

167 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Ambit Northeast, LLC

Docket No. ER19-158-002

ORDER ON REQUEST FOR REHEARING AND STAY

(Issued June 20, 2019)

1. On January 29, 2019, the Commission issued an order granting Ambit Northeast, LLC (Ambit) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and requiring refunds.¹ The Commission also provided notice that it intended to deny Ambit's claim of privileged treatment with respect to ownership and affiliate information and stated that Ambit's filings would be placed in the public record of the proceeding.² On February 6, 2019, Ambit sought rehearing, contending that the Commission erred in rejecting Ambit's claim that certain information was privileged. Ambit also requested to stay the public release of the contested information pending the Commission's decision on rehearing and, if the Commission affirms the rejection of Ambit's claim on rehearing, an additional 60 days. For the reasons discussed below, we deny Ambit's request for rehearing and dismiss, in part, and deny, in part, its request for a stay.

I. Background

2. On October 22, 2018, and as amended on November 30, 2018, Ambit filed an application, pursuant to section 205 of the Federal Power Act (FPA),³ for market-based rate authority.⁴ When considering whether to grant market-based rate authority, the

¹ *Ambit Northeast, LLC*, 166 FERC ¶ 61,066, at P 30 (2019) (January 2019 Order).

² *Id.* P 30 and ordering paragraph (F).

³ 16 U.S.C. § 824d (2012).

⁴ Application (Oct. 22, 2018); Amended Application of Ambit Northeast, LLC and Addressing the Commission's November 21, 2018 Delegated Letter Order (Nov. 30, 2018) (Amended Application).

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Commission examines whether an applicant and its affiliates have, or have adequately mitigated, horizontal and vertical market power.⁵ The Commission's market-based rate regulations define "affiliate" as "[a]ny person that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company."⁶

3. In its application, Ambit indicated that it is an indirect, wholly-owned subsidiary of Ambit Holdings, LLC,⁷ but filed as privileged the identity of those owners who hold more than 10 percent of Ambit Holdings, LLC.⁸

4. As explained in the January 2019 Order, Public Citizen filed comments on October 29, 2018, pointing out that Ambit had not justified its claim of privilege and had failed to file a required protective order. On November 2, 2018, Ambit filed a Motion for the Adoption of a Protective Order.⁹ Ambit claimed that the identity of individual

⁵ *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Public Citizen Inc. v. FERC*, 567 U.S. 934 (2012).

⁶ 18 C.F.R. § 35.36(a)(9)(i) (2018).

⁷ Ambit indicated that it is a wholly owned subsidiary of Ambit Energy Holdings, LLC, which is a wholly owned subsidiary of Ambit Holdings US, LLC, which is a wholly owned subsidiary of Ambit Holdings, LLC. Application at 2; Amended Application at 3.

⁸ Application at 2; Amended Application at 3-4.

⁹ The protective order was adopted on November 9, 2018. *Ambit Northeast, LLC*, Order of the Chief Judge Adopting Protective Order and Waiving Answer Period (Nov. 9, 2018).

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shareholders is privileged because, as a private company, it does not customarily release such information to the public.¹⁰

5. On November 21, 2018, the Director of the Division of Electric Power Regulation - West issued a letter requesting that Ambit explain whether it opposed the release of the information for which Ambit had claimed privileged treatment under exemption 4 of the Freedom of Information Act (FOIA) and the rationale for its position.¹¹ On November 23, 2018, Public Citizen filed additional comments noting that Ambit's ownership information had already been disclosed in filings from a lawsuit.¹²

6. On November 30, 2018, Ambit filed an amended application stating that it opposes the public release of the information and that the information should remain confidential and subject to privileged treatment under FOIA exemption 4.¹³ Ambit also indicated that it had inadvertently omitted an affiliate relationship in its original application.¹⁴ On December 10, 2018, Ambit also filed an answer asserting that Public Citizen incorrectly contends that the information Ambit marked as privileged is publicly available. Ambit stated that the discovery response in a lawsuit identified parties that have some interest in Ambit but does not identify such parties' ownership percentages or whether any such interests exceed the 10 percent voting interest threshold that denotes an affiliate under the Commission's regulations.¹⁵ Ambit argued that, because it would not customarily release its ownership information, it should remain privileged.¹⁶

7. In the January 2019 Order, the Commission provided notice that it intended to deny Ambit's claim of privilege and stated that it would place the entirety of Ambit's

¹⁰ Motion for the Adoption of a Protective Order at 1 (Nov. 2, 2018).

