

**SUPPORTING STATEMENT FOR
FERC-516 Electric Rate Schedule Filings, Proposed Rule for
Credit Reforms in Organized Wholesale Electric Markets
In Docket No. RM10-13-000 (Noticed of Proposed Rulemaking)**

The Federal Energy Regulatory Commission (FERC or Commission) requests Office of Management and Budget review and approval of a revision to the information collection requirements contained in FERC-516, Electric Rate Schedule and Tariff Filings, (1902-0096) as proposed in the following Notice of Proposed Rulemaking, RM10-13-000 “Credit Reforms in Organized Wholesale Markets”. FERC-516 is currently approved through January 31, 2013.

RM10-13-000 NOPR

On January 21, 2010, in Docket No. RM10-13-000, the Commission issued a Notice of Proposed Rulemaking (NOPR) to amend its regulations under the Federal Power Act Section 206, to reform credit practices in organized wholesale electric markets to ensure that credit practices result in jurisdictional rates that are just and reasonable. Credit practices are particularly important in the organized energy markets, in which regional transmission organizations (RTOs) and independent system operators (ISOs) must balance the need for market liquidity against corresponding risk.¹ In order to ensure that credit policies result in jurisdictional rates that are just and reasonable, FERC proposes to require RTOs and ISOs to adopt tariff revisions reflecting these proposed credit reforms.

In the Notice of Proposed Rulemaking (NOPR), the Commission estimated that the annual burden associated with the information requirements contained in the proposed rulemaking to be a total of 360 hours (60 hours per organization). This estimate was based on the number of RTO’s and ISO’s who file transmission tariffs with the Commission and the modifications to their tariffs that each RTO/ISO will have to perform. As a result of the revisions of the requirements and the corresponding reporting burden of 360 hours, the hours will be added to the total hours associated with FERC-516 at the final rule stage.

Overview

¹ **Regional Transmission Organization** - An organization approved by the Commission to coordinate transmission planning (and expansion), operation, and use on a regional basis. **Independent System Operator** - An entity charged with reliable operation of the grid and provision of open transmission access to all market participants on a non-discriminatory basis.

The Commission has long been interested in credit policies in wholesale electric markets. The Commission considered issues related to credit practices in 1996 in crafting the pro forma Open Access Transmission Tariff (OATT) in Order No. 888,² where it directed that each transmission provider's tariff include reasonable creditworthiness provisions, and again in 2004 in a subsequent policy statement that provided additional guidance regarding creditworthiness.³ Since then, the individual organized wholesale electric markets have developed credit practices on a case-by-case basis, in response to individual concerns and issues and with varying levels of stakeholder support. More recently, some in the industry have expressed concern that these credit practices may no longer be adequate to protect the integrity of these markets and, in turn, to protect consumers from the high costs that would flow from excessive defaults and associated risks in the markets.

Credit practices and related risk management tools within organized wholesale electric markets have developed incrementally. Until the 1980s, electricity was generally produced and consumed within a single utility system, or bought from neighboring traditional utility suppliers. Because the risk of non-performance was deemed minimal, collateral requirements and other credit practices were not rigidly managed. Credit practices began to evolve with the development of independent generators and then with increased bulk trading between traditional utilities and independent generators and marketers in the 1990s. Credit practices further progressed in this decade, as power trading with multiple counterparties became a recognized multi-billion dollar industry.

Today, parties operating outside the organized wholesale electricity markets typically use bilateral contracts such as the Western Systems Power Pool (WSPP) standard contract and the Edison Electric Institute (EEI) standard contract to sell power, managing credit risk within the terms of those agreements. However, the majority of transactions based on quantity and volume is in the organized

² 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, at 31,937 (1996) (pro forma OATT, section 11 (Creditworthiness)), order on reh'g, Order No. 888-A, 62 FR 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, 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), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

³ Policy Statement on Electric Creditworthiness, 109 FERC ¶ 61,186 (2004) (Policy Statement).

wholesale electric markets.⁴ Individual RTOs and ISOs developed their own individual processes for assessing risk, extending unsecured credit, and settling accounts.

To a large degree, early credit policies in the organized wholesale electric markets were based on the practices of their transmission owning members. In Order No. 888, the Commission required each transmission provider to have “reasonable credit review procedures ... in accordance with standard commercial practices,”⁵ but otherwise allowed the transmission provider to develop its own individual credit practices.⁶ As the organized markets were being formed, they tended to use practices based on those of their transmission-owning members.

