SUPPORTING STATEMENT FOR
FERC-516 Electric Rate Schedule Filings, Proposed Rule for
Demand Response Compensation in Organized Wholesale Electric Markets
In Docket No. RM10-17-000 (Noticed of Proposed Rulemaking)

The Federal Energy Regulatory Commission (FERC or Commission) is requesting 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, RM10-17-000 "Demand Response Compensation in Organized Wholesale Markets". FERC-516 is currently approved through January 31, 2013.

RM10-17-000 NOPR

On March 18, 2010, in Docket No. RM10-17-000, the Commission issued a Notice of Proposed Rulemaking (NOPR) to amend its regulations proposing an approach for compensating demand response resources in order to improve the competitiveness of organized wholesale energy markets and thus ensure just and reasonable wholesale rates. The Commission is proposing that Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs)[1] that have tariff provisions permitting demand response providers to participate as resources in energy markets by reducing consumption of electricity from their expected levels in response to price signals, will be required to pay demand response providers, in all hours, the market price for energy for such reductions.[2]

[1] The following RTOs and ISOs have organized wholesale electricity markets: PJM Interconnection, L.L.C. (PJM); New York Independent System Operator, Inc. (NYISO); Midwest Independent Transmission System Operator, Inc. (Midwest ISO); ISO New England, Inc. (ISO-NE); California Independent System Operator Corp. (CAISO); and Southwest Power Pool, Inc. (SPP).

[2] This provision applies only to demand response acting as a resource in organized wholesale energy markets. The provision will not apply to demand response under programs that ISOs and RTOs administer for reliability or emergency conditions, such as, for instance, Midwest ISO's Emergency Demand Response; NYISO's Emergency Demand Response Program; PJM's Emergency Load Response; and ISO-NE's Real-Time 30-Minute Demand Response Program, Real-Time and 2-Hour Demand Response Program, and Real-Time Profiled Response Program. This provision also will not apply to compensation in ancillary services markets, which the Commission has addressed elsewhere. See e.g., Wholesale Competition in Regions with Organized Electric Markets, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. P 31,281 (2008) (Order No. 719 or Final Rule).

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 36 hours (6 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 36 hours, the hours will be added to the total hours associated with FERC-516 at the final rule stage.

Overview

The Commission has acted over the last several decades to implement Congressional policy to expand the wholesale energy markets to facilitate entry of new resources and support competitive markets. Most recently, the Commission in Order No. 719 implemented a series of reforms aimed at improving the competitiveness of the organized energy markets, finding that effective wholesale competition protects consumers by, among other things, providing more supply options, encouraging new entry and innovation, and spurring deployment of new technologies.[3] With the goal of improving the competitiveness of organized wholesale markets, the Commission has determined, that it is "integral to the Commission fulfilling its statutory mandate to ensure supplies of electric energy at just, reasonable, and not unduly discriminatory or preferential rates."[4]

Subject NOPR (Docket No. RM10-17-000)

On March 18, 2010, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing an approach for compensating demand response resources in order to improve the competitiveness of organized wholesale energy markets and thus ensure just and reasonable wholesale rates.

In Order No. 719, the Commission recognized active participation by customers in organized wholesale energy markets through demand reductions helps to increase

[3] See Order No. 719 at P 1; see also Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at P 1 (1999), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607, 348 U.S. App. D.C. 205 (D.C. Cir. 2001).

[4] Order No. 719 at P 1.

competition in those markets.[5] Demand reductions whereby customers reduce electricity consumption from normal usage levels in response to price signals can generally occur in two ways: (1) customers reduce demand by responding to dynamic rates that are based on wholesale prices (sometimes called "price-responsive demand"); and (2) customers can provide demand response that acts as a resource in wholesale markets to balance supply and demand. While a number of states and utilities are pursuing retail-level price-responsive demand initiatives based on dynamic and time-differentiated retail prices and utility investments, these are state initiatives, and, thus, are not the subject of this proceeding.[6] The Commission's focus in this NOPR is on customers providing - through bids - demand response that acts as a resource in organized wholesale energy markets.

