

Client Alert

FERC Orders Notification of Change in Status by Utilities with Market-Based Rate Authority

On February 10, 2005 the Federal Energy Regulatory Commission (FERC) issued new regulations requiring that public utilities authorized to make wholesale power sales at market-based rates to notify the FERC of a change in the utility's status no later than 30 days after the occurrence of a "triggering event." *Reporting Requirements for Changes in Status For Public Utilities With Market Market-Based Rate Authority*, Docket No. RM04-14-000, 110 FERC ¶ 61,097 (February 10, 2005).

"Triggering Events" Requiring Notification of Change in Status

In its new regulations, the FERC requires that a change in facts upon which the Commission relied in granting a public utility market-based rates, including but not limited to:

- ownership or control of generation or transmission facilities or inputs to electric power generation; or
- affiliation with any entity not disclosed in an application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area will trigger the requirement to file a change in status notification.

The FERC's new regulations also provide that, to the extent that an affiliate of a public utility experiences a change in status, that change must be reported by the utility if it affects the factors relied on by the Commission in granting the public utility market-based rate authority.

Under the new regulations, increases in generation of less than 100 MW need not be reported immediately. However, market-based rate sellers must report as a change in status each cumulative increase in generation of 100 MW or more that has occurred since the most recent notice of a change in status filed by that seller, (i.e. multiple increases in generation that individually do not exceed the 100 MW threshold must all be reported once the aggregate amount of such increases reaches 100 MW or more).

Events Exempted From the Reporting Requirement

The FERC has specifically exempted the following events from the reporting requirement:

- intra-corporate reorganizations that do not otherwise have an impact on the Commission's authorization of market-based rates and are not otherwise reportable;
- the acquisition of additional generation constructed after July 1996 by a public utility with market-based rate authority, or its affiliates, where the public utility or its affiliates own or control only post-1996 generation in the control area;
- purely financial transactions involving future swaps and derivatives that do not provide for physical delivery because these contracts need not be reported in the Electric Quarterly Reports;

- decrease in ownership or control due to dispositions of generation, transmission or inputs to production, to the extent such transaction decreases the applicant's generation market power as measured by the indicative screens; and
- a change in circumstances based on an action taken by a competitor (such as a decision to retire a generation unit or take transmission capacity out of service) or natural events (such as hydro-year, higher wind generation or load disruptions due to adverse weather conditions).

Inclusion of Reporting Requirement in Market-Based Tariffs

FERC's new regulations require market-based rate sellers to include the reporting requirement in their market-based rate tariffs either at the time that they file any amendment to their tariffs, when they report a change in status under the new regulations, or when they file their three-year updated market power analysis, whichever occurs first.

For Additional Information

This client alert can be found, together with other recent Chadbourne & Parke LLP client alerts, at www.chadbourne.com/publications/sub_Publications.html. If you have any questions regarding FERC's new regulations, please contact any of the following:

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