Over time, the credit policies in each RTO and ISO have evolved and, in November 2004, the Commission issued its Policy Statement on Electric Creditworthiness to encourage consideration of specific reforms.⁷ In particular, the Commission recommended that transmission providers establish qualitative and quantitative measures to assess credit risk and post those measures on their Open Access Same-Time Information System (OASIS) websites or in their tariffs. Further, the Commission recommended that organized wholesale electric markets seek to minimize the risk of default by shortening the settlement period, netting obligations owed by and to market participants wherever possible, and adopting other measures.

Subsequent to the Policy Statement, various proposals to amend credit policies have been filed by RTOs and ISOs and accepted by the Commission. PJM Interconnection, LLC (PJM), for example, has made several filings revising its tariff to modify its credit practices. The Commission recently accepted PJM’s proposal to revise its tariff to reduce its settlement cycle from 30 days to seven days, reduce the amount of unsecured credit allowed to \$50 million for a member company and \$150 million for an affiliated group, and eliminate unsecured credit in the financial transmission rights market.⁸ Earlier, the Commission accepted a shortened period to cure defaults and other tariff revisions intended to improve

⁴ FERC Staff, 2008 State of the Markets Report, 51 (Sept. 2009).

⁵ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,937.

⁶ While the OATT applies to transmission providers, since 1996 a number of transmission providers have developed RTOs and ISOs.

⁷ See footnote 3.

⁸ PJM Interconnection, L.L.C., 127 FERC ¶ 61,017, at P 4 (2009).

credit practices.⁹

Likewise, the Commission has accepted recent tariff revisions filed by California Independent System Operator Corporation (CAISO), reducing the level of unsecured credit that may be obtained by a market participant from \$250 million to \$150 million,¹⁰ and eventually to \$50 million.¹¹ The Commission has also accepted CAISO's proposal to shorten its "settlement and payment period" from more than 80 days to approximately 25 days.¹²

Concerns of default, especially large defaults that have not been minimized by market safeguards, are troubling in the organized wholesale electric markets, in which losses due to default are borne among all market participants.¹³ As part of the Commission's continuing oversight and assessment of these markets, the Commission is issuing the NOPR to ensure that the credit policies in place in those markets are sufficient to reasonably protect consumers against the adverse effects of default.

A. JUSTIFICATION

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

⁹ PJM Interconnection, L.L.C., 126 FERC ¶ 61,084 (2009).

¹⁰ California Independent System Operator Corp., 126 FERC ¶ 61,285 (2009).

¹¹ California Independent System Operator Corp., 129 FERC ¶ 61,142 (2009).

¹² California Independent System Operator Corp., 128 FERC ¶ 61,265, at P 4 (2009).

¹³ Policy Statement, 109 FERC ¶ 61,186 at P 17 ("If collateral posted by a defaulting party is not sufficient to cover the amount of its default, the remaining credit risk exposure and costs are socialized across an ISO's/RTO's members.").

The Commission has a statutory obligation under Section 205 and 206 of the Federal Power Act (FPA) to prevent unduly discriminatory practices in transmission access. FPA section 205 specifies that all rates and charges, and related contracts and service conditions, for wholesale sales and transmission of energy in interstate commerce be filed with the Commission and must be “just and reasonable”. In addition, FPA section 206 requires the Commission, upon complaint or its own motion, to modify existing rates or services that are found to be unjust, unreasonable, unduly discriminatory or preferential. FPA section 207 further requires the Commission, upon complaint by a state commission and a finding of insufficient interstate service, to order the rendering of adequate interstate service by public utilities, the rates for which would be filed in accordance with FPA sections 205 and 206.

Because “just and reasonable” is not defined by the FPA, the Commission and the courts historically have interpreted this standard in the context of public utilities possessing market power. The courts generally have held that electric rates should be limited to rate levels sufficient to compensate the utility for the cost of rendering service to its customers, including a fair return on the utility’s investment devoted to the service at issue.

In Order No. 888, the Commission encouraged the development of independent systems operators (ISOs) as a way to implement the Commission's functional unbundling policy for existing power pools. Properly functioning ISO's serve the public interest by making the electric power market to be more competitive. Trade in bulk power markets as noted above, has continued to increase significantly and the nation's transmission grid is being used more heavily and in many new ways.