Demand response acting as a resource in organized wholesale energy markets helps to improve the functioning and competitiveness of such markets in several ways. First, demand response can lower prices. When bid directly into the wholesale market, demand response – which results in lower demand – can result in lower clearing prices.[7] For example, a study conducted by PJM, which simulated the effect of demand response on prices, demonstrated that a modest three percent load reduction in the 100 highest peak hours corresponds to a price decline of six to 12 percent.[8] Demand response can also lower prices in the organized wholesale energy markets by reducing the need to dispatch higher-priced generation, or construct new generation, in an effort to satisfy

[5] See Order No. 719 at P 48.

[6] Some ISOs and RTOs are engaged in stakeholder discussions concerning the coordination necessary between wholesale markets and retail rate design, and we expect to address any filings emerging from those discussions in future proceedings.

[7] Wholesale Competition in Regions with Organized Electric Markets, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009).

[8] ISO-RTO Council Report, Harnessing the Power of Demand How ISOs and RTOs Are Integrating Demand Response into Wholesale Electricity Markets, found at http://www.isorto.org/atf/cf/%7B5B4E85C6-7EAC-40A0-8DC3-003829518EBD%7D/IRC_DR_Report_101607.pdf.

load.[9] Second, demand response can mitigate generator market power.[10] This is because the more demand response is able to reduce demand, the more downward pressure it places on generator bidding strategies by increasing the risk to a supplier that it will not be dispatched if it bids a price that is too high.[11] Third, demand response has the potential to support system reliability and address resource adequacy[12] and resource management challenges surrounding the unexpected loss of generation.[13]

Given its ability to lower electricity prices and ensure reliability, demand response can play a critical role in helping the Commission fulfill its mandate under the Federal

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[9] Id. ("Demand response tends to flatten an area's load profile, which in turn may reduce the need to construct and use more costly resources during periods of high demand; the overall effect is to lower the average cost of producing energy."). Similarly, NYISO "has experienced a significant increase in the registration of the [demand response] programs that have effectively reduced the need for additional [generation] capacity resources to the system based on customer pledges to cut energy usage on demand." See NYISO's 2009 Comprehensive Reliability Plan at 3, found at http://www.nyiso.com/public/webdocs/newsroom/planning_reports/CRP__FINAL_5-19-09.pdf.

[10] See Comments of NYISO's Market Monitor filed in Docket No. ER09-1142-000, May 15, 2009 (Demand response "contributes to reliability in the short-term, resource adequacy in the long-term, reduces price volatility and other market costs, and mitigates supplier market power.").

[11] Id.

[12] See ISO-RTO Council Report, Harnessing the Power of Demand How ISOs and RTOs Are Integrating Demand Response into Wholesale Electricity Markets at 4, found at http://www.isorto.org/atf/cf/%7B5B4E85C6-7EAC-40A0-8DC3-003829518EBD%7D/IRC_DR_Report_101607.pdf ("Demand response contributes to maintaining system reliability. Lower electric load when supply is especially tight reduces the likelihood of load shedding. Improvements in reliability mean that many circumstances that otherwise result in forced outages and rolling blackouts are averted, resulting in substantial financial savings . . . ."); Smart Grid Policy, 126 FERC ¶ 61,253, at P 19 and n.23 (2009) ("The Smart Grid concept envisions a power system architecture that permits two-way communication between the grid and essentially all devices that connect to it, ultimately all the way down to large consumer appliances. . . . Once that is achieved, a significant proportion of electric load could become an important resource to the electric system, able to respond automatically to customer-selected price or dispatch signals delivered over the Smart Grid infrastructure without significant degradation of service quality.").

