

154 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Collection of Connected Entity Data from Regional
Transmission Organizations and Independent System
Operators

Docket No. RM15-23-000

ORDER DENYING MOTION TO WITHDRAW THE PROPOSED RULE AND ISSUE
A NEW/REVISED/SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING

(Issued January 13, 2016)

1. On September 17, 2015, the Commission issued a Notice of Proposed Rulemaking (NOPR) to amend its regulations to require each regional transmission organization (RTO) and independent system operator (ISO) to electronically deliver to the Commission, on an ongoing basis, data required from its market participants that would (i) identify the market participants by means of a common alpha-numeric identifier; (ii) list their “Connected Entities,” which includes entities that have certain ownership, employment, debt, or contractual relationships to the market participants, as specified in the NOPR; and to (iii) describe in brief the nature of the relationship of each Connected Entity. The NOPR states the information is being sought to assist the Commission in its screening and investigative efforts to detect market manipulation, an enforcement priority of the Commission.

2. On October 28, 2015, a group of entities (Macquarie Energy LLC, GE Energy Financial Services, Inc., EDF Trading North America, LLC, and Morgan Stanley Capital Group, Inc.) filed a Motion for Technical Conference and Request to Postpone Comment Deadline.¹ The Motion for Technical Conference asked that a technical conference be

¹ Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM15-23-000 (Oct. 28, 2015) (Motion for Technical Conference).

established and the comment deadline extended.² By order dated November 10, 2015, the Commission granted the motion and extended the due date for the comments until January 22, 2016.³

3. Staff held the technical conference on December 8, 2015. During the technical conference, staff provided an overview of the NOPR, responded to a number of questions submitted prior to the technical conference, and engaged the panelists in a discussion on the NOPR and the potential benefits and burdens of particular aspects of the proposal. On December 10, 2015, staff's presentation during the technical conference and its responses to the questions submitted were added to the record in this docket.

4. On December 30, 2015, Industry Groups (including the American Forest & Paper Association, Canadian Electricity Association; Commercial Energy Working Group; Edison Electric Institute; Electricity Consumers Resource Council; Electricity Consumers Resource Council; Independent Power Producers of New York, Inc.; Industrial Energy Consumers Group; International Energy Credit Association; and the Retail Energy Supply Association) filed an Expedited Motion for the Commission to Withdraw the Proposed Rule and Issue a New/Revised/Supplemental Notice of Proposed Rulemaking on behalf of their members⁴. Filings in support of the Industry Groups' motion were

² Several entities made filings in support of the request. *See* Comments of the Commercial Energy Working Group in Support of Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM 15-23-000 (Oct. 29, 2015); Answer of Trade Groups in Support of Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM 15-23-000 (Oct. 30, 2015); Comments of the American Gas Association in Support of Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM 15-23-000 (Oct. 30, 2015); Comments of Independent Generation Owners & Representatives in Support of Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM 15-23-000 (Nov. 4, 2015); Answer of International Energy Credit Association in Support of Motion For Technical Conference and Request to Postpone Comment Deadline, Docket No. RM 15-23-000 (Nov. 5, 2015).

³ Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators, 80 Fed. Reg. 71755 (Nov. 17, 2015), 153 FERC ¶ 61,162 (2015).

⁴ Industry Groups' Expedited Motion for the Commission to Withdraw the Proposed Rule and Issue a New/Revised/Supplemental Notice of Proposed Rulemaking, Docket No. RM15-23-000 (Dec. 30, 2015) (Motion).

made by the Ares EIF Management, LLC (AEIF)⁵ and, jointly, by the National Rural Electric Cooperative Association (NRECA) and the American Public Power Association (APPA).⁶

5. While Industry Groups state in the Motion that they appreciate the additional information and guidance provided during the technical conference, they are concerned that the NOPR does not reflect that additional information, guidance, and questions upon which to comment that were provided during the technical conference and that “the NOPR does not memorialize the Commission’s intent to support and accept comments on a proposal that is substantively different from the NOPR as published in the *Federal Register*.”⁷ Industry Groups, AEIF, NRECA, and APPA also expressed concerns that there are still some aspects of the NOPR that require clarification and reconsideration, even after the technical conference.⁸ According to the Industry Groups, without either withdrawing and revising the NOPR or supplementing it with the clarifications provided by staff prior to receiving comments, the final rule could result in the reporting of inconsistent, incomplete, or unclear data. Therefore, Industry Groups request that the Commission: (i) grant their expedited motion; (ii) suspend the January 22, 2016 comment date; (iii) either withdraw and issue a new or revised NOPR, or supplement the existing NOPR such that it is fully reflected of the Commission’s intended proposal; and (iv) establish a new comment date.⁹

6. The Commission is not persuaded by Industry Groups that it should suspend the January 22, 2016 comment due date and, at this time, either withdraw the NOPR and revise it or issue a supplemental NOPR prior to receiving comments. The Commission emphasizes that it will accept and consider comments received by January 22, 2016 on the NOPR, the additional information and clarifications provided by Commission staff at the December 8, 2015 technical conference (and included in this docket on December 10,

⁵ Motion to Intervene and Comments on the Expedited Motion of Industry Groups of Ares EIF Management, LLC, Docket No. RM15-23-000 (Dec. 30, 2015) (AEIF Comments).

⁶ Answer of the Natural Rural Electric Cooperative Association and the American Public Power Association in Support of Industry Groups’ Expedited Motion, and Request for Expedited Ruling, Docket No. RM15-23-000 (Jan. 4, 2016) (NRECA Answer).

⁷ Motion at pp. 4-5. *See also* NRECA Answer at pp. 2-3.

⁸ Motion at pp. 5-6; AEIF Comments at p. 2; NRECA Answer at p. 2.

⁹ Motion at p. 9.

2016), and on whether the Commission should withdraw, or otherwise issue a supplemental or revised NOPR.¹⁰ After considering all of the comments received, the Commission will determine whether it is necessary to withdraw the NOPR, or whether it is appropriate to issue a supplemental or revised NOPR prior to issuing a final rule.

7. As Commission staff emphasized at the Technical Conference, it is important that the Commission receive detailed and specific written comments on the NOPR proposal so that it is able to make a well-informed decision as to how to proceed with this rulemaking. While the technical conference provided a useful forum for interested entities to raise their concerns with the proposal and to ask questions of Commission staff, it remains necessary for the Commission to receive written comments on the NOPR prior to determining what revisions are necessary, or whether issuing a supplemental or revised NOPR is appropriate or necessary, or whether issuing a final rule in this docket is appropriate. Moreover, as with any rulemaking, interested entities can seek additional clarifications and urge the Commission to reconsider aspects of the proposal in their comments.

The Commission orders:

The Industry Groups' Expedited Motion for the Commission to Withdraw the Proposed Rule and Issue a New/Revised/Supplemental Notice of Proposed Rulemaking is hereby denied, as discussed in the body of this order. Comments on the NOPR are due on January 22, 2016.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ By January 22, 2016, interested parties will have had more than four months to prepare their comments on the NOPR. Staff's presentation and question responses have been available in this docket since December 10, 2015.