This has resulted on strains on traditional grid management which could no longer support efficient and reliable systems necessary for the continued development of competitive energy markets. Also, there were indications of continued discrimination in providing transmission services by vertically integrated utilities to hamper the development of fully competitive energy markets. The Commission believed that additional steps were necessary to address grid management if fully competitive energy markets are to be achieved. Therefore, the Commission encouraged all transmission owning entities in the nation, including non-public utility entities, to place their transmission facilities under the control of appropriate regional transmission institutions in a timely manner.

On December 20, 1999, the Commission issued Order No. 2000 “Regional Transmission Organizations”. By adopting the final rule the Commission amended its regulations under the Federal Power Act to advance the formation of Regional Transmission Organizations. The regulations required that each public utility that owns,

operates, or controls facilities for the transmission of electric energy in interstate commerce makes certain filings with respect to forming and participating in an RTO.

On February 17, 2007, the Commission issued a final rule Order No. 890, to revise the pro forma Open Access Transmission Tariff (OATT).¹⁴ The final rule addressed and remedied opportunities for undue discrimination under the OATT adopted in 1996 by Order No. 888. Order No. 888 fostered greater competition in wholesale power markets by reducing barriers to entry in the provision of transmission service. In the ten years since Order No. 888, however, the Commission has found that the OATT contained flaws that undermine realizing its core objective of remedying undue discrimination.

Additionally, since the issuance of Order No. 888, the Commission also has experience on the evolution by the markets with credit practices and it believes that it is appropriate to now consider adoption of specific requirements regarding credit practices for organized wholesale electric markets, to be set forth in the Commission's regulations. To promote confidence in the markets, the Commission proposes reforming credit practices of the organized wholesale electric markets to limit potential future market disruptions and to dampen the possible ripple effect of such disruptions. These reforms include shortening settlement periods and reducing the amount of unsecured credit, as described below. The Commission believes that these reforms, if adopted, will enhance certainty and stability in the markets and, in turn, ensure that costs associated with market participant defaults do not result in unjust or unreasonable rates.

In making these proposals, the Commission seeks to balance the needs of the organized wholesale electric markets to modify their practices to comply with the proposed reforms against the benefits to the markets and consumers of having the reforms in place before the winter peak season in 2011-2012. The proposals include:

A. Shortening the Settlement Cycle

The length of the settlement (i.e., billing) period raises both cash management and risk issues. As discussed in the Commission's Policy Statement, the size of credit risk exposure is, in large part, a function of the length of time between completion of the various parts of electricity transactions, i.e., the provision of service, the billing for service, and the payment for service. Since the risk of default begins at the time the

¹⁴ Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, order on reh'g, Order No. 890-A, 112 FERC ¶ 61,297 (2007)).

product or service is committed for delivery and continues until the account payable is ultimately extinguished, reductions in settlement periods would serve to: (1) lower the level of financial assurances required (i.e., collateral requirement provided by individual participants); (2) reduce the quantity of the aggregate level of payables outstanding at any point in time, thereby reducing the potential exposure of a defaulting entity; (3) enable updated transaction prices and charges to be utilized in a timely manner in determining credit risk exposure; and (4) provide earlier identification of default situations by lessening the opportunity for an unrecognized default and its severity. Accordingly, the Commission believes that ISOs/RTOs can minimize the exposure period and significantly reduce the credit risk to all market participants by reducing the time between when a cost is incurred and when payment is ultimately received by an ISO/RTO (i.e., shortening the settlement period).¹⁵

B. Use of Unsecured Credit

As suggested above, as the timeframe of settlement shrinks, so does the amount of unsecured credit that a participant may need. This is because the number of outstanding transactions and the size of the amounts outstanding become smaller, thus minimizing the credit exposure to any market participant.¹⁶

While RTOs and ISOs have tightened risk and credit standards over the years, the vestiges of the practices historically used for unsecured credit are still substantial in some markets. Following those practices, RTOs and ISOs, after credit analysis, generally allow significant amounts of unsecured credit. The Commission understands that the level of unsecured credit allowed has also varied widely among the organized wholesale electric markets (during the financial crisis in fall 2008, ranging from 50 to 80 percent).

The Commission is proposing to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff revisions to reduce the extension of unsecured credit to no more than \$50 million per market participant. The Commission seeks comment on whether there should be a further aggregate cap to cover an entire corporate family (e.g., holding company, subsidiaries, associates, and affiliates) and also whether the cap should be different for markets of different sizes. Reducing the level of unsecured credit combined with shortening the settlement timeframe should reduce the

¹⁵ Policy Statement, 109 FERC ¶ 61,186 at P 21.

