

## ***I. Definition A***

- *Are there jurisdictional implications if connected entities are not subject to FERC jurisdiction?*

No. All market participants themselves are subject to FERC's jurisdiction. And no obligations are imposed on any entities other than the market participants and the RTOs and ISOs.

- *Why is a 10% threshold used for ownership interest, instead of 50%? Why include entities that have no control?*

This question raises an important point. The information sought under this NOPR is for the purpose of screening for market manipulation. Scienter, or intent, is a necessary element of manipulation, and therefore it is important to look for motivations in the screening process. It is not necessary to have a controlling interest in an entity to have a motive to favor that entity. A significant financial interest could provide such a reason, even if it did not confer control. Ten percent is a customary cutoff for this purpose and is used in many affiliate definitions.

- *Why are passive investors included?*

They are included because we are concerned with benefit to an entity, as well as control over an entity. However, we are sensitive to concerns about the burden this might impose, and welcome comments with specific examples to help us assess whether the burden might outweigh the benefits of acquiring information about passive investors.

- *How should situations where there are trustees and general partners be handled? Are they reportable, or are the beneficiaries and limited partners reportable?*

In the case of a partnership, it would be the partnership itself that would be reported. In the case of a trust, it would be the trust if it is a legal entity under the controlling state law, otherwise the beneficiaries.

- *What about multiple classes of equity interests with difference in voting and financial rights?*

All voting interests would be counted as voting stock.

- *If an intermediate owner has no business activity but is established only for reasons of tax, partnership, or corporate law, are they still connected entities?*

They would be connected entities if they otherwise meet the definition.

- *Are entities outside the US, who do not do business in the US, included?*

All entities are included. For instance, it is quite possible that a foreign entity might have control over the market participant's activities, or over the parent of the market participant. However, we welcome comments on whether further refinements to the proposed definition might be appropriate.

- *Are entities that do not do any business in the electric markets included? Par. 29 speaks of "need not be engaged in the same markets" as the MP.*

Entities outside the electric markets are included, as they may have interests that are affected by actions of the market participant. For instance, they may have positions in financial markets such as ICE. Or, the parent of a market participant might not do business in the electric markets, but might have other subsidiaries that do.

- *What about the daisy chain problem? If A is connected to B, and B is connected to C, does that make A connected to C?*

No. If an entity is not connected under the definition itself, it is not a connected entity. However, it should be noted that under the definition, an entity that has indirect control over 10% or more of the ownership interests of the market participant would be a connected entity. This may or may not arise in the example given.

- *Does the market participant need to report only upstream owners?*

No. The second clause of the definition covers reporting for downstream ownership.

- *What is meant by "indirect" control? Does this apply even if the power to vote is not present?*

Indirect means through an intermediary. For instance, if one entity owned 100% of a second entity, and the second entity owned 10% of the ownership instruments of the market participant, that would be indirect control under the definition. This could occur even if the power to vote is not present, depending on the facts. For instance, persons holding positions of authority could conceivably exercise control without having a voting interest.

- *What is the difference between controlling more than 10% and holding with a power to vote more than 10%?*

In most cases, these will be the same. But it is possible that one entity could be the legal holder of the power to vote, but be controlled by another entity or person. This would arise in a trust situation, if the trust owned the stock but under the trust instruments, the beneficiary had the power to direct investments.

## **II. Definition B**

- *Clarification is sought as to the scope and definition of “trader” in category B. Is it an individual who seeks to make a profit by purchasing and selling physical and financial energy, capacity or reserves? Or does it go beyond that? Does it include those working only with the ISO market interface system? Or those involved in trading functions unrelated to the organized wholesale energy markets, such as trading emissions allowances or renewable energy credits?*

A trader is the person who makes the decisions, or devises the strategies, for buying and selling physical or financial products which are or may be traded in the organized electric markets. It would not include a person who simply “pushes the button” to make a trade, if that person has no control over or input into the decision-making process. It should be noted that we have already received comments which propose revised or new definitions for the regulatory text. We welcome these comments, and we hope others of you will provide us with suggested changes to any parts of the regulatory text that you believe would be clearer or more appropriate than what has been proposed in the NOPR.

- *Does “employee” include a contractor?*

Yes, if the contractor performs the designated functions.

- *What is the definition of a compliance officer?*

A compliance officer is the person primarily responsible for overseeing and managing regulatory compliance issues for the organization.