Power Act (FPA) to ensure that rates charged for energy are just and reasonable.[14] Accordingly, and consistent with national policy requiring facilitation of demand response,[15] the Commission has acted to remove barriers to participation of demand response resources in organized wholesale electricity markets. For example, in Order No. 890, the Commission modified the pro forma Open Access Transmission Tariff to allow non-generation resources, including demand response resources, to be used in the provision of certain ancillary services where appropriate on a comparable basis to service provided by generation resources.[16] Order No. 890-A further requires transmission providers to develop transmission planning processes that treat all resources, including demand response, on a comparable basis.[17]

The Commission built on these reforms in Order No. 719, requiring ISOs and RTOs to, among other things, accept bids from demand response resources in their markets for certain ancillary services on a basis comparable to other resources.[18] The Commission also required each ISO and RTO "to reform or demonstrate the adequacy of its existing market rules to ensure that the market price for energy reflects the value of energy during an operating reserve shortage,"[19] for purposes of encouraging existing

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[13] For instance, in ERCOT, on February 26, 2008, through a combination of a sudden drop in power supplied by wind generators, a quicker-than-expected ramping up of demand, and the loss of thermal generation, ERCOT found itself short of reserves. The system operator called on all demand response resources, and 1200 MW of Load acting as Resource (LaaRs) responded within ten minutes, bringing ERCOT back into balance, from 59.85 Hz back to 60 Hz.

[14] 16 U.S.C. § 824d (2006).

[15] See EPAct 2005, Pub. L. No. 109-58, § 1252(f), 119 Stat. 594, 965 (2005) ("It is the policy of the United States that . . . unnecessary barriers to demand response participation in energy, capacity, and ancillary service markets shall be eliminated.").

[16] Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 887-88 (2007), order on reh'g, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), order on reh'g and clarification, Order No. 890-B, 73 Fed. Reg. 39092 (Jul. 8, 2008), 123 FERC ¶ 61,299 (2008), order on reh'g, Order No. 890-C, 126 FERC ¶ 61,228 (2009), order on clarification, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[17] Order No. 890-A at P 216.

[18] Order No. 719 at P 47-49.

generation and demand resources to continue to be relied upon during an operating reserve shortage, and encouraging entry of new generation and demand resources.[20]

A. JUSTIFICATION

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

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

[19] Id. P 194.

[20] Id. P 247.

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).[21] 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.

The Commission has issued orders in recent years approving various types of ISO and RTO demand response programs. Wholesale customers and qualifying large retail customers may bid demand response directly into the day-ahead and real-time energy markets, certain ancillary service markets and capacity markets.[22] Demand response

[21] 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)).

[22] Other demand response programs allow demand response to be used as a capacity resource and as a resource during system emergencies or permit the use of demand response for synchronized reserves and regulation service. See, e.g., PJM Interconnection, L.L.C., 117 FERC ¶ 61,331 (2006); Devon Power LLC, 115 FERC ¶ 61,340, order on reh'g, 117 FERC ¶ 61,133 (2006), appeal pending sub nom., Maine Pub. Utils. Comm'n v. FERC, No. 06-1403 (D.C. Cir. 2007); New York Indep. Sys. Operator., Inc., 95 FERC ¶ 61,136 (2001); NSTAR Services Co. v. New England Power Pool, 95 FERC ¶ 61,250 (2001); New England Power Pool and ISO New England, Inc., 100 FERC ¶ 61,287, order on reh'g, 101 FERC ¶ 61,344 (2002), order on reh'g, 103 FERC ¶ 61,304, order on reh'g, 105 FERC ¶ 61,211 (2003); PJM Interconnection, L.L.C., 99 FERC ¶ 61,227 (2002).

providers participating as resources in the day-ahead and real-time energy markets are the subject of this NOPR.

With particular regard to demand response compensation for this latter category of resources, the Commission previously has allowed a system-by-system approach, whereby each RTO and ISO has developed its own compensation methodologies for demand response resources in its energy market. As a result, the levels of compensation for demand response vary significantly among RTOs and ISOs. PJM pays the Locational Marginal Price (LMP)[23] minus the generation and transmission portions of the retail rate.[24] ISO-NE and NYISO currently pay LMP when prices are above a threshold level, with the levels differing between the RTOs.[25] The Midwest ISO currently has a program that pays LMP for demand response in the real-time energy market when the demand response provider has purchased the amount reduced in the day-ahead market for energy and ancillary services.[26] CAISO pays LMP in its participating load program that allows qualifying resources to provide day-ahead and real-time energy and non-spinning

[23] LMP refers to the price calculated by the ISO or RTO at particular locations or electrical nodes within the ISO or RTO footprint and is used as the market price to compensate generators. There are variations in the way ISOs and RTOs calculate LMP; however, each method establishes the marginal value of resources in that market. Nothing in this NOPR is intended to change ISO and RTO methods for calculating LMP.

