

**Written Statement of
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Technical Conference, Docket No. RM15-23-000
December 8, 2015**

Duke Energy Corporation (“Duke Energy”) provides these written comments in advance of the technical conference scheduled on December 8, 2015 to discuss the issues relating to the Commission’s Notice of Proposed Rulemaking on the Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators (“NOPR”).¹ Duke Energy appreciates the Commission scheduling a technical conference to further explore the impacts of the NOPR and is supportive of the Commission’s efforts to detect and deter market manipulation. However, we have concerns with the lack of clarity in the definition of Connected Entity, and with the reporting and compliance obligations that may be required of market participants with limited participation in RTO/ISO markets. Duke Energy believes that the scope of the NOPR rule should be narrowed.

Duke Energy is an energy company which has a regulated utility business serving 7.3 million retail electric customers in six states in the Southeast and Midwest regions of the United States. Duke has a commercial business, Duke Energy Renewables, which develops wind and solar energy projects throughout the United States, and several other affiliates involved in commercial wholesale activities. Duke Energy Indiana is a regulated franchised utility affiliate of Duke Energy and is a member and market participant in Midcontinent Independent System Operator, Inc. (“MISO”). Likewise, Duke Energy Kentucky and Duke Energy Ohio are members and market participants of PJM Interconnection, Inc. (“PJM”). Duke Energy’s southeast utilities, Duke Energy Carolinas, Duke Energy Progress and Duke Energy Florida are not in RTO/ISOs, but are market participants in PJM and MISO given that they sell energy into the RTOs. Duke Energy’s commercial affiliates potentially impacted by this NOPR are market participants in PJM, ISO New England, Inc. and Electric Reliability Council of Texas.

Duke Energy believes that the NOPR’s definition of Connected Entity is broad, and needs further definition. The NOPR includes certain senior officers as Connected Entities including the chief executive

¹ Notice of Proposed Rulemaking, *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, Docket No. RM15-23-000 (Sept. 17, 2015).

officer, chief financial officer, chief compliance officer of a market participant, as well as traders. Senior officers of Duke Energy's franchised utility affiliate are listed in their FERC Form 1 filings. Providing this information to the RTO/ISOs would be redundant. Duke Energy takes a narrow view of the types of functions considered "trading" and views traders as employees who make short term trades of power. The types of trades that Duke Energy engages in are primarily derivative transactions, including swap transactions, to hedge or mitigate commercial risk. The Merriam-Webster definition of a trader is "a person who buys and sells (as stocks or commodities futures) in search of short term profits."² Duke Energy does not consider individuals who enter offer curves into the RTO/ISO as engaging in trading activities nor considers individuals negotiating long term power purchase agreements as "traders." These individuals are considered marketing employees for FERC regulatory compliance purposes (i.e., Standards of Conduct and Affiliate Restrictions) but not traders.

Duke Energy believes that the benefit of providing the names of traders to the RTO/ISO does not outweigh the burden on market participants as discussed more below. Duke Energy suggests that instead of the market participant providing the identification of the traders to the RTO/ISO, the Commission obtain this information directly from the market participant once questionable conduct is observed. However, if the Commission does require trader identification, Duke Energy hopes that the definition will be narrowed.

If the Commission requires the reporting of the identities of traders, and particularly if an expansive definition of "trader" is taken, Duke Energy will need to establish additional processes and controls for the reporting. While the marketing and trading positions discussed above are coded with a FERC classification of marketing (regulated or non-regulated depending on which entity) to ensure compliance with the Standards of Conduct and Affiliate Restriction requirements, it will be an additional burden to report employee movement within the trading position to the RTOs/ISOs. To meet the requirement, Duke Energy would need to develop a way to flag "traders" who are included in the

² Trader defined as: a person whose business is buying and selling or barter: as (a) Merchant; (b) a person who buys and sells (as stocks or commodities futures) in search of short-term profits *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 4 Dec. 2015. <<http://www.merriam-webster.com/dictionary/trader>>.

marketing classification during the hiring and transfer process so that a systematic reporting schedule could be maintained. Manager training on the new “flag” and its purpose would also be required. Responsibility for reviewing “trader” employment status would need to be established as well as identifying who would ultimately prepare and submit the report to the RTO/ISO. Review of the employees who are traders would almost certainly need to be done on a daily basis to meet the 15 day deadline. Lastly, someone would need to be responsible for validating that all of the information on the Connected Entity submittal to the RTO/ISO is accurate.

