

**SUPPLEMENTAL SUPPORTING STATEMENT FOR
FERC Form No. 580 "Interrogatory on Fuel and Energy Purchase Practices
Pursuant to Section 205(f)(2) of the Federal Power Act"
(Updated 8/10/2010)**

The Federal Energy Regulatory Commission (FERC/Commission) requests a three-year extension (through 08/30/2013) of OMB approval for FERC Form No. 580, "Interrogatory on Fuel and Energy Purchase Practices Pursuant to Section 205(f)(2) of the Federal Power Act," OMB No. 1902-0137, which expires 08/31/2010.

On December 14, 2009, the Commission issued a Federal Register Notice¹ (Attachment A) announcing its intent to renew the form and to revise the questions previously used as part of the OMB information collection three-year renewal cycle.

The last time the Commission changed the interrogatory questions was in 1996. Significant changes in the electric industry have occurred since then. These necessitate that the Commission ask new questions to analyze current market issues. Moreover it has been 28 years since the Commission collected information on automatic adjustment clauses (AACs), other than fuel adjustment clauses. The Commission proposes to collect basic information identifying automatic adjustment clauses of all types through which utilities have flowed costs during the current reporting period. The Commission also proposes to expand previous interrogatory questions regarding fuel procurement practices and adjustment clause treatment of purchased power to elicit more complete information and thereby reducing the need for follow-up questions (see Attachment B for a chart comparing questions from the 2008 and proposed 2010 interrogatories).

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

When Congress passed the Public Utility Regulatory Policies Act of 1978 (PURPA), it amended Federal Power Act (FPA) Section 205 to mandate: "not less frequently than every 2 years ... the Commission shall review, with respect to each public utility, practices under any automatic adjustment clauses of such utility to insure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses (Attachment C). This mandate was the impetus for the Commission's first investigation of automatic adjustment clauses and the ordering of subsequent investigations of automatic adjustment clause practices in Docket No. IN79-623 (Attachment D). In that Order, the Commission stated:

¹ 74 FR 66114.

“Pursuant to this requirement, the Commission intends to institute such a review of practices under automatic adjustment clauses employed by each public utility. This initial review will be conducted in addition to the ongoing field audits of the Commission, which will continue to examine all aspects of utility operations, including fuel programs, purchasing practices, management systems and other matters. The review will utilize the results of audits and other data filed with the Commission, in addition to the materials developed specifically by the review.”

The requirements established in the investigation were not set out in the Code of Federal Regulations (CFR).

The first Commission interrogatory issued in 1979 and subsequent interrogatories issued every two years thereafter. The 2010 interrogatory will be the Commission’s 16th investigation. As the review is congressionally mandated, Commission investigations of automatic adjustment clauses will continue until Congress abolishes the requirement.

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

The FERC Form No. 580 (Form 580) interrogatory is conducted every two years. Through it, the Commission collects information from public utilities subject to its jurisdiction that own or operate power plants that generate a minimum of 50MW. Presently there are approximately 125 public utilities subject to this requirement.

The information collected through the Form 580 interrogatory is used by Commission staff to review utility purchase and cost recovery practices through AACs to insure efficient use of resources, in compliance with the statute and with Commission regulations promulgated in 18 CFR §35.14. The information is also used by the Commission to evaluate costs in individual rate filings and to supplement periodic utility audits. The public also uses the information in this manner. Without the Form 580 interrogatory, the Commission would not have the requisite information available to conduct the necessary review the FPA mandates.

3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN AND

TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN

During the previous two years, the Commission devoted considerable staff resources, with industry support, to study the format of the information filed and to construct an electronic version of the interrogatory that is easy to use, allows simultaneous use by multiple utility staff, uses respondent compatible software, allows for download of filed information to aid in entering future filing information and allows for electronic analysis of the information by the Commission, respondents and the public. This 2010 filing cycle will be completely electronic. As a result of highly constructive comments respondents provided the Commission and extensive industry testing, this well-honed information collection instrument has the potential to significantly reduce filing burden.

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 2.

The Commission uses the information collected in the Form 580 together with the data from the Energy Information Administration's (EIA's) Form 923 (EIA-923), "Power Plant Operations Report" to compile a complete data set necessary for adjustment clause analysis. The information in the EIA-923 supplements the Form 580 data and subsequent analyses and is not duplicative. Specifically, the fuel contract data the Commission collects in the Form 580 has significantly greater granularity than the EIA-923 data. These two information collections are designed to achieve different purposes and are not formatted or organized in a way that would allow the use of one for the purposes of the other. There is no other known source for the Form 580 information.

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

This investigation does not collect information from small entities.

