

## **SUPPORTING STATEMENT FOR FERC-582, ELECTRIC FEES AND ANNUAL CHARGES**

(Three year Extension requested through July 31, 2010)

The Federal Energy Regulatory Commission (Commission) requests that the Office of Management and Budget (OMB) review and extend its approval of **FERC-582, ELECTRIC FEES AND ANNUAL CHARGES** through July 31, 2010. FERC-582 (OMB Control No. 1902-0132) is an existing data collection (filing requirement) whose filing requirements are contained in Title 18 C.F.R., Sections 382.201, 381.105, 381.106 and the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701) and the Omnibus Budget Reconciliation Act of 1986. FERC-582 is currently approved through September 30, 2007.

The estimated reporting burden for FERC-582 is expected to average 500 hours per year over the next three years. This is an adjustment to the current OMB inventory of 768 hours and reduction of 268 hours. The average burden per filing is estimated to be 4 hours per respondent.

### **A. Justification**

#### **1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY**

1. The Independent Offices Appropriation Act of 1952 (IOAA) authorizes the Commission to establish fees for services. In addition, Congress directed the Commission in the Omnibus Budget Reconciliation Act of 1986 (OBRA), to “assess and collect all fees and annual charges in any fiscal year in an amount equal to all of the costs incurred by the Commission in that fiscal year.” To implement this provision of OBRA, the Commission issued a final rule in Docket No. RM87-3-000 (52 FR 24153) to establish a cost recovery program of annual charges.

The Commission amended its regulations at 18 CFR and added Part 382 to implement a program of annual charges that it assesses against interstate natural gas and oil pipelines, electric utilities, electric cooperatives, power marketers and power marketing agencies. The Commission implemented the annual charges program in a final rule in Docket Number RM87-3 to complement the existing fees program.

In Docket No. RM92-17-000, the Commission amended its regulations to eliminate certain filing fees and also revised its current methodology for annual adjustments to its filing fees and direct billing. In the Notice of Proposed Rulemaking (NOPR), the Commission proposed to eliminate most filing fees, with the exception of

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six, and to recover the costs associated with filings for which it eliminated fees in the annual charges assessed in accordance with 18 CFR Part 382. The Commission reserved the option of ordering direct billing for filings that may be unusually extensive in scope and/or present complex factual, legal or policy issues requiring an extraordinary amount of time and effort to process them. In the final rule, issued January 7, 1993, the Commission amended its regulations in Part 346 and 381 to eliminate certain filing fees and retained the requirements for filing fees for petition for issuance of a declaratory order and fees for blanket certificate applications made by Hinshaw pipelines and local distribution companies. In addition, the Commission retained filing fees for petitions for rate approval and for extension reports for Title III transactions plus the six filing fees identified in the NOPR.

In Docket No. RM00-7-000 issued on October 26, 2000, the Commission amended its regulations to establish a new methodology for the assessment of annual charges to public utilities. The new regulations resulted in the Commission now assessing annual charges on transmission rather than on both power sales and transmission. The reason for the change was to reflect the changes in the industry and the nature of the work performed by Commission staff. The Commission's regulatory efforts are predominately focused on ensuring nondiscriminatory, open access transmission services as opposed to power sales and power exchanges. With open-access transmission, functional unbundling and the movement to market-based power sales rates brought about by the Commission's Order No. 888, state retail unbundling efforts, the creation of Regional Transmission Organizations in Order No. 2000, the Commission's efforts are increasingly devoted to assuring open and equal access to public utilities' transmission systems. Wholesale power sales rates have been increasingly disciplined by competitive market forces and less by the Commission directly. For these reasons, the Commission felt that it should assess its regulatory program costs solely on the MWh of electric service transmitted in interstate commerce by public utilities providing transmission service, rather than, as in the past on both jurisdictional power sales and transmission volumes.

### **2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION**

The information collected by the Commission on FERC-582 is used by Commission

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Staff to obtain total megawatt-hours of transmission of electric energy in interstate commerce, which for purposes of computing the annual charges are measured by the sum of the megawatt-hours of all unbundled transmission (including MWh delivered in wheeling transactions and all bundled wholesale power sales (to the extent these latter megawatt-hours are not separately reported as unbundled transmission). All parties involved in the generation and sale of electric energy rely on the transmission system to move their product. Power sellers will be contributing to the Commission's recovery of electric regulatory program costs in that, they will be using the transmission system and, in any cost-based rates that they pay for transmission service that they may take, they will pay, albeit indirectly, their share of the Commission's costs.

