

for” phrase in the definition for that ancillary service. In addition, the Commission asks whether other ancillary services should be identified in the EQR. Notice PP 11-12.

EEI and Our Members Have a Direct Interest In This Proceeding.

EEI is the association of United States shareholder-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. members serve 95% of the ultimate customers in the shareholder-owned segment of the industry, and represent about 70% of the U.S. electric power industry.

As the Commission explains in its Notice, the Commission established the EQR reporting requirement in Order No. 2001, which requires companies that are subject to the Commission’s regulations under Federal Power Act (FPA) section 205 to file quarterly reports identifying the utility on whose behalf the report is being filed, summarizing pertinent data about the utility’s currently effective contracts, and summarizing data about wholesale power sales the utility made during the reporting period. The Commission has adopted a general regulation at 18 C.F.R. 35.10b allowing it to develop and modify software and guidance as needed to implement the EQR reporting requirement. On September 24, 2007, the Commission adopted the EQR Data Dictionary that is the subject of this notice, to collect and consolidate definitions of terms and values used in filing EQR data, and on December 21, 2007, the Commission issued a related order on rehearing.¹

EEI’s members comprise the primary class of public utilities that are subject to the Commission’s FPA section 205 jurisdiction and EQR reporting requirement.

¹ *Revised Public Utility Filing Requirements*, Order No. 2001-G, 120 FERC ¶ 61,270 (2007), *order on reh’g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007).

Therefore, EEI and our members have a direct interest in this proceeding and will be directly affected by any changes to the Data Dictionary.

The Commission Should Clarify that the Ancillary Services Reporting Requirement Applies Only to Contracts and Third Party Transactions, Not Transmission Transactions.

There are two sets of entities that sell ancillary services – “third parties” and “transmission functions” (i.e., independent transmission companies, ISO/RTOs, and the transmission functions of vertically integrated utilities). Since EQR reporting began, the Commission has never required transmission functions to report ancillary service sales in the Transactions portion of the EQR. That is, when a transmission function has provided transmission service under an open access transmission tariff (OATT) or a pre-OATT unbundled transmission contract, it has not needed to report, as a Transaction, any sales of ancillary services that were associated with its provision of transmission service. EEI is concerned that the suggested changes to the Appendix A definitions may not clearly enough reflect this existing policy, which was established in Order No. 2001.²

Under Order No. 2001, a transmission function does have to report on the Contracts portion of its EQR if a transmission contract includes ancillary service products. But the Commission quite clearly stated, at paragraphs 269-272 of the order, that transmission functions were not to report ancillary service sales, in response to a request by the Southern Company for “clarification that no transaction information is required for OATT ancillary services.” The Commission explained that “ancillary service transaction data associated with transmission need not be reported when the transmission services are provided on an unbundled basis.” That is, where the

² *Revised Public Utility Filing Requirements*, Order No. 2001, 99 FERC P 61,107 (2002).

transmission function was providing ancillary services in conjunction with transmission service, the ancillary service sales were not reportable as transactions, because the ancillary services were provided by the transmission function as part of the transmission service.³

In contrast, when sales of ancillary services are made by third parties, including a merchant function affiliated with a transmission function, the sales are reportable transactions. Indeed, in Order No. 697, the Commission confirmed that through its current EQR requirement, “*third party providers of ancillary services provide information regarding their ancillary services transactions for the quarter, including the ancillary service provided, the price, and the purchaser.*” Order No. 697 at P1058 (emphasis added). The Commission defined third-party providers as parties “other than the transmission provider in a particular transaction.” *Id.* at P1047.

Although the Notice discusses only “third-party sellers of ancillary services” and does not change the existing exemption afforded transmission functions established in Order No. 2001, the language the Commission has proposed to add to the EQR Data Dictionary is rather confusing and could be misinterpreted by those unfamiliar with Order No. 2001.⁴ Again, the Commission proposes to add to the definition for each of the four relevant ancillary services the phrase “Reported for power sales and transmission-related transactions.” But all ancillary services, whether sold by a transmission function or a merchant function, are arguably “transmission-related.” There is no need for ancillary services absent a need for transmission service.

