But the NOPR sweeps far wider, with FERC claiming that it needs additional information in order to monitor markets and identify market manipulation. Its proposed "Connected Entities" disclosure rule would require market participants to identify entities that hold ownership interests of 10 percent or more, including entities that hold both voting and non-voting securities in the market participant. In addition, market participants would be required to identify their chief executive officer, chief financial officer, chief compliance officer and their traders.

The proposed rule also requires disclosure of certain third parties with whom the market participant does business, including certain holders or issuers of debt interests and parties to structured transactions where the holder has the right to share in the market participant's profitability, or where the holder has the right to convert its position to an ownership interest. Market participants would also be required to identify entities that provide services relating to the operational or financial management of resources, including tolling agreements, energy management/marketing agreements, asset management and operations agreements, and fuel management agreements.

To facilitate its analysis of the gathered data, FERC proposes to require every market participant to obtain, and also to report for every Connected Entity (*i.e.*, every entity holding voting or nonvoting securities of 10 percent or more in a market participant, every affected lender, and every affected vendor providing reportable management or marketing services to the market participant), if available, a Legal Entity Identifier (LEI), *i.e.*, a unique alphanumeric identifier that would be included as one of the data inputs.

FERC seeks to justify this very significant expansion of its enforcement program on the need to monitor the market and detect manipulation. But the scope of the information that market participants will need to gather and report to FERC is unprecedented and, contrary to FERC's assertions in the NOPR, would impose a very significant burden not only on entities directly regulated by FERC but also on entities that invest in or do business with such entities. In short, the proposed rule should be closely assessed not just by traditional market participants, but by all companies that invest in, transact with or in general do business with those market participants.

Comments on the [Connected Entities NOPR](#) are due on November 30, 2015.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Larry F. Eisenstat

Partner – Washington, D.C.

Phone: +1.202.624.2600

Email: leisenstat@crowell.com

Patricia M. Alexander

Senior Policy Advisor – Washington, D.C.

Phone: +1.202.624.2788

Email: palexander@crowell.com