[24] PJM FERC Electric Tariff, Sixth Revised Sheet No. 388D.01.

[25] For example, under ISO-NE's Real Time Price Response Program, the minimum bid is $100/MWh and a demand response resource is paid the higher of LMP or $100/MWh. See Section III.1.3 of the ISO New England Transmission, Markets and Services Tariff, Section 1 of the Second Restated New England Power Pool Agreement. NYISO implements a day-ahead demand response program by which resources bid into the market at a minimum of $75/MWh and can get paid the LMP. See NYISO Incentivized Day-Ahead Economic Load Curtailment Program, Fifth Revised Tariff Sheet No. 34-34A, 89.

[26] See Charges and Credits for Real-Time Energy and Operating Reserve Market Energy Purchases and Sales Associated with Demand Response Resources. Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 1114.

reserves.[27] SPP currently has no demand response program at all.[28] ISOs and RTOs have continued to examine the effectiveness of demand response compensation in their respective regions, and, as a result, the issue of proper compensation continues to be the subject of several proceedings.[29]

Given the importance of demand response resources to the competitiveness of organized wholesale electricity markets, and based upon the Commission's experience to date with demand response in the ISO- and RTO-administered markets, the Commission proposes to address compensation for demand response resources participating in organized wholesale energy markets generically in this NOPR. The Commission proposes to add section 35.18(g)(1)(v) to its regulations to establish a specific compensation approach for demand response resources participating in organized wholesale energy markets (such as the day-ahead and real-time markets administered by the ISOs and RTOs). Under the proposed section, each Commission-approved ISO and RTO that has a tariff provision providing for participation of demand response resources in its energy market must pay demand response resources, in all hours, the market price for energy, i.e., full LMP, for demand reductions made in response to price signals.[30]

The Commission proposes to take this action generically to address issues that are common to the RTO and ISO markets in a coordinated manner in a single proceeding. The Commission believes paying demand response resources the LMP in all hours will compensate those resources in a manner that reflects the marginal value of the resource to each RTO and ISO, comparable to treatment of generation resources. This will improve

[27] See section 11.2.1.1 IFM Payments for Supply of Energy, CAISO FERC Electric Tariff.

[28] However, the Commission has directed SPP to report on ways it can incorporate demand response into its imbalance market. Southwest Power Pool, Inc., 114 FERC ¶ 61,289, at P 229 (2006). In its orders addressing SPP's compliance with Order No. 719, the Commission also directed SPP to make a subsequent compliance filing addressing demand response participation in its organized markets. Southwest Power Pool, Inc., 129 FERC ¶ 61,163, at P 51 (2009).

[29] See PJM Interconnection, L.L.C., Docket No. EL09-68-000; ISO New England, Inc., Docket No. ER09-1051-000; ISO New England, Inc., Docket No. ER08-830-000; Midwest Indep. Transmission Sys. Operator, Inc., Docket No. ER09-1049-000.

[30] This provision will not apply to programs that ISOs and RTOs administer for reliability or emergency conditions. In those situations, the ISO and RTO tariffs may provide compensation that is not necessarily related solely to energy prices but is designed to prevent involuntary load curtailment.

the competitiveness of the organized wholesale energy markets and, in turn, help to ensure that energy prices in those markets are just and reasonable.

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.

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.

