

INSIGHTS

FERC Seeks Industry Input on Uniform Definition of "Affiliate"

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Seeking to clear up an apparent inconsistency in the definition of an "affiliate" in its regulations, on August 29 FERC issued an [order](#) asking for the industry's input on a uniform definition of "affiliate" for purposes of the agency's market-based rate program. There are currently two differing definitions for affiliate: For companies that qualify as Exempt Wholesale Generators (EWG), a company or person is considered an affiliate of the EWG if it owns or controls 5% or more voting interest in the EWG. For non-EWG companies, the current affiliate threshold is 10%.

FERC had reiterated this distinction in its [Order No. 697-A](#), issued April 21, 2008. Several interests requested rehearing, arguing that the inconsistency unnecessarily placed disparate burdens on companies that hold EWGs. These parties also argued that, although the Federal Power Act requires FERC to use a 5% threshold for certain transactions involving EWGs, FERC is not required to use the 5% threshold for a general assessment of market power or market concentration. In its order, FERC appeared to agree, and proposed to adopt a single definition of affiliate, with the 10% threshold, that would apply to both EWGs and non-EWGs. Comments on this issue are due October 20.