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

Form 580 information is collected every other year as required under Section 205(f)(2) of the FPA as amended by Section 208 of PURPA. If the collection were conducted less frequently, the Commission would not be able to carry out the reviews required by this statute.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE

INFORMATION COLLECTION

There are no special circumstances requiring the collection to be conducted in a manner inconsistent with FPA Section 205(f) as amended by Section 208 of PURPA and the Commission's subsequent order issued in Docket No. IN79-6.

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

The notice of proposed information collection and request for comments was published in the Federal Register on December 14, 2009² (Attachment A). The draft Form 580 and instructions for filling out the form were posted to the Commission's website at that time. It generated comments from the Edison Electric Institute (EEI), American Electric Power Company, MidAmerican Energy Company and Pacific Gas and Electric Company. The comments are included in their entirety as attachments G through J. The nature and distribution of the comments warranted presentation by subject instead of by utility. Comments are listed below in two categories: those that were incorporated into the form and those that were not.

F.R. COMMENTS THAT WERE INCORPORATED INTO THE FORM 580

QUESTION 2 – TYPES OF AACs:

- Added additional choices to “Type of AACs” dropdown:
 - Transmission
 - RTO/ISO charges³
 - Other (state)
 - Tolling agreement (state clause type)
- Added choice to “Type of Costs” dropdown:
 - Other (specify type)

QUESTION 5 - FUEL PURCHASE POLICIES AND PROCEDURES:

There were numerous comments made regarding the sensitive nature of the information requested in question 5. Commenters stated the information requested should be treated as privileged, that if released, potential fuel sellers would be given a

² 74 FR 66114.

³ “RTO/ISO” refers to Regional Transmission Organizations and Independent System Operators.

road map to a purchaser's buying policies and practices. That public disclosure of bidding and bid evaluation practices could facilitate gaming by potential suppliers. Further, that it would subject the utility to a greater risk of litigation from fuel suppliers. In response to these comments, the Commission:

- Removed from question 5 the requirement to attach with the Form 580 copies of utility fuel procurement policies and practices and related studies.
- Reworded question 5d1 from “What was the utility’s fuel inventory policy” to “Does the utility have a fuel inventory policy” and reworded “Under what circumstances is fuel inventory increased or decreased” to “Does the policy state under what circumstances fuel inventory increased or decreased.”
- Removed from question 5f the word “specific” so that it now reads: “Report-specific individual plant environmental constraints”.
- Reworded question 5i7 from “Illustrate in detail” to “Describe” – with regard to fuel procurement policies used on a recent fuel procurement contract.
- Inserted in question 5j the word “generally” in asking for the utility’s purchase policy differences between associated companies and those that are not associated.
- Developed an addendum which sets forth a duplicate question 5 which may be filed as privileged, should the filer choose to do so. Added text to question 5 to instruct those choosing to file their question 5 response as privileged.

In response to a recommendation from OMB, FERC also added the following to the privileged version of Question 5:

“The Commission’s regulations, in certain circumstances, provide for privileged treatment of certain information submitted, 18 C.F.R. 388.107, 388.112-13 (2010), but any such information ultimately may be subject to disclosure pursuant to the Freedom of Information Act, 5 U.S.C. 552 (2006), and the Commission’s implementing regulations, 18 C.F.R. Part 388 (2010).”

QUESTION 6 - THE COST AND QUALITY OF FUELS BY CONTRACT:

- Changed the reporting requirement from all contracts to contracts longer than one year in duration, as was the requirement in the 2008 collection.
- Added “see Desk Reference” to the fuel cost column, to direct filers to instructions to enter either FOB plant cost or FOB origin cost, not both.

- Added the choice: “pipeline quality” to a pipeline quality dropdown, as many utilities buy gas from the pipeline that serves their plants without regard to the quality of the gas.

QUESTIONS 7 AND 8 - CONTRACT SHORTFALLS, BUY-DOWNS AND BUY-OUTS:

Commenters stated that the information requested in these two questions is commercially sensitive if reported when identified, instead of when later settled. That, at the earlier identification stage, disclosure of such information would impair a company's bargaining power.

- Reworded the question to request information on shortfalls, buy-downs and buy-outs for agreed cases only. Respondents need not submit information for cases that are involved in ongoing litigation.

APPENDIX A - CONTRACT TYPES:

- In Appendix A, fixed a typographical error: “Contact” to “Contract”.

DESK REFERENCE:

- Added additional instructions to the Desk Reference, as appropriate, to support the changes in the form described herein.

REPORTING BURDEN:

- Based on comments received, the Commission eliminated the requirement to file question 6 information for contracts of one year or less and the question 5 requirement to attach copies of utility fuel procurement policies and practices and related studies. In addition, the Commission has increased its burden figures for the 2010 collection to incorporate an added 900 hours of burden to cover training, initial data entry, understanding of the new electronic filing software etc., which increased the total burden to 4,500 hours. The total burden will revert back to 3,600 hours for the 2012 collection.