¹¹ *Ambit Northeast, LLC*, Docket No. ER19-158-000 (Nov. 21, 2018) (delegated order). FOIA exemption 4 applies to trade secrets and commercial or financial information. 5 U.S.C. § 552(b)(4) (2012).

¹² Public Citizen Additional Comments at 1-3 and Exhibit C (Nov. 23, 2018).

¹³ Amended Application at 8-10.

¹⁴ *Id.* at 4.

¹⁵ Ambit Motion for Leave to Answer and Answer to November 23, 2018 Additional Comments by Public Citizen at 3 (Dec. 10, 2018).

¹⁶ *Id.*

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Application and Amended Application in the public record no sooner than 10 days following the issuance of the January 2019 Order.¹⁷

II. Request for Stay

8. Ambit requests that the Commission stay Commission action to publicly disclose the information that Ambit marked as privileged “given the irreparable harm that Ambit would suffer.”¹⁸ Ambit asks that the Commission stay disclosure during the pendency of Ambit’s rehearing and, if the Commission denies its rehearing request, extend the stay for an additional 60 days thereafter.¹⁹

9. The Commission grants a stay when “justice so requires.”²⁰ In determining whether this standard has been met, the Commission considers several factors, including: (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay is in the public interest.²¹ If the party requesting the stay is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine other factors.²²

10. In order to support a stay, the movant must substantiate that irreparable injury is “likely” to occur.²³ The injury must be both certain and great, and it must be actual and

¹⁷ January 2019 Order, 166 FERC ¶ 61,066 at P 30 & ordering para. (F).

¹⁸ Rehearing Request at 2.

¹⁹ *Id.* at 1.

²⁰ *Tennessee Gas Pipeline Co., L.L.C.*, 157 FERC ¶ 61,154, at P 4 (2016) (citing *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,111, at P 9 (2016); *Enable Gas Transmission, LLC*, 153 FERC ¶ 61,055, at P 118 (2015); *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183, at P 9 (2015)).

²¹ Ensuring definiteness and finality in our proceedings also is important to the Commission. See *Constitution Pipeline Co.*, 154 FERC ¶ 61,092, at P 9 (2016); *Enable*, 153 FERC ¶ 61,055 at P 118; *Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,022, at P 13 (2012).

²² See, e.g., *Algonquin Gas Transmission*, 156 FERC ¶ 61,111 at P 9.

²³ See *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183 at P 10 (citing *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

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not theoretical. Bare allegations of what is likely to occur do not suffice.²⁴ The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.²⁵ Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.²⁶

11. We dismiss as moot Ambit's request for stay until the Commission acts on rehearing, as the Commission has not yet released Ambit's ownership information. As for Ambit's request for an additional stay, we note that Ambit asserts that Ambit itself would suffer irreparable harm. But Ambit does not explain why it would be injured if the Commission released its owners' names or otherwise address any of the factors used by the Commission to evaluate requests for stay. For this reason, we deny Ambit's request for stay but note, as discussed below, that the Commission will release this information no sooner than 10 calendar days from issuance of this order.

III. Rehearing Request

12. Ambit seeks rehearing of the Commission's ruling in the January 2019 Order that it intended to release information disclosing Ambit's upstream owners and affiliates. Ambit contends that the Commission failed to provide an adequate explanation for its denial of Ambit's claim of privilege.²⁷ Ambit claims that the ownership information is privileged and therefore exempted from disclosure under FOIA. Specifically, Ambit argues that this information is protected under: (1) FOIA exemption 4, because it is financial information regarding the owners of a private company that is not customarily released to the public; and (2) FOIA exemption 6, because it is information about a private individual's personal finances.²⁸

A. Commission Process

13. Ambit states that the Commission invoked 18 C.F.R. § 388.112(d) as authority to release its ownership information within 10 days from the January 2019 Order,²⁹ but that

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Rehearing Request at 5.