- *Are the employees of connected entities to be reported, or only employees of the market participant?*

The market participant needs to report only its own employees.

## **III. Definition C**

- *Why include holders of a profits interest, and not just ownership interests?*

As mentioned earlier, the motivation to favor an entity can be as useful in ferreting out manipulation as the ability to control the actions of that entity.

- *Does the concept of a convertible debt holder include purely financial entities, such as mortgagees, who would acquire an ownership interest only upon a default in payment?*

Yes. However, we welcome suggestions as to restrictions to the concept that might reduce the reporting burden but still include entities that have a motive to influence the actions of a market participant, or the actions of others that affect the market participant.

- *Are employee incentive plans, which grant stock options to employees, included in the concept of convertibility?*

Only if the aggregate percentage threshold of 10% of the ownership interests in the market participant is reached.

- *Is a "tax equity investor" in a renewable project, which acts like a financier, included in the concept of a debt holder?*

It would depend on the particulars of the governing instrument. If the investor could acquire ownership interest upon a default, yes. However, the de minimis exception might come into play in such a case. We look forward to comments discussing what a suitable threshold for "de minimis" might be.

- *What is a "structured" transaction?*

This would be a transaction which provides an indirect means to potentially acquire an ownership interest. The term itself is probably superfluous, as the key aspect of the definition is that the transaction must give the entity the right to share in the market participant's profitability, or is convertible to an ownership interest that gives it 10% or more of the ownership interests of the market participant. We welcome comments on textual changes to streamline the definition.

#### **IV. Definition D**

- *What are the defining characteristics of an agreement that creates a connected entity relationship?*

If the agreement confers control over the trading activities, or over the unit commitment decisions, of the market participant. Therefore, fuel arrangements, tool sharing arrangements, physical maintenance arrangements, and standard power purchase agreements, would not be included. It appears from a number of the questions we received that including examples in the

definition may have caused more confusion than it helped. We encourage comments on this aspect of the definition, and as to whether examples should be excluded entirely from the regulatory text.

- *What is meant by “management of resources”? And are the resources electric resources only?*

Management for this purpose would refer to operational control; for instance, if the agreement conferred the power to commit or decommit a unit. In that case, the entity entering into the agreement would be a connected entity. And yes, the resources are electric resources only, and the NOPR covers only activities in the organized electric markets, not in the gas markets.

- *Are “resources that participate in Commission-jurisdictional markets limited to generation and transmission?”*

That would certainly be the vast majority of the resources. Other resources might also qualify, such as ancillary service providers.

- *What does “participate in Commission-jurisdictional markets” include? Is it only buying and selling power, or does it include FTRs, virtuals, owning/operating QFs, buying wholesale power, owning and operating a pipeline, etc.*

It includes participating in any or all of the RTO or ISO’s markets, physical and financial. However, under the definition, the agreement must also include control of the electric resources that participate in the markets to create a connected entity relationship. In the examples given, owning and operating a pipeline is outside the scope of the electric markets.

- *Does category D include contracts covering control of gas resources that participate in Commission-jurisdictional gas markets? The language does not specify electric only. What about an LDC that has a marketing affiliate that either supplies or is an energy manager for a participant in an RTO or ISO?*

Gas resources are not included. In the example given, merely supplying gas to a generator would not confer control.

- *If a market participant contracts with a pipeline for transportation, does the pipeline become a connected entity? What if the asset manager is an “affiliate” of the market participant, or owned by the same parent?*

No. A contract for transportation, without more, does not confer control.

- *For LDCs and gas suppliers that have the ability by contract to curtail gas service to a generator for operational reasons, does such a contract fall under category D? What about if the service can be curtailed for economic reasons?*

If the curtailment is for operational reasons, such as to protect the pipeline, that would be outside the scope of category D. However, if service could be curtailed for economic reasons, then the contract confers an element of financial control over the generator, and would be included.

- *Do joint action agencies that are market participants fall under this rule? They have exemptions for Standards of Conduct and EQR filings. Should they also be exempted here?*

All market participants are included.

- *What about participants in the EIM market? Are they considered to be market participants in an ISO or RTO for purposes of this rule?*

Under the CAISO tariff, participants in the EIM market are considered to be market participants in CAISO and subject to its applicable tariffs. Therefore, they would be considered market participants for purposes of this proposed rule.

- *Is ERCOT included as an RTO or ISO? There was no mention of excluding it.*

ERCOT, which is not a Commission jurisdictional market, is not included.