As noted above, Congress has directed the Commission to collect fees and annual charges equal to its annual appropriation. The Commission deposits the fees and annual charges it collected into the Department of Treasury's general fund.

The Commission's electric regulatory program includes: administering the provisions of Parts II and III of the Federal Power Act (FPA)<sup>1</sup> as they apply to the activities of public utilities (traditionally, principally investor-owned utilities);<sup>2</sup> discharging its responsibilities under various statutes involving the PMAs; and implementing various provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>3</sup> involving qualifying cogenerators and small power producers (QFs).

Pursuant to section 205 of the FPA,<sup>4</sup> the Commission regulates the rates, terms and conditions of service of public utilities making sales for resale or transmitting electric energy in interstate commerce. All jurisdictional rates, terms and conditions must be on file with the Commission, and may be approved by the Commission only if they are just and reasonable and not unduly discriminatory or preferential. Under section 206 of the

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FPA,<sup>5</sup> the Commission may change any rates, terms or conditions that it finds to be unjust, unreasonable, or unduly discriminatory or preferential.

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116 U.S.C. 824-825r.

2Under sections 211, 212 and 213 of the FPA, 16 U.S.C. 824j-1, the Commission also has authority over transmitting utilities that are not public utilities. Compare 16 U.S.C. 796(23) with 16 U.S.C. 824(b), (e).

316 U.S.C. 2601-2645.

416 U.S.C. 824d.

The Commission also regulates certain accounting and corporate activities of public utilities pursuant to the FPA. Examples include the following: Under section 203,<sup>6</sup> the Commission reviews applications filed by public utilities seeking to merge or to dispose of jurisdictional facilities. Pursuant to section 204,<sup>7</sup> the Commission reviews the proposed securities issuances of public utilities whose securities issuances are not regulated by a state commission within the meaning of section 204(f). Under sections 301 and 302,<sup>8</sup> the Commission has authority over a public utility's accounting and its depreciation. Section 304 outlines the Commission's authority to direct public utilities (and also licensees) to report information, including information on transmission of electric energy to the Commission.<sup>9</sup>

### Federal Power Marketing Agencies

The Commission reviews the rates established by the Department of Energy for the PMAs (Bonneville Power Administration (BPA), Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration). While regulation of public utility rates is guided by the FPA, regulation of the PMAs' rates is subject to the standards enumerated in a number of other statutes.<sup>10</sup> Essentially, the statutes require that the rates established by the PMAs must be devised with regard for the

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recovery of the cost of generation and transmission of electric energy, the encouragement of the most widespread use of the power, the provision of the lowest possible rates to customers consistent with sound business principles, and the protection of the interests of

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516 U.S.C. 824e.

616 U.S.C. 824b.

716 U.S.C. 824c.

816 U.S.C. 825, 825a.

916 U.S.C. 825c.

<sup>10</sup>Flood Control Act of 1944, 16 U.S.C. 825s; Federal Columbia River Transmission System Act, 16 U.S.C. 838g; Pacific Northwest Power Preference Act, 16 U.S.C. 837; Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839; Bonneville Project Act, 16 U.S.C. 832f (Northwest Power Act); Reclamation Act of 1939, 43 U.S.C. 485h; Department of Energy Organization Act, 42 U.S.C. 7101; see also DOE Delegation Order No. 0204-108, 48 FR 55664 (Dec. 14, 1983); 18 CFR Parts 300 and 301.

the United States in amortizing its investment in the projects within a reasonable period of time. The Commission is also authorized, pursuant to the Northwest Power Act, to review the Average System Cost methodology used to determine rates for exchange sales by utilities to BPA.

### Qualifying Facilities

Section 210 of PURPA<sup>11</sup> requires the Commission to prescribe rules to encourage cogeneration and small power production of electricity. In particular, the section directs the Commission to adopt rules requiring utilities to purchase power from and sell power to qualifying cogeneration and small power production facilities. The Commission reviews applications filed by cogenerators and small power producers requesting QF certification and either grants or rejects such applications based on criteria set forth in the Commission's regulations.<sup>12</sup>

### **3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN**

The Commission now accepts as part of its "efiling" initiative, the electronic submission of reports under FERC-582. The Commission has also converted the information filed under 18 CFR 382.201(b) to an automated file for computation of annual charges for electric utilities. Further, applicants seeking an order for a waiver may make their request electronically over the Commission's web site.