²⁸ *Id.* at 2.

²⁹ *Id.* at 5 (citing 18 C.F.R. § 388.112(d) (2018)).

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the Commission actually cannot release its information until the Commission satisfies the notification requirements in 18 C.F.R. § 388.112(e).³⁰

14. A document for which privileged treatment is claimed is maintained as nonpublic until such time as the Commission determines otherwise.³¹ Although such information may be requested by the public pursuant to FOIA, the Commission retains the right to make determinations with regard to any claim of privilege, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.³² Section 388.112(d) of the Commission's regulations states that when the Commission is considering releasing information for which privileged status has been claimed, an official from the Commission will notify and give the submitter at least five calendar days to comment on the request.³³ Section 388.112(e) states that notice of a decision by the Commission to deny a claim of privilege will be given at least five calendar days before disclosure and will briefly explain why the person's objections to disclosure are not sustained by the Commission.³⁴

15. The purpose of the Commission's regulations is to give notice to filers seeking privileged treatment when the Commission is considering whether to release the information to the public and to give filers an opportunity to object to disclosure.³⁵ The Commission has fulfilled this purpose. Commission staff requested that Ambit justify its request for privileged treatment³⁶ and the Commission indicated in the January 2019 Order that it intended to deny Ambit's claim of privilege no sooner than 10 calendar days

³⁰ *Id.* (citing 18 C.F.R. § 388.112(e)).

³¹ 18 C.F.R. § 388.112(c)(i).

³² *Id.*

³³ *Id.* § 388.112(d).

³⁴ *Id.* § 388.112(e). *See, e.g., ANR Pipeline Co.*, 101 FERC ¶ 61,096, at P 6 (2002) (making public certain portions of non-conforming negotiated rate agreements).

³⁵ *Revision of Freedom of Information Act Rules*, 53 Fed. Reg. 1469-01, at 1471 (Jan. 20, 1988), Order No. 488, FERC Stats. & Regs. ¶ 30,789, at 30,975 (1988) (cross-referenced at 42 FERC ¶ 61,009) (establishing pre-disclosure notification procedures for entities claiming FOIA exemption 4 for confidential commercial information).

³⁶ November 21 Letter at 2-3.

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after the issuance of that order.³⁷ In this order, the Commission fully considered all of Ambit's objections to disclosure in the record, including the objections in its request for rehearing, and will not sustain them for the reasons discussed below. In addition, the Commission will not release the contested information before 10 calendar days following the issuance of this order. Because Ambit was notified that the Commission intended to deny its request for privileged treatment and the Commission has fully considered its objections to disclosure and explained, more than five calendar days prior to disclosure, why Ambit's objections to disclosure are not sustained by the Commission, our requirements have been met.

B. Ambit's Claim of Privilege

16. Ambit argues that FOIA exemptions 4 and 6 bar the Commission from releasing this information. However, the Commission is not releasing this information in response to a FOIA request.³⁸ As stated in the January 2019 Order, the Commission is releasing Ambit's upstream ownership information pursuant to its discretion to carry out its jurisdictional responsibilities.³⁹ The Commission requires an applicant seeking market-based rate authority to provide certain information to the Commission, including identifying its affiliates and upstream ownership with greater than a 10 percent ownership interest, in order for the Commission to examine whether the applicant and its affiliates have, or have adequately mitigated, horizontal and vertical market power.⁴⁰ As this information is central to the Commission's analysis whether to grant a request for

³⁷ January 2019 Order, 166 FERC ¶ 61,066 at P 30 and ordering paragraph (F).

³⁸ See 5 U.S.C. §§ 552(a)(3)(A), 552(b) (explaining that an agency makes records available upon request unless those records fall within an exemption); see also 18 C.F.R. § 388.112(a) (explaining that "any person submitting a document to the Commission may request privileged treatment for some or all of the information . . . it claims is exempt from the mandatory public disclosure requirements of" FOIA); see also *id.* § 388.112(b) (requiring a person requesting privileged treatment to include in its filing a justification for such request).