³ Such sales would include cost-based sales by transmission functions of Transmission Owners, when such sales are made in their control area under their transmission or ancillary service tariffs.

⁴ Had the Commission indicated a change in the treatment of transmission function sales of ancillary services, EEI would object to such change. But such a change would presumably only be made subject to a notice and comment rulemaking.

Because the Commission has expressed no intent in the Notice to change the rule established by Order No. 2001 regarding ancillary service sales by the transmission function, the Data Dictionary should reflect that the Commission is only clarifying the obligations of third-party providers. EEI proposes that the following language be used instead of the language proposed in the Notice:

For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (*i.e.*, non-transmission function) are reported.

This clarification would be consistent with the Notice's Summary section, which says that "[i]f adopted, this proposal will make reporting this information less burdensome and more accessible." If the policy established in Order No. 2001 were in fact being changed by the Notice, the increase in burden would be immense. We do not believe the Commission intended any such change, and we encourage the Commission to clarify that it did not.

In conjunction with this clarification, the Commission should clarify the appropriate manner to report the Product Type Name for ancillary service sales in the Contracts portion of the EQR. A Product Type Name of "T" means a "product sold under a FERC-approved transmission tariff." Ancillary services reported by a transmission function thus should be labeled "T" in the Contracts portion of the EQR. In contrast, a merchant function reporting on a contract that identifies ancillary service products should characterize the Product Type Name as cost-based ("CB") or market-based ("MB"), as factual circumstances dictate. This approach would provide added clarity.

The Commission Should Not Add More Ancillary Services to the EQR at This Time, But Should Clarify that Energy Imbalance and Generator Imbalance Can Be Ancillary Services.

In the Notice, the Commission invites comments on whether other ancillary services beyond those identified in Order No. 890 should be explicitly included in the EQR. EEI recommends against including any other ancillary services in the EQR at this time.

On the other hand, the Data Dictionary lists and defines the term Energy Imbalance as a permissible Product Name, and the Commission proposes to add Generator Imbalance as a Product Name. However, unlike definitions in the Data Dictionary for Black Start Service, Reactive Supply and Voltage Control, and others, the definition for Energy Imbalance and the proposed definition for Generator Imbalance do not indicate that they also may be Ancillary Services. Energy Imbalance and Generator Imbalance can be provided as ancillary services under the OATT service agreement (*see* Schedule 4 of the pro forma OATT) or under other types of transmission agreements. These services also can be provided under power sales agreements or other arrangements. Without clarifying that Energy Imbalance and Generator Imbalance can be an ancillary services and replacing the “Reported for power sales and transmission-related transactions” language with the language we have proposed above, the Data Dictionary is not clear that transmission functions do not need to report ancillary service Energy Imbalance and Generator Imbalance transactions.

EEI encourages the Commission to clarify that Energy Imbalance and Generator Imbalance can be an Ancillary Services, and that Energy Imbalance or Generator Imbalance services provided under a transmission contract are not reportable transactions

in the EQRs. Only ancillary services provided by a marketer are reportable transactions, though both marketers and transmission functions must list them in the Contracts section of the EQR.

The Commission Should Delete the Contract Commencement Date Field from the EQR, or At Least Modify the Field Name and Clarify that the Field Applies Only Prospectively to Significant Amendments After Adoption of its Current Meaning.

In Order No. 2001-H, at paragraph 11, the Commission revised the definition of “Contract Commencement Date” to mean the date of the currently reported version of each contract. The Commission indicated that the Contract Commencement Date needs to be updated each time any of the data reported in the Contract portion of the EQR for that contract changes, including, for example, the name of the seller or other fields listed in the EQR for that contract. Previously, EQR filers typically completed the Contract Commencement Date field with the original effective date of a contract.