This proposed rule, if adopted, would amend the Commission's regulations to obligate ISOs and RTOs to pay the market price for energy to demand response resources for demand reductions within each respective ISO and RTO region. Requiring ISOs and RTOs to pay the market price for energy to demand response resources for demand reductions in response to price signals will potentially reduce the market clearing price of electricity. The Commission has emphasized the importance of demand response as a vehicle for improving the competitiveness of organized wholesale electricity markets and ensuring supplies of energy at just, reasonable and not unduly discriminatory or preferential rates.[31]

The Commission has previously accepted a variety of ISO and RTO proposals for compensation for demand response providers, with different levels of payment. As the Commission has gained experience with these programs, it is concerned that the current compensation levels appear to have become unjust and unreasonable. Providers may submit price and quantity bids into the organized wholesale energy markets and the market clears at the marginal resource yet they fail to compensate demand response at levels that reflect the marginal value of the resource being used by the RTO or ISO to balance supply and demand. The current wholesale compensation levels may therefore be leading to under-investment in demand response resources, resulting in higher, and unjust and unreasonable, prices in the organized electricity markets. To help ensure that wholesale prices in ISOs and RTOs remain just and reasonable, the Commission is proposing to require each ISO and RTO to pay the Locational Marginal Price (LMP) to demand response providers participating in the organized wholesale energy markets.

It is a well-established practice in the organized wholesale energy markets to rely on LMPs to encourage efficient behavior by market participants. The LMP represents the value of additional supply or reductions in consumption at each node within the RTO or ISO and, thus, reflects the marginal cost of the last unit necessary to efficiently balance supply and demand.[32] The LMP is therefore the primary mechanism for compensating generation resources clearing in the organized electricity markets, which the Commission

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[31] Order No. 719 at P 16.

[32] See ISO New England, Inc., 100 FERC ¶ 61,287, at P 71 (2002) (LMP "provide[s] appropriate price signals indicating the value of additional resources or conservation at each node in the transmission system"); Cleco Power LLC, et al., 103 FERC ¶ 61,272, at P 67 (2003) ("It is widely observed that markets work efficiently when prices reflect marginal costs, i.e., when the market price will be equal to the cost of bringing to market the last unit necessary to balance supply and demand.").

has found encourages "more efficient supply and demand decisions in both the short run and long run."[33]

The Commission proposes that ISOs and RTOs[34] with tariff provisions permitting demand response providers to participate as resources in energy markets by reducing consumption of electricity from their expected levels in response to price signals be required to pay to demand response providers, in all hours, the market price for energy for such reductions.[35] This proposed rule would require ISOs and and RTOs to submit a tariff filing to acknowledge they are permitting demand response resources to participate as a resource in the energy market by reducing consumption of electric energy from their expected levels in response to price signals and subsequently ISOs and RTOs will pay those demand response providers, in all hours, the market price for energy for these reductions.

Without this information, the Commission would be unable to discharge its responsibility to approve or modify electric utility tariff filings in order to improve the competitiveness of organized wholesale energy markets and thus ensure just and reasonable wholesale rates. 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.

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[33] See New England Power Pool, 101 FERC ¶ 61,344, at P 35 (2002).

[34] The following RTOs and ISOs have organized wholesale electricity markets: PJM Interconnection, L.L.C. (PJM); New York Independent System Operator, Inc. (NYISO); Midwest Independent Transmission System Operator, Inc. (Midwest ISO); ISO New England, Inc. (ISO-NE); California Independent System Operator Corp. (CAISO); and Southwest Power Pool, Inc. (SPP).

[35] This provision applies only to demand response acting as a resource in organized wholesale energy markets. The provision will not apply to demand response under programs that ISOs and RTOs administer for reliability or emergency conditions, such as, for instance, Midwest ISO's Emergency Demand Response; NYISO's Emergency Demand Response Program; PJM's Emergency Load Response; and ISO-NE's Real-Time 30-Minute Demand Response Program, Real-Time and 2-Hour Demand Response Program, and Real-Time Profiled Response Program. This provision also will not apply to compensation in ancillary services markets, which the Commission has addressed elsewhere. See e.g., Wholesale Competition in Regions with Organized Electric Markets, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. P 31,281 (2008) (Order No. 719 or Final Rule).

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.

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 regulations[36] 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.

[36] Rule 2003(c) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2003(c).

In RM01-5-000[37], 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 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.[38]

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.

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

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

Electric Rate schedules and tariff filings containing transmission, rate, and terms and conditions of service 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 would apply do not fall within the definition of small entities.[39] 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.

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[39] 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).