¹⁶ See California Independent System Operator Corp., 129 FERC ¶ 61,142 at P 14 (adopting limit of \$50 million of unsecured credit per market participant); PJM Interconnection, L.L.C., 127 FERC ¶ 61,017 at P 5 (adopting limit of \$50 million for a member company and \$150 million for an affiliated group).

risk of default and consequently reduce the cost of default that is shared among market participants.

C. Financial Transmission Rights Markets

The above-proposed reforms are not directly applicable to markets for financial transmission rights, because financial transmission rights have a longer-dated obligation to perform which can run from a month to a year or more. The Commission has also noted that financial transmission rights markets have unique risks that distinguish them from other wholesale electric markets, and that the value of a financial transmission right depends on unforeseeable events, including unplanned outages and unanticipated weather conditions.¹⁷ Moreover, financial transmission rights are relatively illiquid, adding to the inherent risk in their valuation.¹⁸

Given the unique characteristics of and risks inherent in financial transmission rights markets, the Commission proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff provisions that eliminate unsecured credit in financial transmission rights markets.

D. Ability to Offset Market Obligations

Organized wholesale electric markets typically arrange for settlement and netting of transactions entered into between market participants and the market administrator, but do not take title to the underlying contract position of a participant at the time of settlement. This practice became an issue during the Mirant bankruptcy and its resulting default in the CAISO market. Because CAISO had not “taken title” of the transactions, CAISO could not net payments owed to Mirant against payments owed by Mirant.¹⁹ As a result, all of Mirant’s creditors had a claim to revenues owed to Mirant by CAISO market participants, but CAISO market participants bore the loss for money owed and not paid

¹⁷ For a financial transmission right, an unexpected outage can cause unforeseen congestion or movement in flows and the resulting charges or credits can swing very substantially either way.

¹⁸ PJM Interconnection, L.L.C., 127 FERC ¶ 61,017 at P 36.

¹⁹ Memorandum by Wachtell, Lipton, Rosen & Katz to PJM regarding Setoffs and Credit Risk of PJM in Member Bankruptcies at 7, 10-11 (Mar. 17, 2008) (found on Dec. 31, 2009 at <http://www.pjm.com/~media/committees-groups/committees/crmisc/20080423/20080423-wachtell-netting-memo.ashx>).

by Mirant.

The Commission is proposing to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff revisions to clarify their status as a party to each transaction so as to eliminate any ambiguity or question as to their ability to manage defaults and to offset market obligations. The Commission is seeking comment on whether this clarification of status would have ramifications beyond addressing the risk highlighted here.

E. Minimum Criteria for Market Participation

The Commission recognizes that trading helps provide market liquidity, but trading by undercapitalized entities without adequate risk management procedures in place poses an unwarranted risk to organized wholesale electric markets and to their market participants. Minimum criteria for market participation, such as the capability to engage in risk management or hedging or to out-source this capability with periodic compliance verification, are intended to make sure that each market participant has at its disposal adequate risk management capabilities and adequate capital to engage in trading with minimal risk, and related costs, to the market as a whole. Minimum criteria should not be onerous, however, and should allow most traditional market participants – including small load-serving entities, municipalities, cooperatives, and other similar participants in organized wholesale electric markets – to participate.

The Commission therefore proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff language to specify minimum participation criteria for all market participants. The Commission requests comment on what the minimum criteria should be, as well as the process by which the organized wholesale electric markets adopt such criteria.

F. “Material Adverse Change”

Many wholesale market tariffs allow a market administrator to require additional collateral if there is a “material adverse change” in the market participant’s credit status. However, this phrase is ambiguous and could lead to uncertainty as to when a market administrator can require the posting of additional collateral, at potentially great cost to the market participant. Additionally, this ambiguity may have the practical effect of delaying a market administrator’s request for additional collateral until the last minute, by which time the market participant may find it difficult or impossible to obtain and provide such collateral. The mere request for collateral at such a late date could even lead to reactions from other market participants that result in defaults.

The Commission is proposing to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff language to specify under what circumstances a market administrator may invoke a “material adverse change” as a justification for requiring additional collateral. The Commission is requesting comment as to specific language regarding the circumstances under which a market administrator may invoke the “material adverse change” provision and the process by which the organized wholesale electric markets would adopt such language.