### **4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2.**

The Commission periodically reviews notice requirements as OMB review dates arise or as the Commission may see fit in carrying out responsibilities under the OBRA in order to

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eliminate duplication and minimize the filing burden. There is no duplication that has

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1116 U.S.C. 824a-3.

1218 CFR Part 292.

been found. To avoid duplication the Commission, in RM87-3-000, proposed to use existing data annually submitted on FERC Form 1, “Annual Report of Major Public Utilities, Licensees and Others,” (1902-0021) and FERC Form 1-F, “Annual Report of - Nonmajor Public Utilities and Licensees,” (1902-0029) for the computing of annual charges. But because the two forms had data elements that required redefinition in computing annual charges, the Commission concluded that the FERC Forms 1 and 1-F would not be appropriate and added filing requirements at 18 CFR 382.201(c) instead to the final rule.

In addition, the Commission had proposed the use of natural gas sales and transportation volumes reported on FERC Form 2 “Annual Report of Major Natural Gas Companies” (1902-0028) and FEC Form 2-A “Annual Report of Nonmajor Natural Gas Companies” (1902-0030) for computation of annual charges. However, comments to the proposed rule persuaded the Commission that the data it proposed to use was not appropriate.

**5. METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES**

FERC-582 is a regulatory filing requirement pertaining to the filing of fees for use by the Commission in its computation of annual charges. The data required imposes the least possible burden for small and large entities while collecting the information required to carry out the responsibilities under OBRA. The Commission provides as noted, waiver provisions (18 CFR 381.106 and 382.105(a)) and requests for exemption (18 CFR 381.108) from fees and annual charges, respectively, on the basis of financial hardship.

**6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY**

FERC-582 is an annual filing. The information collected cannot be discontinued nor collected less frequently due to statutory requirements. The information required in 18 CFR 382.201(c) is required only once a year and is necessary to compute annual charges the Commission will assess later to the applicable regulated entities.

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**7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION**

The guidelines of 5 C.F.R. 1320.5(d) are not being exceeded in the number of copies forwarded to the Commission. Because FERC-582 data is now submitted electronically, there is no longer a need for paper submission of this information.

**8. DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY:  
SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S  
RESPONSE TO THESE PUBLIC COMMENTS**

Prior to adopting regulations that require the collection of data, the Commission's procedures require that rulemaking notices be published in the Federal Register, thereby allowing all applicants, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. The rulemaking procedures also allow for public conferences to be held as required. In accordance with OMB requirements in 5 C.F.R. 1320.8(d), the reporting requirements for FERC-582 were noticed in the Federal Register on February 28, 2007 (72 FR 8980-81). The Commission received comments from ISO New England (ISO-NE) in response to this notice.

ISO-NE is a private, non-profit entity that serves the regional transmission organization ("RTO") for New England. The ISO-NE operates the New England bulk power system and administers New England's organized wholesale electricity market pursuant to the ISO tariff and the Transmission Operating agreement with the New England transmission owners. ISO-NE submits data annually on behalf of its transmission owners in accordance with FERC-582, the Commission's information collection requirement.

In the notice the Commission estimated the average burden of response as four hours. ISO-NE believes that this is an accurate assessment for each of New England's transmission owners, but does not capture the time spent by ISO-NE in collecting, compiling and filing the data with the Commission. ISO-NE estimates its time spent on these tasks as twenty to twenty-five hours on an annual basis.

ISO-NE does not believe that this process is unduly burdensome or difficult, or is in need of a technological solution. However, ISO-NE believes the only process improvement warranted is an extension of the annual reporting date from April 30 to

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the end or even the middle of May. The rationale for an extension is that the FERC Form 1 is also due in April, and much of the information is gleaned from the FERC Form 1. An extension would provide ISO NE (and other entities aggregating data)

with sufficient time to collect and compile and the required information transmission owners.)