• 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

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 compensation for demand resources 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, as noted above with the implementation of the eTariff Final Rule, Order No. 714, and electronic filing was put into place on a phased in approach beginning April 1, 2010. This will eliminate eventually the need for paper copies entirely for service agreements and transactional reports.

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

Despite the benefits of demand response and various efforts by the Commission, ISOs and RTOs to address barriers to and compensation for demand response participation, demand response providers collectively play a small role in wholesale markets. After several years of observing demand response participation in ISO and RTO markets with different, and often evolving, demand response compensation structures, the Commission is concerned that some existing, inadequate compensation structures have hindered the development and use of demand response. The impediment has been addressed at Commission-sponsored technical conferences concerning demand response, where participants have confirmed that customers "must have confidence that appropriate price signals will be sustained by stable competitive pricing structures, before they will make an investment in demand response."[40] Some participants have advised that demand response quite simply will not occur without adequate compensation.[41]

Organized wholesale energy markets are evolving and, as such, the rules and regulations related to those markets will continue to evolve. This is no less so for demand response, as the markets, and the types of demand response participating in them, continue to evolve. Therefore, it may be necessary in the future for industry and the Commission to reassess the appropriate method for compensating demand response

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[40] Transcript of Order No. 719 technical conference at 24, statement by James Eber, Director of Demand Response at Commonwealth Edison, found at http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=3994&CalType=%20&CalendarID=116&Date=05/21/2008&View=Listview.

[41] See Statements of Larry Stalica, Vice President, Linde Energy Services, Inc. FERC Technical Conference- Demand Response in Organized Electric Markets, May 21, 2008, found at http://www.ferc.gov/EventCalendar/Files/20080521081612-Stalica,%20Linde%20Energy%20Services.pdf. ("The mere avoidance of electricity prices often provides insufficient value to offset these real costs. Demand response will not occur if customers do not have an economic incentive to reduce consumption.").

resources in organized wholesale energy markets.[42] Accordingly, the Commission seeks comment on whether, and under what circumstances, the Commission should conduct periodic reviews of demand response compensation and the criteria that should be used in making such assessments.

Comments are due 45 days after publication in the Federal Register.

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
FERC-516				

[42] Indeed, the Commission's proposed action in this proceeding is evidence of its continuing assessment of compensation for demand response resources. In PJM Interconnection, L.L.C., 121 FERC ¶ 61,315 (2007), the Commission rejected a complaint that PJM's existing compensation for demand response (LMP minus the generation and transmission components of the retail rate) was unjust and unreasonable, finding that there was insufficient evidence at the time to make such a finding. As the Commission has acquired more experience with the participation of demand response resources in the organized wholesale energy markets, we are concerned that compensation for demand response in PJM and other RTO and ISO markets may no longer be just and reasonable.

Transmission Organizations with Organized Electricity Markets	6	1	6	36

Total Annual hours for Collection: (Reporting + recordkeeping, (if appropriate) = Total hours for performing tasks 1 through as identified above = 36 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

If adopted:

Data Collection	No. of Respondents	No. of Responses	Hours Per Response	Total Hours
FERC-516	1,230	4,336	**105.979**	**459,525**

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: 36 hours @ $220 per hour = $7,920 for respondents. No capital costs are estimated to be incurred by respondents.

The total annualized costs for the information collection is $7,920. This number is reached by multiplying the total hours to prepare responses (36 hours, 6 RTOs/ISOs @ 6 hours per entity) by an hourly wage estimate of $220 (legal and support staff rates).

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

This proposed rule, if adopted, would amend the Commission's regulations to obligate ISOs and RTOs to pay the market price for energy to demand response resources for demand reductions within each respective ISO and RTO region. Requiring ISOs and RTOs to pay the market price for energy to demand response resources for demand reductions in response to price signals will potentially reduce the market clearing price of electricity. The Commission has emphasized the importance of demand response as a vehicle for improving the competitiveness of organized wholesale electricity markets and ensuring supplies of energy at just, reasonable and not unduly discriminatory or preferential rates.[43]

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

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

[43] Order No. 719 at P 16.

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 uses 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.).

A. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS.

This is not a collection of information employing statistical methods.