G. Grace Period to “Cure” Collateral Posting

RTOs and ISOs have also adopted timeframes in which a party may “cure” its changed credit position by posting additional collateral. The standardized timeframe helps eliminate uncertainty for other market participants during periods of credit stress. PJM, for example, has adopted a period of two business days to cure.²⁰ The Commission understands that demanding additional collateral from a participant can complicate that participant’s financial position and that the participant may need time to “cure,” including consulting with potential lenders and others. On the other hand, the Commission is also aware that the time period to “cure” the position of the participant must be short enough to minimize uncertainty for other market participants and to stem accumulation of debt and potentially erratic market behavior.

For these reasons, the Commission proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff language to limit the time period allowed to post additional collateral when additional collateral is requested by the organized wholesale electric market. The Commission requests comment on the appropriate time period to post additional collateral, e.g., two business days, as PJM has adopted, and whether the time period should be standardized among organized wholesale electric markets.

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

The information from FERC-516 enables the Commission to exercise its wholesale electric power and transmission oversight responsibilities in accordance with the Federal Power Act. The Commission needs sufficient detail to make an informed and reasonable decision concerning the appropriate level of rates, and the appropriateness of non-rate terms and conditions, and to aid customers and other parties who may wish to challenge the rates, terms, and conditions proposed by the utility.

²⁰ PJM Interconnection, L.L.C., 126 FERC ¶ 61,084 at P 12.

This proposed rule, if adopted, would amend the Commission's regulations to ensure that credit practices currently in place in organized markets reasonably protect consumers against the adverse effects of default. To promote confidence in the markets, the Commission believes it is appropriate to consider adoption of specific requirements regarding credit practices for organized wholesale electric markets. These requirements include shortening of settlement periods and reducing the amount of unsecured credit. The Commission believes these actions, if they are adopted, will enhance certainty and stability in the markets, and in turn, ensure that costs associated with market participant defaults do not result in unjust or unreasonable rates. Filings by RTOs and ISOs would be made under Part 35 of the Commission's regulations.

The major portion of data requested in the Part 35 regulations specifies the rates, terms and conditions of service to support the wholesale customers in a service the utility is proposing to provide. Submission of the information is necessary because of the complexity of the utility conditions and terms to provide service. Sufficient detail must be obtained for the Commission to make informed and equitable decisions concerning the appropriate levels of rates and service, and to aid customers and other parties who may wish to challenge the rate proposed by the utility. Through this data collection process, the Commission is able to regulate public utilities and licensees by exercising oversight and review of the reported rate schedules and tariffs.

With regard to administering tariffs, the RTO is the sole provider of transmission services and sole administrator of its own open access tariff. It has sole authority over facilities under its control to evaluate and approve or deny all requests for transmission service, and also authority to approve requests for new interconnections.

In addition, the Commission has a statutory obligation under section 205 and 206 of the FPA to prevent unduly discriminatory practices in transmission access. To accomplish this, the Commission added section 35.27 to its regulations concerning the standards a public utility must satisfy regarding nondiscriminatory open access transmission services on the utility's facilities that transmit electric energy in interstate commerce. The regulations require all public utilities owning or controlling facilities for the transmission of electric energy in interstate commerce to file tariffs of general applicability that offer transmission services, including ancillary services, on a network and point-to-point basis. The regulations require the public utility to take transmission service for itself under the rates, terms and conditions of these tariffs. In essence these tariffs as approved by the Commission list the terms and conditions, including a schedule or prices, under which utility services will be provided.

Without this information, the Commission would be unable to discharge its responsibility to approve or modify electric utility tariff filings and would delay the effective implementation of nationwide open access to transmission by wholesale electric customers. Failure to issue these requirements would prevent timely Commission determination and approval of just and reasonable rates, which in turn, would prevent public utilities and licensees from being fairly compensated for services rendered.

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

There is an ongoing effort to determine the potential and value of improved information technology to reduce the burden. The Commission adopted user friendly electronic formats and software in order to facilitate the required electronic formats for rate filings and will develop formats for any subsequent filings.

In Order No. 2001, (67 FR 31043, May 8, 2002) the Commission revised the format through which traditional public utilities and power marketers must satisfy their obligation, in accordance with section 205 of the FPA and Part 35 of the Commission's regulations, to file agreements with the Commission. Public utilities that have standard forms of agreement in their transmission tariffs, cost-based power sales tariffs, or tariffs for other generally applicable services no longer have to file conforming service agreements with the Commission. The filing requirement for conforming agreements is now satisfied by filing the standard form of agreement and an electronic Electric Quarterly Report. Order No. 2001 also lifted the requirement that parties to an expiring conforming agreement file a notice of cancellation or a cancellation tariff sheet with the Commission. The public utility can simply remove the agreement from its Electric Quarterly Report.

