

The following sections contain the Energy Information Administration's (EIA) response to the single filing by American Electric Power Service Corporation submitted on August 5, 2009, for review before the Office of Management and Budget. Per key determinations - there will be a reclassification of a selected set of data elements as confidential under a term time-period.

A. General Comments on Modifications to Form OE-781R

The commenter supports the changes to Form OE-781R that update the form to better reflect changes in the marketplace and agrees with the EIA's observation that the RTOs and ISOs are a centralized, reliable and comprehensive source of data on cross-border power flows. The commenter also agrees that it is no longer necessary to impose on individual transmission owners the burden of reporting the cross-border power flow data when the operators of those transmission systems, such as ERCOT, collect the data and EIA could access such data. The commenter believes this change in data collection methodology will both ease the administrative burden on companies and result in more efficient and accurate data collection of information on actual cross-border power flows.

The commenter supports several of the clarifications and modifications made to Form OE-781R to make the categories of data collected under the form consistent with other reporting obligations currently imposed on the industry. For example, the commenter appreciates EIA defining "Booked Out" in the manner described by the Federal Energy Regulatory Commission ("FERC"), which is more consistent with industry reporting practice, (2) acknowledging that Contracted energy minus Booked Out energy may not equal Delivered energy as had previously been implied, and (3) clarifying that such deviation will not cause a report to be non-conforming. The commenter also appreciates the clarification that EIA's guidelines for reporting proposed transmission facilities crossing international borders is intended to use the same reporting standard as the North American Electric Reliability Corporation ("NERC") for reporting proposed transmission lines. To the extent that EIA is able to collect the data that it requires in a manner consistent with the numerous, pre-existing data collection requirements imposed on the industry – which already has a heavy reporting burden – it will ease the administrative burden on participants.

Response: EIA acknowledges the comments.

B. Estimate of Respondent Burden Hours and Cost

Comment: The commenter believes that the estimate is understated by several multiples, and that the burden per monthly report will be at least double the annual estimate.

The commenter has stated that their data collection and entry process is manual and time intensive including significant quality control measures to ensure the reports are accurate. They indicated that the situation would be true regardless of whether the reporting is made using Excel or Word documents or an Internet-browser based system. It was also noted that while EIA has helpfully provided the ability to check a box indicating that there are no changes or no sales/purchase volumes to report; this will still require the commenter's personnel to confirm that that there was, in fact, no reportable activity.

In particular the commenter had the following concerns:

- Other respondents who are vertically integrated utilities that do not operate in Regional Transmission Organization (RTO) regions such as the commenter, which operates in ERCOT – including under Public Utility Commission of Texas rules in Texas and FERC rules in all other areas – will also be required to have transmission personnel report Schedule 3 data separately from the merchant generation personnel who report information for Schedules 2A, 2B and 2C. Schedules 4, 5A and 5B will be reported by the transmission personnel responsible for researching and reporting transmission information. The commenter will not achieve the time-saving advantages of having a single set of personnel coordinate, research, file and maintain records for the filed data. Vertically integrated, non-governmental entities across Texas and other regions of the country will encounter similar problems.
- The monthly nature of reports will take existing personnel away from their existing duties of coordinating, researching, filing and maintaining records for the numerous other reports that commenter is required to maintain of its power, ancillary service and transmission transactions. Although the exact effect on other processes is difficult to determine, the commenter has a limited number of personnel devoted to administration and filing of reports, and it is certain that the time pressure placed on these personnel will increase.

Response: The burden hour estimate represents the average expectation for all the large and small respondents that have participated in international trade from an extensive level of activity to just doing very little and only as an export or import. The respondent has indicated their burden is much higher. They also indicated that it is a manual operation with very extensive counter checks. That approach fits the needs of this company, but does not represent how other companies do this that have incorporated and manage electronic data processing, editing, and quality reviews. The burden associated with obligated legal separation of reporting applies to all participants in the electric power industry and can only be considered as a common part of business practices. It is now at a higher level than what was observed prior to having market competition in the ‘old’ electric utility industry. The respondent is a publicly-traded corporation. Because of this, there are financial and regulatory reporting requirements and internal audit controls already established in the respondent’s normal course of business. The consequence of those auditing and reporting controls is that the records are present in the company. Given that reporting of this same/similar information is being provided to the Public Utility Commission of Texas and the Federal Energy Regulatory Commission (for domestic trading), the information is found in a common system of records.

