

FERC PREPARES TO LAUNCH LONG-AWAITED MBR RELATIONAL DATABASE

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U.S. Power Alert

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Significant changes to the market-based rate (MBR) program administered by the Federal Energy Regulatory Commission (FERC) will begin rolling out in the coming days. In Order No. 860 (FERC Docket No. RM16-17), FERC established a new requirement for MBR sellers to submit a variety of information into a new “relational database.” While the roll-out of this new MBR database was delayed by six months due to COVID (and then by another three months to accommodate certain proposed updates to the MBR database), the database is now set to launch on 1 July 2021. FERC intends to update and streamline the FERC's data collection processes with this new MBR database. But the transition by MBR sellers to the new database could prove difficult, and we recommend companies make plans now so that they can avoid unanticipated issues with these new compliance obligations.

THE RELATIONAL DATABASE AND CHANGES FROM CURRENT PRACTICE

Currently, to submit an application for MBR authority or certain MBR notices of changes in status, an entity needs to prepare an asset appendix (which includes information on the entity's and its affiliates' generation, power purchase agreements, and transmission assets) and indicative market screens (which analyze the market power of the entity and its affiliates). After a transition period of several months, starting on 3 November 2021, the MBR database itself will generate the asset appendix and—based on information entered into the database—the indicative market screens. To achieve this, FERC requires each MBR seller, between 1 July 2021 and 2 November 2021, to submit information directly into the relational database in a “baseline” filing and then submit any changes to this information on a monthly basis. An MBR seller will then be linked to its affiliates in the MBR database through the identification of a common “ultimate upstream affiliate” (defined by FERC as “the furthest upstream affiliate(s) in the ownership chain - i.e., each of the upstream affiliate(s) of a Seller, who itself does not have 10 percent or more of its outstanding securities owned, held or controlled, with power to vote, by any person (including an individual or company).”). For an MBR seller with an “ultimate upstream affiliate” that acquired its securities through a blanket Federal Power Act Section 203 authorization, the MBR seller will not be considered to be affiliated with other companies that have the same “ultimate upstream affiliate” (e.g., if Vanguard, acting through a blank Federal Power Act Section 203 authorization, qualifies as the “ultimate upstream affiliate” of both MBR Seller 1 and MBR Seller 2, but MBR Seller 1 and MBR Seller 2 do not otherwise have any upstream ownership in common, MBR Seller 1 and MBR Seller 2 would not be considered affiliates of each other for FERC purposes).

While there will be substantial continuity in the data already collected from MBR sellers, FERC requires additional information to be reported into the new MBR database. For example, whereas MBR sellers previously reported

only their long-term power purchases, entities will now also have to report their long-term power sales, as well. In addition, MBR sellers will be required to upload information from their Energy Information Administration (EIA) Form 860 into the database. In other ways, FERC has lessened the reporting burden. For example, MBR sellers will no longer need to provide details about their transmission and natural gas assets other than those assets' location.

BASELINE FILINGS

FERC has acknowledged that compliance with Order No. 860 could pose challenges, especially as MBR sellers make their baseline filings and adjust to the new database. In part, this is why FERC chose to launch the relational database on 1 July 2021, well in advance of the submission deadline of 2 November 2021. Each existing MBR seller must submit its own baseline filing, which filing must identify (i) the seller's generation assets, long-term power purchases and sales, and vertical assets; (ii) the assets of any of the seller's affiliates *without* MBR authority (but not including qualifying facilities that are exempt from Federal Power Act Section 205); and (iii) the seller's ultimate upstream affiliate. Moving forward, companies that request MBR authority will also need to make baseline filings in the relational database and must do so in advance of submitting an MBR application.

The devil will be in the details for these baseline filings. Each MBR seller will identify itself using its existing FERC-issued Company Identifier (otherwise known as the MBR seller's CID), but other companies and even individuals that must be identified in the relational database also must have an identifier number—whether a Legal Entity Identifier (LEI) or a FERC-generated ID number. For example, an MBR seller's affiliate (without MBR authority) whose assets must be reported by the MBR seller must have either an LEI or FERC-generated ID number. MBR sellers further must report generation assets using codes generated by the EIA to the extent available. If such codes are not available, the MBR seller must obtain a FERC-generated “Asset ID.”

It is also worth noting that the MBR database will be publicly available, and FERC does not expect any of the information required to be submitted into the database to qualify for privileged treatment.

DATABASE MAINTENANCE AND CHANGE-IN-STATUS FILINGS

Order No. 860 also requires that each MBR seller ensure that the information contained in the relational database remains accurate. This obligation is broader than FERC's existing requirement that MBR sellers make a change-in-status filing when there has been a change to the characteristics the Commission relied upon in granting MBR authority. Under the new requirement, MBR sellers must make monthly updates to any information in the relational database that has changed since its submission no later than the 15th day of the month following such change. For example, if a transaction results in an indirect change of control of the MBR seller, that company will need to report the new ultimate upstream affiliate in the relational database. Further, MBR sellers who discover errors in their data must update the relational database as soon as practicable. In light of these new obligations, however, the Commission amended its change-in-status filing regulation to require submissions on a quarterly basis rather than the current timeframe of doing so within 30 days of the relevant change.

NEW CHALLENGES

Even after MBR sellers finalize their baseline submissions and begin to adjust to the new database, the relational database mandated by Order No. 860 likely will pose new challenges for MBR sellers seeking to comply with

FERC's regulations and rules. For example, the increase in the number of instances where MBR sellers must timely report data to FERC could result in more inadvertent compliance failures.

We recommend that all MBR sellers—as well as all entities planning to file an MBR application—begin making plans now and adjust compliance programs to ensure that they meet their initial and ongoing Order No. 860 compliance obligations. For more details about what information must be submitted to the relational database or the mechanics of making a baseline submission or MBR authorization application, please contact the authors of this alert.

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