Non-conforming agreements, which are agreements for transmission, cost-based power sales and other generally applicable services that do not conform to an applicable standard form of agreement in a public utility's tariff, must continue to be filed with the Commission for approval before going into effect. This category excludes unexecuted agreements and agreements that do not precisely match the applicable standard form of service agreement.

On November 15, 2007, the Commission issued a Final Rule, RM07-16-000, Order No. 703, "Filing via the Internet" 73 Fed. Reg. 65659 (November 23, 2007) revising its regulations for implementing the next version of its system for filing documents via the Internet, eFiling 7.0. The Final Rule allows the option of filing all

documents in Commission proceedings through the eFiling interface except for specified exceptions, and of utilizing online forms to allow “documentless” interventions in all filings and quick comments in P (Hydropower Project), PF (Pre-Filing NEPA activities for proposed gas pipelines), and CP (Certificates for Interstate Natural Gas Pipelines) proceedings.

This Final Rule amended the Commission’s regulations²¹ to provide that all documents filed with the Commission may be submitted through the eFiling interface except for documents specified by the Secretary. The changes implemented in the eFiling Final Rule means that categories such as oversized documents and most confidential documents will be accepted via eFiling. However, at that time, there were principal exceptions, and they are tariffs, tariff revisions and rate change applications; some forms; and documents that are subject to protective orders.

In RM01-5-000²², Order No. 714 issued September 19, 2008, FERC revised its regulations to require that all tariffs, tariff revisions and rate change applications for the public utility, natural gas pipeline and oil pipeline industries be filed according to a set of standards developed in conjunction with the North American Standards Board. The standards will assist in FERC’s goal of establishing a robust electronic filing environment for tariffs and tariff related material and will make it possible for FERC staff and the public to retrieve this material from a data base. Adoption of these standards and protocols will provide each company with enhanced flexibility to develop software to better integrate tariff filings with their individual tariff maintenance and business needs. These standards and protocols will also provide an open platform permitting third-party software developers to create more efficient tariff filing and maintenance applications, which will spread the development costs over larger numbers of companies.

Electronically filed tariffs and rate change applications should improve the efficiency and administrative convenience and improve the overall management of the tariff and tariff change filing process, facilitate public access to tariff information, and reduce the burden and expense associated with paper tariffs and tariff changes. In addition, electronically filed tariffs should improve access and research capabilities with and among applicant’s tariffs. This feature should help facilitate the Commission’s monitoring of the energy markets, to the benefit of the customers and all involved. It should also enhance competition within industries by providing the customers with an

²¹ Rule 2003(c) of the Commission’s Rules of Practice and Procedure, 18 CFR 385.2003(c).

²² Electronic Tariff Filings, Order No. 714, 73 FR 57515 (Oct. 3, 2008), FERC Stats. & Regs ¶ 31,276 (2008).

electronic means of comparing the rates, terms and conditions, and other provisions applicable to the regulated entities. While Order No. 714 became effective November 3, 2008, the Commission delayed required implementation of the electronic filing requirements until April 1, 2010 to provide sufficient time for filers to develop tariff filing software based on the standards adopted in Order No. 714.

The Commission intends, as far as practicable, to continue decreasing its reliance on paper documents and to continue to upgrade eFiling capabilities in furtherance of the Commission's responsibilities under the Government Paperwork Elimination Act.²³

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.

Electric Rate schedules and tariff filings containing transmission information that are not available from other sources and therefore, no use or other modification of the information can be made to perform oversight and review responsibilities under applicable legislation (e.g. Federal Power Act, Energy Policy Act of 1992, Energy Policy Act of 2005). All of the Commission's public information collections are subject to analysis and review by Commission staff and are examined for redundancy. Further, Commission staff conducted an internal review of this collection of information to determine the necessity of the Commission's strategic objectives.