Rationale: The source of this change is another Federal Agency, the Federal Energy Regulatory Commission (FERC), which has jurisdictional responsibilities under the Federal Power Act and the Energy Policy Act of 2005. FERC used its regulatory authorities to establish new regulations on how the markets for wholesale electricity, transmission, and associated system operations will be done. To mitigate the ability of transmission-owning

utilities from favoring their own generation over competitors based on the transmission-owning utility's need for market-sensitive operating and transactional information to facilitate open access transmission service, the FERC imposed a separation of function between the generation and transmission business units within vertically integrated companies. This is mandatory for public utilities subject to FERC's jurisdiction, and because of the reciprocity provisions in the FERC's pro forma open access has resulted in many transmission-owning utilities not subject FERC's jurisdiction (e.g., municipal utilities and rural electric cooperatives) to adopted the same practices. Legal restrictions and prohibition of contact with the other parties or employees internal to a company were placed on key business and operational activities. EIA has no choice but to acknowledge the lawful actions of another federal agency and accordingly designed the OE-781R to address the required separation of reporting functions now set as a standard across our Nation. This is not a burden issue that can be administratively removed by EIA. All participants in the electric power industry have been impacted by these regulations and these rules have been reviewed and accepted as modified by our federal judicial system. (Competition was accelerated in response to Federal Energy Regulatory Commission (FERC) Order Nos. 888¹ and 889² in 1996 and Order No. 890³ in 2007.)

Comment: The recommendation is that EIA limit the frequency for the reporting obligation to quarterly instead of monthly.

Response: Both the Presidential Permit (PP) and the Export Authorization (EA) collect monthly data, but the reporting cycle is different. The PP collects twelve months on an annual filing while the EA collects monthly on a quarterly filing. That reporting cycle disconnect is being addressed in the update of this form and the collection process. EIA also processes large volumes of data on a monthly basis in order to meet statutory and mission obligations for timely information. In addition, EIA has initiated electronic filing as the primary method of submission and now has multiple years of experience. EIA has determined that the usage of electronic filings is efficient, improves the quality of the filings, and overall, this method is generally considered cost effective for both industry and the government.

¹ Federal Energy Regulatory Commission, *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS v. FERC*), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

² Federal Energy Regulatory Commission, *Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct*, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

³ Federal Energy Regulatory Commission, *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order NO. 890-C, 126 FERC ¶ 61,228 (2009) ("Order No. 890").

Comment: If EIA requires monthly reporting, the commenter recommends delaying the filing of Form OE-781R to a minimum of sixty (60) days past the end of the reporting month, as well as clarifying its guidelines on the filing of revised reports as revised data becomes available. The commenter relies on information from an ISO/RTO to prepare its reports. Verified information is sometimes not available until several weeks after the close of each month, and is often further revised. The delay in the finalization of data during the time that the 30-day reporting clock is running will place unnecessary time pressure on report preparation and potentially jeopardize the accuracy of monthly reports.

Response: EIA will require monthly reporting. However, EIA is adopting practices similar to the FERC that will permit respondents to make data revisions billing adjustments. Respondents will be able to look-back up to three months from the current filing month to make revisions to transaction data to the extent the data previously reported was finalized after the close of the applicable reporting month. FERC reporting requirements for the Electric Quarterly Reports for domestic power sales requires that “A utility must file a revised report if more complete information is obtained or errors are found. Some structured markets do not give prices/revenues to sellers until after 30 or more days, so the pricing data will not be available by the report date.” Respondents “should enter the transaction quantities and nothing for the unknown prices, and files revised reports when the information becomes available.” FERC expressed its “desire to strike a balance between having timely, accurate data and reducing the burden on filing entities. EIA has sought to strike a similar balance by allowing respondents to revise transactional data on a rolling three month basis using its e-filing system.

