

## **Q & A's on Interim Generation Market Power Analysis and Mitigation Policy**

### **Q. How did the Commission factor in native load to the market power analysis?**

A. Both screens allow the applicant a deduction for its native load commitments from the generation that is counted in the screen. In fact, both screens allow this same deduction for competing sellers. Under the pivotal supplier screen, the applicant can deduct a proxy for native load obligations that is equal to the average of the daily native load peaks during the month in which the annual peak day occurs. This means that if an applicant's annual peak day occurs in August, it can deduct for its native load commitments an amount of generation that is equal to the average of the 31 daily native load peaks for each day of August. Competing sellers get the same treatment for their native load obligations.

Under the market share screen, which measures the applicant's market share in each of the four seasons, the deduction allowed for native load obligations is equal to the minimum peak demand day in a given season. This means that for the summer season (June - August) the Commission would look at the applicant's lowest native load peak on any day during the summer season, and would deduct that amount as the native load obligation. The reasoning behind using the lowest peak day is that it reflects the fact that the remainder of the applicant's generation was uncommitted and thus available to sell into wholesale markets at some point during the summer. Again, competing sellers get the same treatment, so there is symmetry between an applicant and its competitors in this regard.

### **Q. How is the native load deduction different under the new screens from what the Commission had adopted in the previous screen—the SMA? How are the market power tests different from SMA?**

A. There was no native load deduction under the SMA. Thus, the new tests are better in that they are more realistic in this respect. With respect to the second question, generally the new tests are more accurate in measuring the generation that is available to compete in wholesale markets (by allowing for recognition of native load commitments, long-term firm non-requirements sales, operating reserve commitments, and planned outages). The new tests are also more accurate in measuring the transmission limitations of the system, and thus more accurate in measuring the amount of competing generation that can realistically get into an applicant's market. The new tests measure these transmission limitations using simultaneous import capability which is more accurate than total transfer capability (TTC), which is what was used under the SMA screen that is being replaced. Since there are now two screens, and not just one, and each of the new screens has its own proficiency in measuring different things, the Commission can much more accurately measure different types of market power (i.e., unilateral exercise or through coordinated interaction), it is able to measure market power in different products (spot sales or in long-term markets) and over differing time periods (peak and off-peak, including over all four seasons). The new version is also better because it gives more process to both applicants and intervenors to make their respective cases (e.g., applicants get a second bite at the apple with the chance to file a more robust market power study (the Delivered Price Test) if they fail the initial screens, while intervenors can file historic sales data or transmission

information to show that applicants were really more dominant/pivotal than was shown in the screens). The new version also gives applicants more flexibility in fashioning either mitigation to eliminate their market power, or to develop the rates they will use in lieu of market-based rates.

**Q. How do customers benefit from today's order on market generation power?**

A. Customers benefit from the new screens because they can be assured that those with generation market power will not be allowed to sell at market-based rates. There will be less rate flexibility and more reporting requirements (and thus more transparency) for those found to have unmitigated market power. In short, customers that purchase electricity in wholesale markets benefit because they will be protected from having to buy power at excessive rates from suppliers with market power—and this protection extends to all wholesale product markets (not just spot sales, as under the SMA); regulators benefit by having greater accountability from those found to have market power (through greater reporting requirements), which in turn leads to greater transparency for all; and in addition to this transparency, competitors that still have market-based rate authority benefit from not being saddled with the administrative obligations that will now burden their competitors with market power.

**Q. Is FERC pursuing a more cost-based regime in the SMA rehearing order?**

A. It is not the Commission's intention to pursue a more cost-based regime. However, the Commission's intention in this order is that those that have market power will not be allowed to sell at market-based rates, and they will instead have to use cost-based pricing. Thus, cost-based rates is not the goal of this order, but it's a just and reasonable result for those found to have market power which at the same time provides greater protections to customers and market participants in wholesale markets.

**Q. This is an interim generation market power analysis and mitigation policy. How long before a permanent policy is adopted?**

A. The interim policy will remain in place until the Commission adopts a new generation market power screen, which the Commission intends to consider as part of the new market-based rate generic rulemaking it is launching in the E-2 order (which announces a technical conference and seeks comments from the public on the adequacy of its current four-prong analysis to assess whether an applicant should be granted market-based rate authority). Though no timetable has been announced on how long this rulemaking will take, rulemakings of this magnitude typically take at least a year to get to a Final Rule, and may take up to 18 months.