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

The Commission has reviewed those public utilities that constitute "small business concerns" under the Regulatory Flexibility Act for compliance with the proposed rule. FERC does not believe that the NOPR would have a direct impact on small entities. Most, if not all, of the transmission organizations to which the requirements of this rule

²³ Pub. L. No. 105-277, § 1704, 112 Stat. 2681, 2681-750 (1998).

would apply do not fall within the definition of small entities.²⁴ Those entities to be impacted directly by this rule include the following:

- California Independent Service Operator Corp. (CAISO) is a nonprofit organization comprised of more than 90 electric transmission companies and generators operating in its markets and serving more than 30 million customers.
- New York Independent System Operator, Inc. (NYISO) is a nonprofit organization that oversees wholesale electricity markets serving 19.2 million customers. NYISO manages a 10,775-mile network of high-voltage lines.
- PJM Interconnection, L.L.C. (PJM) is comprised of more than 450 members including power generators, transmission owners, electricity distributors, power marketers and large industrial customers and serving 13 states and the District of Columbia.
- Southwest Power Pool, Inc. (SPP) is comprised of 50 members serving 4.5 million customers in 8 states and has 52,301 miles of transmission lines.
- Midwest Independent Transmission System Operator, Inc. (Midwest ISO) is a non-profit organization with over 131,000 megawatts of installed generation. Midwest ISO has 93,600 miles of transmission lines and serves 15 states and one Canadian province.
- ISO New England Inc. (ISO-NE) is a regional transmission organization serving 6 states in New England. The system is comprised of more than 8,000 miles of high voltage transmission lines and several hundred generating facilities of which more than 350 are under ISO-NE's direct control.

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

²⁴ The RFA definition of “small entity” refers to the definition provided in the Small Business Act, which defines a “small business concern” as a business that is independently owned and operated and that is not dominant in its field of operation. See 5 U.S.C. § 601(3), citing to Section 3 of the Small Business Act, 15 U.S.C. § 632 (2000). The Small Business Size Standards component of the North American Industry Classification system defines a small utility as one that, including its affiliates is primarily engaged in the generation, transmission, or distribution of electric energy for sale, and whose total electric output for the preceding fiscal years did not exceed 4MWh. 13 C.F.R. § 121.202 (Sector 22, Utilities, North American Industry Classification System, NAICS) (2004).

It is not possible to collect this data less frequently. Only public utilities owning, operating, and/or controlling facilities used for the transmission of electricity in interstate commerce are required to comply with the NOPR. They will only be required to file once to amend their OATTs to include these reforms. The Commission proposes to require that each RTO and ISO make certain filings to amend their tariffs, in order to comply with the credit reform requirements specified in the NOPR.

The required information should impose the least possible burden for companies to comply with the Commission's open access policies.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

This proposed program meets all of OMB's section 1320.5 requirements with the exception of part "d" thereof. Section 1320.5(d) limits the collection of data to an original and two copies of any document. The data provided under FERC-516 includes tariff sheets and rate schedules that would be filed by the respondents to comply with the provisions as indicated in Item A (1.). Currently an original and five copies are required to be submitted to the Commission. This is the minimum necessary to permit processing within the statutory time frame for Commission action. The original is routed to eLibrary for public viewing over the Commission's web site. One copy is distributed to the Public Reference and Files Maintenance Branch for public inspection in the Commission's Public Reference Room. An additional copy is distributed to the Office of General Counsel for legal review. Three copies are distributed to the Office of Energy Markets and Regulation for technical review by analysts in rate filings, rate investigations and financial analysis.

However, with the implementation of the eTariff Final Rule, Order No. 714, and electronic filing is put into place, this will eliminate the need for paper copies entirely for service agreements and transactional reports. Until the expected implementation date of April 1, 2010, the traditional number of hard copies will still be needed for efficient processing of the data.

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

Notwithstanding the progress that has been made in some of the organized wholesale electric markets in reforming credit practices, the Commission is concerned that more needs to be done to ensure that rates for service in those markets are just and

reasonable. Past experience in the markets has highlighted aspects of the credit management tools that require modification,²⁵ as was emphasized at a technical conference on credit and capital issues held by the Commission in January 2009.²⁶

As noted above, the Commission's concerns about the adverse effects of default and ensuring that the credit policies in place in organized markets can adequately protect consumers have prompted the issuance of this NOPR and comments on proposed reforms.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

Not applicable. The Commission does not provide compensation or remuneration to entities subject to its jurisdiction.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

An entity seeking confidential treatment of the information must ask the Commission to treat this information as confidential and non-public, consistent with Section 388.112 of the Commission's regulations. (18 CFR 388.112) Generally, the Commission does not consider this information to be confidential.

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

There are no questions of a sensitive nature that are considered private.

12. ESTIMATED BURDEN ON COLLECTION OF INFORMATION

Data Collection	Number of Respondents	No. of Responses	Hours Per Response	Total Annual Hours

²⁵ See New England Power Pool, 97 FERC ¶ 61,387 (2001) (accepting alternative payment and financial assurance arrangements filed by NEPOOL in response to defaults associated with the bankruptcy of Enron).