*Commission's Response:*

In the notice the Commission indicated that the estimate reflects an average amount of time to comply with the requirements. For some entities the amount of time will exceed the average and for others the amount of time will below the average. It is quite understandable that the amount of time it takes ISO New England to comply with the requirements is greater than the average as ISO New England represents twenty-one utilities and is responsible for compiling their data. It should be noted that the estimate reflects 4 hours per utility and so it is commendable that ISO New England through its information systems can compile the data for so many utilities in the amount of time they have indicated in their comments.

With regard to their solution for reducing the amount of time even further by granting ISO New England an extension of anywhere from 15 to 30 days, the Commission believes this solution is unacceptable. The Commission has an obligation to issue bills and collect annual charges within certain time frames. As a result the Commission needs the data sufficiently in advance to be able to calculate and issue bills. For this reason, the Commission must receive FERC-582 by April 30 as currently provided for in 18 CFR 382.201(c)(1). As noted by ISO New England the Form 1s from which the data are drawn, must be filed by April 18 (see 18 CFR 141(b)(2)(ii)). Therefore, ISOs/RTOs have 12 days from the date of the formal filing of the Form 1s plus they can obtain the necessary data from their members in advance of the formal filing of the Form 1s which would provide additional time to obtain the data.

**9. EXPLAIN AND PAYMENT OR GIFTS TO RESPONDENTS\_**

No payments or gifts have been made to respondents.

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**10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS\_**

The information submitted to the Commission is public information and therefore is not considered confidential.



**11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE**

No data of a sensitive nature is requested.

**12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION**

Based on the Commission's recent experience with the burden of FERC-582, it is estimated that the average burden will be as follows:

<b>FERC-582 burden hours of annual reporting</b>				
FERC-582	Respondents	Estimated no. of responses per year	Average annual hours per response	Total hours
	125	1	4	500

Total estimated burden (hours per year)	: 500
FERC 582 burden hours currently in OMB's inventory	: 768
Program change in industry burden hours	: 0
Adjustment change in industry burden hours	: 268

The decrease reflects a decrease in the number of respondents who are filing under FERC-582 and can be attributed to consolidation within the industry through mergers, acquisitions or for instance in the number of entities, primarily power marketers who have gone out of business. In addition, many entities have the Regional Transmission Organization prepare and submit the filing on their behalf thereby reducing the number of entities filing with the Commission.

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13. The estimated annualized cost to the respondents for **FERC-582 Electric Fees and Annual Charges** averaged over the next three years is as follows:

Total Hours Respondent	Person	Estimated Average	Total
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$$\begin{array}{rcccccc} \text{Burden} & \square & \text{Hours/Year} & \times & \text{Salary/Year}^{13} & = & \text{Cost} \\ 500 & & 2080 & & \$122,137 & & = \$29,360 \end{array}$$

14. The estimated annualized cost to the Federal Government for **FERC-582 Application for Preliminary Permit** is shown below:

<u>Operation</u>	<u>FERC-582</u>
a) Data clearance (FERC FY 2007)	\$ 587.00
b) Analysis of data	<u>\$ 60,482.00</u>
Total cost in one year of operation	\$ 61,069.00

#### 15. CHANGE IN BURDEN

There is a change in the burden from the Commission's last submission to OMB due to an adjustment in the number of entities that are subject to filing FERC-582. (See item no. 12 for further discussion).

#### 16. TIME SCHEDULE FOR INFORMATION COLLECTION AND PUBLICATION

There are no tabulations, statistical analysis or publication plans for the information collection. The data are used for regulatory purposes.

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#### 17. APPROVAL NOT TO DISPLAY EXPIRATION DATE

It is not appropriate to display the expiration date for OMB approval of the information collected. The information is not collected on a standard printed form. Applicants prepare and submit a format that is filed electronically. The format is usually in the form of a spreadsheet identifying their annual transactions.

#### 18. EXCEPTIONS TO ITEM NO. 19,

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<sup>13</sup>The estimated annual cost per staff/employee (\$122,137) based on the number of employees or Full Time Equivalent (FTEs) in the Office of Executive Director and the FY 2007 appropriation for that Office as reported in the Commission's FY 2006 OMB Budget Request. The estimated "salary" per employee with industries regulated by the Commission is assumed to be the same as that per Commission staff members, including related overhead and contracted services.

Not applicable. Item no. 19(g) (vi-See item no. 17 above and item no. 19(i), see Section B below.

## **B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

The FERC-582 is designed for regulatory purposes and therefore, does not employ statistical methods for analysis or publication.