

Suggested Topics for Technical Conference on Market-Based Rate Filings (Docket No. AD10-4-000)

1. For a new MBR filing on behalf of a subsidiary of a large energy company with multiple other subsidiaries already granted MBR authorization, to what extent can the new application rely upon (e.g. incorporate by reference) the information on these affiliates contained in their prior filings and thereby forego a detailed listing and description of all its other affiliates and simply provide a brief description of the upstream ownership of the new applicant?
2. When an RTO modifies or supplements its menu of ancillary services which has previously been approved by the Commission for inclusion in MBR authorizations, when and how do MBR sellers need to amend their tariff sheets to conform the language to reflect these changes to the specific ancillary services offered in each market? Should MBR sellers wait until the Commission posts the new standard ancillary service language for that market on its website?
3. The Commission has previously stated that an applicant can rely upon “a recent market power analysis accepted by the Commission”. In such instances, the Commission has said that a new applicant can adopt the prior analysis submitted by a member of the same corporate family as its own and provide the pivotal supplier and market shares for its own, along with its affiliates', generation. For purposes of such reliance on a “recently accepted” screen analysis, what time frame can be relied upon as “recently accepted”? For example, would a Triennial Report submitted and approved a year or two prior to the date of the filing where there has been no interim change-in-status filing be deemed sufficiently “recent”. In such cases, does the Applicant simply need to submit a copy of the most recently approved Appendix A containing the prior screen results? Does it need to include the workpapers underlying that analysis?
4. Even if there have been some minor changes in the amount of owned/controlled generation in the corporate family since the most recently accepted market power analysis, can a new MBR applicant make the representation that there have been no “material” changes in the assumptions underlying that analysis such that it can be relied upon without having to prepare a new set of screens and submitting a new Appendix A?
5. Can a new applicant for MBR authorization that owns or controls a *de minimus* amount of generation in a relevant market forego the need to prepare a completely new market power analysis and use the results of other recently approved market power studies recently filed by other MBR sellers in the same region to demonstrate its obvious inability to exercise generation market power? For example, Applicant XYZ may argue that it owns or controls only 10 MW of uncommitted capacity in a geographic market where the Commission has recently approved market power screens from other MBR sellers showing over 1,000 MW of uncommitted capacity and thus with only a 1 percent nominal share, there can be no horizontal market power concerns. Is such a narrative representation adequate or does the Commission require applicants to complete an Appendix A citing the data from these other recently approved market power submissions?
6. Clarify that an application for MBR authorization for an entity owning a new plant whose output is fully committed under long-term contract (i.e. zero uncommitted capacity) and owns no affiliated generation in the relevant geographic market may forego the indicative screens? If the same

7. Order 697 requires that after a proposed merger has been announced, the merging companies must treat one another as "affiliates" for purposes of the Commission's affiliate restrictions. How does this work when one of the merging companies is a franchised utility that already has a finding that it lacks "captive customers" such that the affiliate restrictions do not apply to its relationship with its current marketing affiliates? Can the franchised utility rely on that finding and elect *not* to apply the affiliate restrictions to its relationship with prospective marketing affiliates? Is a notice filing necessary or appropriate to reflect such a decision? Is a more substantive filing required, such as an amendment to tariff sheets, recognizing that such an amendment would have to be withdrawn if the merger was not consummated?
8. In order No. 697, the Commission suggests that its primary concern regarding affiliate abuse arises in the context of market-based sales between a *regulated* franchised utility with captive customers and its *unregulated* marketing affiliates whose profits accrue to shareholders. In such circumstances, absent the type of "captive customer" waiver finding noted above, a separate filing is needed under FPA Section 205 incorporating the Edgar/Allegheny showings before the sale can proceed. In the context of market-based sales *between two regulated utilities* with captive customers where the Commission has implied that affiliate abuse concerns may not exist (given that *both* buyer and seller are subject to retail rate regulation and there is no concern that shareholders will profit at ratepayer expense) is there still the same requirement to make a separate section 205 filing under Edgar/Allegheny for market-based transactions between the two utilities (i.e. do the *Edgar* standards apply to market-based or cost-based sales between two regulated franchised utilities)?
9. For new MBR applicants affiliated with transmission owners not subject to Commission jurisdiction, what representations should be made with regard to their reciprocity tariffs to demonstrate that transmission market power has been adequately mitigated? Is there any need to have such OATTs filed by the relevant transmission owner for a Commission determination (e.g. declaratory order) that they satisfy "reciprocity" requirements in order to have the benefit of the standard presumption for MBR sellers that a filed OATT adequately mitigates transmission market power?
10. Confirm that the 500 MW threshold for Category 1 Seller designation only applies to generation capacity that is owned or controlled by the applicant (and its affiliates) and is *physically located* in the relevant reporting region but excludes generation owned/controlled by the applicant in first-tier markets that can be imported into that region.
11. If a portion of the 500 MW owned or controlled by an MBR seller in a region consists of purchased capacity where the underlying PPA will terminate during the term of the 3-year triennial reporting window, can the MBR Seller seek to have its Category 2 designation changed to Category 1 and thereby avoid having to file a new Triennial until such time it again exceeds the 500 MW threshold in that region?