²⁶ Testimony in Technical Conference on Credit and Capital Issues, Docket No. AD09-2-000, Tr. 91:23-25 (Mr. Robert Ludlow, Vice President and Chief Financial Officer, ISO-NE) (Jan. 13, 2009); Testimony in Technical Conference on Credit and Capital Issues, Docket No. AD09-2-000, Tr. 101:3-5 (Mr. Philip Leiber, Chief Financial Officer and Treasurer, CAISO) (Jan. 13, 2009).

FERC-516				
Transmission Organizations with Organized Electricity Markets	6	1	60	360

Total Annual hours for Collection: (Reporting + recordkeeping, (if appropriate) =
 Total hours for performing tasks 1 through as identified above = 360 hours.

It should be noted that the above table applies only with the number of respondents who must comply with the requirements of the NOPR. These requirements are a component of all filing requirements contained under 18 CFR Part 35.

Current OMB Inventory

Data Collection	No. of Respondents	No. of Responses	Hours Per Response	Total Hours
FERC-516	1,230	4,330	106.117	459,489

As Proposed by NOPR

Data Collection	No. of Respondents	No. of Responses	Hours Per Response	Total Hours
FERC-516	1,230	4,330	106.201	459,849

13. ESTIMATED OF THE TOTAL COST BURDEN TO RESPONDENTS

The Commission reviewed both the hourly rate figures of the Bureau of Labor Statistics and salary.com. plus applying where possible market rates per occupational series. The hourly rates represent a composite of the respondents who will be responsible for implementing and responding to the NOPR (Legal and financial staff). It has projected the average annualized cost to be:

The Commission has projected the average annualized cost of all respondents to be the following: 360 hours @ \$300 per hour = \$108,000 for respondents. No capital costs are estimated to be incurred by respondents.

The total annualized costs for the information collection is \$108,000. This number is reached by multiplying the total hours to prepare responses (360 hours, 6 RTOs/ISOs @ 60 hours per entity) by an hourly wage estimate of \$300 (a composite estimate that includes legal, technical and support staff rates, \$215+\$60+\$25).

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

The costs to the Commission are estimated to be \$34,459 (.25 FTEs (full time equivalent employees) x \$137,834).

15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

The Commission is issuing this NOPR to reform credit practices in organized wholesale electric markets.²⁷ The recent turmoil in financial markets has emphasized the importance of sound credit practices that provide competitive markets with adequate access to capital without excessive risk and without excessive cost. Credit policies are particularly important in the organized energy markets, in which regional transmission organizations (RTOs) and independent system operators (ISOs) must balance the need for market liquidity against corresponding risk. In order to ensure that credit policies result in jurisdictional rates that are just and reasonable, the Commission proposes to require RTOs and ISOs to adopt tariff revisions reflecting these proposed credit reforms.

See Background section above for further discussion.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

Schedule for Data Collection and Analysis

Tariff Amendment Filed	60 days after publication in Federal Register
Initial Commission Order	60 days

While the Commission proposes that the tariff changes be submitted no later than

²⁷ For purposes of this Notice of Proposed Rulemaking, organized wholesale electric markets include energy, transmission and ancillary service markets operated by independent system operators and regional transmission organizations. These entities are responsible for administering electric energy and financial transmission rights markets. As public utilities, they have on file as jurisdictional tariffs the rules governing such markets.

June 30, 2011, to go into effect no later than 60 days after filing, the Commission is requesting comment on whether the changes proposed should be put in place earlier.

17. DISPLAY OF EXPIRATION DATE

The information collected on Open Access Transmission Tariffs is not collected on standardized filing formats or a preprinted form that would avail itself of displaying the OMB control number. With the implementation of Order No. 714 (RM01-5-000), the electronic filing electric, gas and oil tariffs (see item no. 3 above), the control numbers for these information collections will be displayed on the instructional manual to be disseminated to regulated entities and also posted on the Commission's web site.

18. EXCEPTION TO THE CERTIFICATION STATEMENT

There are exceptions to the Paperwork Reduction Act Submission certification. Because the data collected for these reporting and recordkeeping requirements are not used for statistical purposes, the Commission does not use as stated in item 19(I) "effective and efficient statistical survey methodology." In addition, as noted in no. 17, this information collection does not fully meet the standard set in 19 (g) (vi.).

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS.

This is not a collection of information employing statistical methods.