Comment: FERC and Public Utility Commission of Texas, which have obligations to monitor transactions on the grid and to ensure reliability, do not require more than quarterly reporting. Although EIA correctly points out that other data is reported to the EIA on a monthly basis thirty (30) days past the end of the month, and while AEP acknowledges the administrative convenience to EIA of having similar reporting timelines for all data received by EIA, EIA’s proposal does not demonstrate a need for more accelerated reporting for informational purposes for this particular data set.

Response: DOE has these same obligations to monitor international transactions on the grid and to ensure such transactions do not impact domestic reliability. The 30-day requirement will enhance DOE’s ability to fulfill those obligations, while allowing respondents to revise their earlier data as necessary.

C. Schedules 2A, 2B and 2C

Comment: There are a number of overlapping categories required to be reported for cost-of-service and market rate transactions. Specifically, to ease administrative burden, AEP recommends that Schedules 2A and 2B be modified to use the same data fields for both the “Cost-of-Service” and “Market Rate” transaction categories

Response: The international transaction must either be based on cost-of-service or done under approved market rate tariffs. These transactions cannot be both. So there is no overlap. The respondent will fill out one section or the other for submission of summation information on these transactions. Both general collection categories must be present in order to capture the wide ranging set of trade that happens across this Nation's two international borders. However, EIA does expect that with the passage of time, the existing cost-of-service contracts will expire and fewer new ones will be signed. The assumption is that they will most likely be replaced with ones which can be filed using the market side of the proposed survey collection form. EIA will also review the usage of the cost-of-service section and determine what revisions, if any, will need to be done in the next review of this form. The FERC Electric Quarterly Report also separates in its jurisdictional information collection, the reporting of market-based from that of cost-based, and transmission service.

Comment: The commenter raised the issue of blending the concepts of actual megawatt hours across the tie (i.e, Scheduled Exports/Exports) with dollars paid under the transactional contracts (Contracted, Booked Out and Delivered).

Response: Schedule 2 was established to collect information on the contracted wholesale trade while Schedule 3 was established to collect information on the operational power flows that go back and forth across the international borders. The usage of the term, "Scheduled" is appropriate in a generic context for all contracted sales, purchases, and exchanges shown in the categories on Schedule 2. That same term has similar usage that is also correct and describes the actual 'operational scheduling' of the power described on Schedule 3. To avoid confusion between the functional groups filing operation and contractual information, the word "Scheduled" will be dropped on Schedule 2 that collects data on contract trade.

Comment: There is a lack of consistency between the categories and other industry reporting practices, they do not have industry precedent and are subject to interpretation by each respondent. Different regions with different market structures do not have a pre-established understanding for applying these categories within each region. The commenter believes that EIA should make its reporting categories simpler and consistent with those required by FERC's Electric Quarterly Report ("EQR") process, while still maintaining the reporting of transactions on an aggregate basis. Also noted that there is only one volume field, "Transaction Quantity" (field 63) that is measured in MWh (or other units appropriate for the relevant product).

Response: The OE-781R is prepared in conformity with the FERC Uniform System of Accounts (18 CFR Part 101) and the interpretation of all accounting words and phrases is in accordance with the Uniform System of Accounts. The FERC EQR provides about 15 categories for "Class Name" and the associated duration of these trading agreements. The OE-781R uses only three of these to define the period of the transactions (hourly, less than one year and greater than one year) plus an "Other" category to allow respondents to supply information on non-routine or different transactions. The selection of this simplified reduced set was sufficient to describe immediate, short-term, and long-term transactions that allows a

straight summary of the rest of the EQR categories. These summary groupings are also wide enough to capture all the variations in the approved market structures operating beside U.S Borders.

If the OE-781R was realigned from rows to columns, there would be only one column showing the volume field. However, the EQR actually has two fields (32 and 63) that collect quantity information. The hard copy presentation of the OE-781R is meant to visually show the representation of generally how the survey collection instrument will look. The electronic computer image will be different. For this, EIA is testing variations of the electronic images with different future respondents to the survey form to see what computer screen image would be best approximate the easiest view for someone in a company to match their styles of recording keeping practices. This represents another aspect of burden reduction that EIA does to assist the respondent.