In Order No. 2001-H, at paragraphs 12-13, the Commission explained that it was making this change in the definition to assist the Commission and the public in determining when contract terms reported in the EQR were put in place, in particular to better understand the market conditions at the time the contract was put in place. This reasoning indicates that the Commission is concerned about power sales, because “market conditions” are not particularly relevant for transmission and interconnection contracts. But the vast majority of power sale contracts do not contain fixed power sale prices. Thus, the Transactions section of the EQR, not the Contracts section of the EQR, must be referenced to understand what market conditions may have led to the price terms. Indeed, changing the Contract Commencement Date could be deceptive if it is to be used to assess market conditions at the time the current terms took effect. Assume, for

example, that a fixed-rate power sale was entered into in 1995 and the power price has remained unchanged but the name of the seller changed on January 1, 2008. The revised Contract Commencement Date of January 1, 2008 will not tell the EQR reviewer anything about market conditions at the time the contract was entered into. EEI also believes that creating the possibility that a Contract Commencement Date will be decades later than the Contract Execution Date will be rather confusing for those reviewing EQRs.

Therefore, EEI encourages the Commission to delete the “Contract Commencement Date” field from the EQR. For the reasons just discussed, the field as revised is misleading and not likely to be useful.

If the Commission does retain the field, we encourage the Commission to confirm that the field needs to be completed in conformance with the new definition only prospectively, i.e., for changes to the EQR information for a given contract that occur after January 1, 2008. That is, when filers make their first EQR submissions under the new Data Dictionary, they do not need to go back through all of their contracts and confirm on what date the current terms and conditions that are being reported in EQR took effect and correct the existing Contract Commencement Date, if necessary, to reflect the most recent prior amendment. Because the new definition set forth in Order No. 2001-H differs significantly from the previous definition, this review would be required for every contract listed in the EQR. For example, assume a contract had a September 1, 1965 effective date and a thirty year term, but on July 1, 1990 the utility extended the term to fifty years. When the utility first completed its EQR, it would have reported a Commencement Date of 09/01/1965 and a Contract Termination Date of 09/01/2015.

EEI seeks to confirm that in its first quarter 2008 EQR, the Commencement Date may remain 09/01/1965, even though 07/01/1990 is the date of the most recent amendment that altered a reportable contract term. In contrast, if the same contract is amended on June 1, 2008 to revise the term, the Contract Commencement Date on the second quarter 2008 EQR will be altered to 06/01/2008. Such an approach will reduce significantly the burden associated with the new definition of Contract Commencement Date. Certainly, if filers wish to revise the Contract Commencement Date in their first quarter 2008 EQR to reflect the most recent date of a reportable amendment they may, but they should not be required to do so.

Additionally, the Commission also should consider refining its proposal as to what triggers the need to alter a Contract Commencement Date. The Commission should require the Contract Commencement Date to be changed only if the company would have to make a FERC filing if the contract at issue otherwise was filed at FERC. For example, if the Customer Company Name, Company DUNS Number, or Customer DUNS Number changed in a contract that is on file at FERC, there would be no legal requirement under the FPA to file a change to the contract, and the contract would not receive a new effective date from FERC. In contrast, if a Seller Company Name changed, a FERC filing would be required if the contract was on file. Thus, if a Seller Company Name changes, regardless of whether the contract is on file, the Contract Commencement Date should be changed. But if only the Customer Company Name or other such information that would not trigger a filing requirement changes, the Contract Commencement Date should not change. This approach results in consistency between EQR requirements and FERC filing requirements.

Finally, if the Commission retains the field, EEI encourages the Commission to change the name of the field from “Contract Commencement Date” to “Latest Modification Date.” This would more accurately reflect the information being reported in the field and would help to reduce confusion.

Conclusion, Contact Information

If the Commission has any questions regarding these comments, please contact either of the undersigned or Roger Kranenburg at rkranenburg@eei.org or (202) 508-5183. The three of us are the contacts for purposes of this filing.

Respectfully submitted,

- signature -

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