³⁹ January 2019 Order, 166 FERC ¶ 61,066 at P 30 (citing 18 C.F.R. § 388.112(c)(i) (2018)). See also *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132 n.1 (D.C. Cir. 1987) (noting that the release of information may be justified in the exercise of an agency's discretion, even though the data fall within one or more of the statutory FOIA exemptions).

⁴⁰ 18 C.F.R. § 35.37 (2018).

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market-based rate authority, releasing this information allows the public to understand the facts the Commission examines in making its determination.

17. Nonetheless, as discussed below, neither of the FOIA exemptions invoked by Ambit would exempt Ambit's information from disclosure.

1. FOIA Exemption 4

18. FOIA exemption 4 protects from disclosure "commercial information" obtained from a non-government source, so long as that information is "privileged or confidential."⁴¹ The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) explained in *National Parks & Conservation Association v. Morton* that commercial or financial information is confidential if the disclosure of the information is likely to either: (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.⁴²

19. The identity of Ambit's owners does not fall into either category. Ambit does not claim that releasing this information would harm its competitive position, but argues such disclosure may discourage full candor by future applicants, thereby impairing the Commission's ability to collect this information in the future.⁴³ The underlying policy rationale for withholding such a document is that if an entity is concerned that information it submits will be released to the public, it may not provide the same level of detail that it otherwise would.⁴⁴ But this concern is not present when a submission is required.⁴⁵ Here, Ambit had an obligation to submit its ownership information because it chose to engage in a regulated activity, i.e., the sale of electric energy, capacity, and

⁴¹ 5 U.S.C. § 552(b)(4) (2012); 18 C.F.R. § 388.107(d) (2018) (implementing FOIA exemption 4).

⁴² *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

⁴³ Rehearing Request at 5.

⁴⁴ *National Parks and Conservation Ass'n v. Morton*, 498 F.2d at 767-68.

⁴⁵ See *id.* at 770 (explaining there was no danger that public disclosure would impair the government's ability to obtain information when concessioners were required to submit the requested information). See also *People for the Ethical Treatment of Animals v. U.S. Dep't of Ag.*, No. 03-195, 2005 WL 1241141, at *5-6 (D.D.C. May 24, 2005) (finding no impairment because submission was required by federal regulations).

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ancillary services at market-based rates.⁴⁶ Moreover, Ambit's generalized assertion that the government's ability to collect this information will be impaired is not enough to establish that disclosure of Ambit's ownership information in this proceeding will impair the Commission's ability to obtain necessary information in the future.⁴⁷

20. Ambit next argues that its owners' identities should remain confidential because, as a private company, Ambit would not itself release this information to the public.⁴⁸ Ambit points to *Critical Mass Energy Project v. Nuclear Regulatory Commission*, where the D.C. Circuit held that information submitted voluntarily is confidential under FOIA exemption 4 if it is "of a kind that would customarily not be released to the public by the person from whom it was obtained."⁴⁹ In *Critical Mass Energy Project v. NRC*, the information at issue was provided voluntarily, that is, not pursuant to any mandate.⁵⁰ But here, as discussed above, Ambit had an obligation to submit its ownership information as part of its request for authorization for market-based rates.⁵¹

2. FOIA Exemption 6

21. FOIA exemption 6 provides that FOIA "does not apply to matters that are...personnel and medical files and similar files the disclosure of which would

⁴⁶ Order No. 697-A, 123 FERC ¶ 61,055 at P 181 n.258.

⁴⁷ See, e.g., *Niagara Mohawk Power Corp. v. U.S. Dep't of Energy*, 169 F.3d 16, 18 (D.C. Cir. 1999) ("[W]e have more than once held that such conclusory and generalized assertions are not enough to establish the requisite risk of impairment") (citing *National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir. 1976); *Washington Post Co. v. U.S. Dep't of Health and Human Servs.*, 690 F.2d 252, 269 (D.C. Cir.1982)).

⁴⁸ Rehearing Request at 5.

⁴⁹ *Id.* (citing *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir.1992) (*en banc*)).

