

# Market Power Analysis

How FERC analyzes market power in the MBR context in electric energy and capacity markets

Third-Party Provision of Reactive Supply and Voltage Control and Regulation and Frequency Response Services

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# Principles Behind MBR

- Seller must demonstrate to FERC that:
  - It lacks the ability to exert horizontal and vertical market power
- If the seller demonstrates the above and makes various commitments and representations, FERC grants the seller authorization to sell electric energy, capacity, and ancillary services at MBR
- FERC uses the general antitrust techniques of defining the relevant *geographic* and *product* markets to examine the seller's posture relative to other sellers

# Geographic Market

- A seller's relevant geographic market is any balancing authority area (BAA) in which it owns or controls generation
  - Also, if the seller, or any of its affiliates, owns, operates, or controls the transmission system in a BAA where the seller has generation, it must also study each market interconnected to that BAA
- If a seller is in a RTO/ISO, its relevant geographic market is the RTO/ISO (unless it is in a submarket)
- Include imports up to the geographic market's simultaneous transmission import limit

# Product Market: Uncommitted Capacity

- Capacity is the relevant product (proxy is uncommitted capacity)
  - Measures a seller's capability to influence the market (MW); energy would measure how much was actually sold (MWh)
- Includes:
  - Total nameplate (or seasonal) capacity of generation owned or controlled
  - Long-term firm purchases
- Subtract:
  - Long-term firm sales
  - Operating reserves
  - Native load obligations per 18 C.F.R. § 33.3(d)(4)(i)
  - Planned outages for each season – market share screen only
- Formula applies to all sellers

# Horizontal Market Power

- A seller with horizontal market power may be able to manipulate market prices by withholding its generation, or by profitably bidding into markets at exorbitantly high prices
- FERC uses two preliminary “indicative” screens to test for horizontal market power: the pivotal supplier screen and the wholesale market share screen
  - Intended to be a “conservative analysis”
  - Taken together, the indicative screens can measure a seller’s market power at both peak and off-peak times

# Horizontal Market Power

## Pivotal Supplier Screen

- Evaluates the potential of a seller to exercise market power based on uncommitted capacity at the time of the BAA's annual peak demand
- Measures the ability of a seller to exercise market power unilaterally, and the ability of a seller to dominate the market at peak periods
- Seller fails this screen if annual peak demand cannot be met without some contribution of supply by the seller or its affiliates

# Horizontal Market Power

## Wholesale Market Share Screen

- Measures for each of the four seasons whether a seller has a dominant position in the market based on its uncommitted capacity compared to the uncommitted capacity of the entire relevant market
- Seller fails this screen if its market share of uncommitted capacity is 20% or more in any of the four seasons

# Horizontal Market Power

- What happens if the seller passes both screens?
  - Rebuttable presumption the seller lacks market power
- Intervenors can present evidence to disprove the presumption (including historical sales data, and evidence that competing suppliers cannot access the market)
- If no evidence is presented to rebut the presumption that the seller lacks market power, then the seller obtains/retains its MBR authorization

# Horizontal Market Power

- What happens if the seller fails one or more screens?
  - Rebuttable presumption seller has market power
- FERC may initiate an investigation pursuant to FPA Section 206 to make rates subject to refund
- Seller may present evidence to disprove the presumption (Delivered Price Test (DPT) and historical sales data), or
- Propose mitigation to eliminate market power concerns

# Horizontal Market Power

- If the seller is ultimately found to have market power, or does not rebut the presumption, then:
  - If it is an initial MBR applicant, it is denied MBR authority in all geographical markets in which it has market power, or
  - If it is an existing MBR applicant it is denied authority to enter into new arrangements at MBR in all geographic markets in which it has market power, though it can continue performing under long-term agreements previously entered into at MBR until they expire
- Refunds would only be due if FERC ultimately finds market power or the seller does not challenge presumption