Comment: Eliminate the “Scheduled Exports/Imports;”

Response: The issue of “Schedule Exports/Imports” has been addressed in a prior comment.

Comment: Eliminate “Contracted” and “Delivered” categories as duplicative and re-align the remaining other categories so that there are the following five volumetric categories that are more aligned with common energy products: “Energy Quantity”, “Booked-Out Energy Quantity”, “Capacity Quantity”, “Ancillary Services Quantity (U.S. Side)” and “Other Product Quantity”;

Response: Elimination of the “Contracted” and “Delivered” categories would move the collection to receipt of “Net” information about the summary of these transactions. This is not acceptable and is also counter to the guidance by the FERC for its EQR collection. The chosen format allows tracking of the physical transactions with financial relationships. The reporting of the details on ancillary services on the various quantities and individually associated transactions does carry a burden. DOE made the determination that the summary cost information with just the identification, by a simple check-off box, of the types of ancillary services was sufficient for current programmatic needs. The commenter’s recommendation goes beyond the current informational needs and does add burden. The consideration of “Capacity Quantity” is in a similar situation in that this goes beyond the current informational needs of DOE. The primary interest is in the energy flowing across the Nation’s borders, the associated value of this and the values of the ancillary and transmission support needed to enable international electricity trade and system reliability.

Comment: Re-align the form and reduce the total payment categories to a single category: “Total Transaction Charges”; and indicate that the field definitions are intended to be analogous to those used by the FERC for the Electric Quarterly Reports (EQR).

Response: Consistent with the functional unbundling required for jurisdictional power sales and transmission service, the FERC established reporting requirements for market based rates that require public utilities to report the discrete components of a transaction. Each of the activities that are now associated with these ‘unbundled’ markets has an independent economic value that is either paid for or received. It is not acceptable to collect one summary total describing all these very different markets. Also, the definitions for these fields are consistent with the FERC’s Uniform System of Accounts and the regulations pertaining to the contract and transactional data required to be filed in the EQR.

Comment: Please eliminate the “Transmission U.S. Side” category since that information is collected by FERC on the same EQR form but only from transmission providers and not for power transaction data similar to that collected on Schedules 2A and 2B of Form OE-781R.

Response: EIA brought this issue up with the FERC during the discussions about the form. When the FERC realized that all sets of international trade information in this area was being filed on the EQRs, the FERC stated that they will initiate a process to remove types of categories and data since they do not have authority to collect that information. That authority resides with DOE and is to be collected on this proposed Form OE-781R. This form presents a full snapshot of all aspects of electricity trade and reliability that meets both DOE and EIA’s mission responsibilities.

D. Potential Confidential Information in Schedule 5B

Comment: The data collected using Form OE-781R on proposed transmission facilities crossing international borders could potentially contain confidential information whose publication could harm the commenter.

Response: In response to your comment, DOE has determined that there is a period of time where public disclosure of selected information proposed for collection could impact the competitive position of the respondent in their market. The starting point for this protection was determined to be from the internal planning concept within the company and the ending point, where confidentiality is lost, is when descriptive information (of the data elements identified below) on the project have to be publicly filed before a public utility commission and or state transmission line siting authority, a regulatory federal agency in a public document, and/or to the regional entity of the North American Electric Reliability Corporation (the industry’s electricity reliability organization) for use in regional planning.

DOE is requesting early notification about proposed international transmission projects. Besides the regulatory oversight obligations, the information does support their budget planning process, which operates usually two or more years in advance. Part of that budget has to cover new work and this information will provide key inputs.

Therefore, the following data elements will be classified as being confidential for a term period of time as described above. The data elements (or data fields) are:

- Disclosing the location of the proposed terminal points (starting and ending points);
- Line length;
- Projected in service date; and
- Determination of whether the transmission line is planned to be an upgrade of a transmission lines on an existing right-of-way or add a totally new facility on new right-of-way or combination of both.

Rationale: There is a need to protect information that describes technical aspects of location for a new project and the preliminary right-of-way acquisition(s) for the proposed projects during the initial formation period of the project. This information should be protected from disclosure during this early period of the project, but later that same information will need to be made public to facilitate the various reliability and environmental studies and any associated open public meetings.