12. Clarify the need to conform data sets for the same historical test periods in the context of change-in-status (“CIS”) filings. Specifically, the Order 697 rules specify that the baseline CIS updated market power study use data inputs for same study period as used in the most recent market power study filed by the MBR seller and accepted by the Commission *but for data related to the event triggering the CIS*. Thus, there is a built-in timing mismatch (as much as 3 years) between the input data used in the triennial filings, based on the applicable historical study period, and an MBR seller’s current load and resource position. Some applicants have attempted to address this mismatch by providing an alternative analysis in their triennial filings that adjusts the applicant’s resource position to reflect their current status (as shown in their Asset Appendix) and have argued that this alternative analysis provides a conservative basis for the applicant to address whether a subsequent CIS report materially affects the underlying facts relied upon by the Commission in reviewing their triennial filings. The Commission to date has not commented on these alternative analyses. Is this an appropriate way to "reset" the baseline between the Study Period and the filer's current resource position? If not, is the only alternative to prepare all new Indicative Screen or Delivered Price Test analyses?
13. In addition to CIS report timing mismatches resulting from changes in the *applicant’s own market position*, there also may have been substantial interim changes in the loads and resources of *other participants* in relevant markets resulting from mergers, acquisitions, new construction and loss of major loads etc. that would not have been reported as a CIS event by the Applicant. There also may have been major changes in RTO participation or configuration or other events that would deviate from the baseline study period information in the prior market power study. To what extent is an applicant allowed to take account of these changes in a CIS market power update?
14. Clarify when the 30 day CIS reporting window begins for a new wind energy project which may consist of a large number of individual wind turbines each having a relatively small nameplate capacity but where the aggregate capacity of the project exceeds the 100 MW reporting threshold (i.e. within 30 days of delivery of test energy from the first turbine even though there may be a substantial delay until construction of the full 100 MW is complete or within 30 days of delivery of test energy from the entire plant complex).
15. Is it permissible to treat resources differently in the Asset Appendix and the indicative screens with respect to "control" if the screen treatment is the more conservative? Specifically, many wind project agreements make it difficult to specify which party actually "controls" the output of the facility. Is there any uniform convention or guidance that should be followed in such cases?
16. Clarify whether a letter of concurrence from the purchaser of the output of a generating facility must be obtained only if an applicant’s Asset Appendix shows that it does not “control” a facility for which it is nominally the “owner” and there may be disagreement regarding control (i.e. if any entity asserts "control" it does not need to obtain a letter of concurrence from the owner).
17. Clarify that non-applicant firm transmission reservations may be relevant in the computation of the screens. For example, if the SIL is 1,000 MW and a non-applicant has reservations to import 300 MW, the allocable imports could be only 700 MW. Would it be acceptable to "conservatively" allocate the entire 1000 MW and still pass the indicative screens?

18. Are TOs performing the SIL study required to provide separately the FCITC and net interchange components of the SIL? If the FCITC value is negative, should it be rounded to zero?
19. In the context of the rules governing sales at the metered boundary for mitigated MBR sellers, there are occasions where a sale would be consummated at a trading hub outside the mitigated BAA for a variety of reasons (liquidity, transmission rights, etc.) where the purchaser is an entity whose entire load is located within the mitigated BAA. While the rules under Order 697 etc. al. appear to allow sales to a non-affiliated purchaser that sink entirely *outside* the mitigated BAA, if the seller knows the buyer for its own reasons is most likely to deliver that power back into the mitigated BAA (e.g. using transmission rights or facilities it already controls), does that raise issues. Would the decision be different if the buyer had specifically designated that delivery point outside of its service area in an RFP or solicitation context and the mitigated MBR seller had no role in the selection of the delivery point?
20. FERC regulations and Staff practices require that an MBR applicant submit a pro forma MBR tariff with the MBR application. As a result of the Commission's e-tariff initiative, the creation (or periodic revision) of an individual MBR tariff of precisely 8 sections will now involve significant IT development and may cost in excess of \$15,000. What would Staff propose that MBR applicants, and those holding MBR authority, do to minimize costs and still comply with tariff requirements. Alternatively, would Staff permit MBR holders and applicants to simply adopt a pre-posted pro forma MBR tariff?
21. How should a long-term sale agreement including load-following service be counted? The amount of capacity purchased by the counterparty is not known until after the fact. Is it permissible to rely on last year's peak capacity, or an average, to determine how much capacity is controlled in such a case?
22. How should intermittent resources such as wind power be counted? There appear to be two options: (1) the nameplate capacity or (2) the MISO planning capacity – which is considerably less than nameplate.
23. How should MISO Aggregate Planning Resources Credits defined as “Aggregate PRCs are PRCs that are associated with Planning Resources that the Midwest ISO determines are deliverable through the Midwest ISO Region” be counted? “A PRC represents 1 MW of qualified unforced capacity from a Planning Resource for a particular month, and tracked to nearest tenth of a MW value, pursuant to the applicable PRC qualification procedures....” There is no associated energy sold with this product.