A significant improvement to the NOPR would be to apply these rules to market participants who have committed capacity into the RTO/ISO. Duke Energy believes that the Commission’s intent is to monitor RTO/ISO markets for manipulation. As such, we believe that the NOPR as currently written casts a wide net. Market participants of an RTO/ISO who have generation assets that are committed outside of an RTO/ISO rarely sell specific capacity to the RTO/ISO. The transactions done by these market participants are energy transactions and are normally done at the “border” without a specific resource named. We think the NOPR’s language is too broad and would cause an unnecessary burden to market participants outside of RTO/ISOs if these entities were required to report all traders and impacted agreements.

If the Commission moves forward with the requirement to report the identities of traders, Duke Energy hopes that the Commission will consider only short term wholesale energy transactions as trading, and not consider employees who are engaged in long term wholesale power origination as “traders.” Duke Energy has a number of employees engaged in long term wholesale origination in various areas of the company. The origination employees negotiate the agreement and are not involved with supplying the power to them once the agreement is negotiated. We believe employees who enter bid and offer curves into the RTO/ISO systems should not be considered traders. Moreover, we think it is appropriate to further limit the “traders” to those individuals who oversee the trading functions and have signature authority to assume significant risk on behalf of the market participant.

Providing the contract information listed in the NOPR creates additional compliance burdens on market participants. If the Commission moves forward with this proposal, more clarity is necessary to enable the market participant to know exactly which contracts result in Connected Entities that should be reported. The NOPR provides that if the market participant has entered into an agreement with an entity relating to the management of resources that participate in Commission-jurisdictional markets, or otherwise relates to operational or financial control of such resources, including tolling agreements, asset management agreements, operating management agreements, fuel management agreements, energy marketing agreements, “and the like” these Connected Entities should be reported. We are unclear on the reporting obligations for Duke Energy. For example, Duke Energy has a number of agreements with third parties relating to the joint ownership of generation facilities. If Duke Energy operates and manages the generation on behalf of itself and the joint owners, is Duke Energy considered a Connected Entity of the joint owner? What does the financial control of the resource mean? The Commission references in Footnote 29 of the NOPR that energy/management agreements which provide services such as operating generating plants, acting as billing agents, and scheduling transactions should be reported. However, if an entity merely acts as a billing agent and does not operate generation would that be considered a Connected Entity? Would a wholesale power agreement containing a “tolling arrangement” in which Duke Energy sells power to a counterparty, such as to a municipality, and has the right to dispatch the counterparty’s generation under the power sales agreement be reportable even if the counterparty is not a market participant in an RTO/ISO? Are asset management agreements entered into under 18 CFR § 284.8(h) (3) between a market participant and a third party for supplying fuel to a market participant’s generation resources where the third party has no control over generation dispatch or generator operations reportable? Clarification of these reporting obligations is critical.

While we are unclear of the scope of the agreements to be reported, this type of reporting will create compliance burdens. We have no automated process to track the information requested on these agreements, such as heat rate curves for a tolling agreement and the MW or MWh curves for a power

purchase agreement,³ and we will need to manually review all such applicable agreements. As stated above, if entities that do not have a capacity obligation to an RTO/ISO are not considered market participants, the compliance burden will be significantly reduced for entities such as Duke Energy.

The 15 day deadline for reporting material changes in agreements or new agreements to the RTO/ISO is too short a timeframe. Duke Energy suggests that if the Commission moves forward with this proposal market participants report changes and updates quarterly. It would be a much easier task to align the contract reporting with the EQR reporting. The same internal processes for managing compliance for EQR reporting could be used for the RTO/ISO reporting.

Duke Energy appreciates the Commission's consideration of its comments.

³ The NOPR requests this level of detail for the impacted agreements. See NOPR at P 33.