⁵⁰ *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d at 879 (determining that nuclear power plant safety reports were confidential for the purpose of exemption 4 because they were commercial information provided to the government on a voluntary basis that would customarily not be released to the public by the entity from whom it was obtained).

⁵¹ Order No. 697-A, 123 FERC ¶ 61,055 at P 181 n.258.

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constitute a clearly unwarranted invasion of personal privacy.”⁵² But even if a privacy interest exists, the Commission may release the information if the public’s right to disclosure outweighs the individual’s right to privacy.⁵³

a. Ambit’s Owners’ Privacy Interest

22. Ambit contends that revealing its upstream owners and their ownership percentages would necessarily reveal private financial information about private individuals and closely-held family businesses.⁵⁴ Ambit argues that the privacy interest in these names outweighs any public interest in disclosure, noting that their identification adds nothing to the public’s understanding of the Commission’s approval of Ambit’s application for market-based rates.⁵⁵

23. FOIA exemption 6 does not generally extend to businesses,⁵⁶ with the exception of individually owned, or closely-held family businesses. In such cases, when the financial makeup of a business mirrors the financial situation of an individual, then revealing a business record may jeopardize a personal privacy interest that exemption 6 seeks to protect.⁵⁷

24. Ambit argues that the identity of its corporate owners is subject to exemption 6 because those owners are closely-held family businesses. But Ambit only states that

⁵² 5 U.S.C. § 552(b)(6); 18 C.F.R. § 388.107(f). The term “similar files” is broadly construed and includes “[g]overnment records on an individual which can be identified as applying to that individual.” *U.S. Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 602 (1982); *Lepelletier v. FDIC*, 164 F.3d 37, 47 (D.C. Cir. 1999) (“The Supreme Court has interpreted the phrase ‘similar files’ to include all information that applies to a particular individual”).

⁵³ *U.S. Dep’t of State v. Wash. Post Co.*, 456 U.S. at 602.

⁵⁴ Rehearing Request at 4-5 (citing *Multi Ag Media LLC v. U.S. Dep’t of Agric.*, 515 F.3d 1224 (D.C. Cir. 2008) (*Multi Ag Media*)).

⁵⁵ *Id.* at 4.

⁵⁶ *Nat’l Parks and Conservation Ass’n v. Kleppe*, 547 F.2d at 686 n.44 (“The sixth exemption has not been extended to protect the privacy interests of businesses or corporations”).

⁵⁷ *Multi Ag Media*, 515 F.3d at 1229 (citing *Nat’l Parks and Conservation Ass’n v. Kleppe*, 547 F.2d at 685).

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releasing the contested information would reveal private financial information about these businesses,⁵⁸ failing to explain how disclosure would reveal financial information easily traceable to an individual. Without this connection, exemption 6 does not apply to Ambit's corporate owners.⁵⁹

25. Ambit has also failed to explain how its owners' names constitutes a substantial financial privacy interest. Ambit cites *Multi Ag Media*, which states that an individual has a substantial privacy interest under FOIA in his personal financial information, including income.⁶⁰ In *Multi Ag Media*, the court found that the disclosure of databases containing information on farm operations—including crops, field acreage, and information that could be used to identify a specific producer or landowner—allows inferences to be drawn about an individual farmer's personal finances based on crop productivity.⁶¹ Ambit argues that releasing its ownership information is analogous because it would reveal private financial information about its owners.

26. We disagree. Exemption 6 protects business records that reveal “at least a portion of the owner's personal finances.”⁶² The contested information does not contain each owner's percentage interest in Ambit, but only reveals that certain owners have more than a 10 percent interest in Ambit. These owners have assets in and influence over Ambit, but as a private company, Ambit's financial information is not public and no inferences could be drawn to reveal specific financial information. We acknowledge that a substantial privacy interest is anything greater than a *de minimis* privacy interest,⁶³ but Ambit's ownership information only shows that an individual has an ownership stake in a business giving that individual a significant level of control over the company.

⁵⁸ Rehearing Request at 4.

⁵⁹ *Multi Ag Media*, 515 F.3d at 1229.

⁶⁰ Rehearing Request at 3-4 (citing *Multi Ag Media*, 515 F.3d at 1228-29).

⁶¹ *See Multi Ag Media*, 515 F.3d at 1228-29.

⁶² *Id.* at 1228-29 (quoting *Nat'l Parks and Conservation Ass'n v. Kleppe*, 547 F.2d at 685).

⁶³ *Nat'l Ass'n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989).

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b. The Public Interest in Disclosure

27. The focus of inquiry in determining whether information is subject to FOIA exemption 6 is whether the public's right to disclosure outweighs the individual's right to personal privacy.⁶⁴ The core purpose of FOIA is to allow the public to understand the activities of the government and "shed[] light on an agency's performance of its statutory duties."⁶⁵ Consequently, there must be a nexus between the requested information and the asserted public interest that would be advanced by disclosure.⁶⁶ Ambit acknowledges that the core purpose of FOIA's disclosure mandate is to allow the public to understand the operations or activities of the government, but argues that there is no ongoing public interest in disclosure of its owners such that their identification adds to the public's understanding of the Commission's approval.⁶⁷ We disagree.

28. As explained in the January 2019 Order, the Commission allows power sales at market-based rates if the applicant and its affiliates lack, or have adequately mitigated, horizontal and vertical market power.⁶⁸ The Commission must know the identity of a seller's upstream owners in order to examine the seller's ability to exercise market power in coordinated interaction with other sellers. A seller seeking to obtain or retain market-based rate authority must include affiliated generation in its required horizontal market power indicative screens⁶⁹ and must also disclose affiliate assets in its vertical market power analysis⁷⁰ and its required asset appendix.⁷¹ Because this information is central to the Commission's analysis, public disclosure enables members of the public to determine

⁶⁴ 5 U.S.C. § 552(b)(6).

⁶⁵ *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

⁶⁶ *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157, 172-73 (2004).

⁶⁷ Rehearing Request at 4 (citing *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. at 773).

⁶⁸ January 2019 Order, 166 FERC ¶ 61,066 at P 19. *See also* Order No. 697, 119 FERC ¶ 61,295 at P 290 ("The first step for a seller seeking market-based rate authority is to file an application to show that it and its affiliates do not have, or have adequately mitigated, market power.").

⁶⁹ *See* 18 C.F.R. pt. 35, subpart H, appendix A.

⁷⁰ *See id.* § 35.37(d).

⁷¹ *See id.* pt. 35, subpart H, appendix B.

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whether to participate in the proceeding to protect their interests and to understand what the Commission relies on in making its determination.

29. Moreover, contrary to Ambit's suggestions, the Commission's oversight does not end with its determination that Ambit may engage in wholesale sales at market-based rates.⁷² As particularly relevant here, Ambit must report to the Commission within 30 days any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority, including reporting new upstream affiliates.⁷³ Having access to the identity of Ambit's current affiliates allows interested members of the public to identify whether Ambit has properly reported to the Commission a change in status by filing new upstream affiliations to the Commission, or whether if Ambit has failed to do so in a timely manner.

30. On balance, we find that Ambit's modest privacy interest does not outweigh the public interest in disclosing the names of Ambit's owners.⁷⁴ The public interest in transparent decision making and encouraging public participation exceeds Ambit's request to shield the identity of its owners. Accordingly, we deny Ambit's request for rehearing.

The Commission orders:

(A) Ambit's request for rehearing is hereby denied, as discussed in the body of this order.

(B) Ambit's request for stay is hereby dismissed in part and denied in part, as discussed in the body of this order.

⁷² See, e.g., *Mont. Consumer Counsel v. FERC*, 659 F.3d at 914 (noting that the Commission also engages in ongoing oversight of market-based rates).

⁷³ 18 C.F.R. § 35.42 (2018).

⁷⁴ *U.S. Dep't of State v. Wash. Post Co.*, 456 U.S. at 602.

(C) This order shall constitute notice under section 388.112 of the Commission's regulations that Ambit's October 22, 2018 and November 30, 2018 filings will be placed in the public record of this proceeding no less than 10 calendar days following the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.