SUBMITTAL OF PREVIOUSLY FILED INFORMATION:

The Commission will not enter previously filed data into the new form for two reasons:

- A significant portion of the data filed two years ago was not entered into the preferred Excel format properly. Some filers did not even use the form and many filers that did, did not properly identify each contract's fuel cost with its corresponding delivery information. The required use of the new electronic format will eliminate these issues.
- The new Adobe PDF platform is different than the previously preferred Excel platform therefore eliminating the ability to flow the data from one format to another.

The Commission will however, provide the data filed in 2010 for 2012 filers in the appropriate electronic format thus requiring filers to update information previously filed thus eliminating the burden of subsequently entering data that doesn't change much year to year.

**COMMENTS THAT WERE NOT INCORPORATED
INTO THE FORM 580****AAC DEFINITION:****Comment:**

- EEI challenges the Commission's interpretation of what clauses should be considered "automatic adjustment clauses." Section 205(f) (4) defines "automatic adjustment clauses" as "a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility." It goes on to exclude "any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate." Based on this latter exclusion, EEI argues that formula rate tariffs and agreements that are subject to public true-up proceedings an/or refund should not be included within the scope of Form 580. As such, EEI asserts a simple pass-through component, which does not include a pre-established rate, should not be considered an AAC under the proposed changes.

Response:

The Commission disagrees with EEI's reading of Section 205(f) (4). Form 580 is an information collection, issued to support the preparation of the review called for by section 205(f) of the FPA.⁴ That section requires the Commission, at least every two years, to "review, with respect to each public utility, practices under any

⁴ 16 U.S.C. § 824d(f) (2006).

automatic adjustment clauses of such utility to insure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses.”⁵

Many rate schedules contain provisions for adjustments to rates based on changes in one or more elements of the cost incurred to provide the service, the adjustments being calculated using procedures that have had prior regulatory approval. Where such adjustments in charges are permitted to occur automatically, without specific regulatory review of each adjustment, the rate schedule provisions are referred to as “automatic adjustment clauses.”

Many of the wholesale electric rate schedules filed with the Commission by public utilities contain provisions for automatic adjustment of rates. Current Commission policy permits acceptance of these types of energy cost rates, as well as comprehensive cost-of-service formula rates. These operate to adjust rates automatically. The effect of the clause may be reflected in rates charged by the utility without notification to or filing with the Commission.

These types of automatic adjustment clauses correspond to the definition of AAC in PURPA. What was *not* included in this definition were so-called “periodic review-of-rate clauses,” where the Commission has routinely required filing of changes in rates pursuant to implementation of a review-of-rate clause.

The definition of an automatic adjustment clause incorporated in the Form 580 – “a provision of a rate schedule which provides for increases or decreases (or both), *without prior hearing*, in rates reflecting increases or decreases (or both) in costs incurred” – which EEI complains of, *see* EEI comments at 5, is consistent with this longstanding understanding of Congress’ intent. The fact that a rate may be subject to an after-the-fact public true-up proceeding and/or later refund is a rate that is *not* subject to prior hearing; a rate that adjusts only subject to after-the-fact review, and not prior review, is thus a rate that can and should be legitimately considered an automatic adjustment clause.

In any event, even if EEI were correct in its interpretation of the definition of *automatic adjustment clause*, the Commission’s authority to collect information on such rates is not limited by section 205(f). Section 304 of the FPA⁶ provides that “every public utility shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper

⁵ 16 U.S.C. § 824d(f)(b) (2006).

⁶ 16 U.S.C. § 825c (2006).

administration of this Act.” That section goes on to provide that the Commission may “require from such persons specific answers to all questions upon which the Commission may need information.” Similarly, section 307 of the FPA⁷ provides for investigation of “any facts, conditions, practices, or matters which [the Commission] may find necessary or appropriate.”⁸ Thus, even if EEI’s claim as to the definition of automatic adjustment clause were valid, the Commission may still seek the information it deems necessary to meet its requirements under the statute.

REPORTING THRESHOLDS:

Comment:

- Require information on natural gas contracts only if such contracts in total account for more than, for example, 20% of the total recoveries under AACs during the period.

Response:

If a utility has a specific circumstance under which they think there is a compelling reason not to answer a particular question in the interrogatory, they can apply for a waiver of that particular question. It is not possible for the Commission to anticipate every individual circumstance under which it would not make sense for a particular utility to answer any given question.

DUPLICATIVE REPORTING:

Comments:

- Do not require reporting of information already collected elsewhere, particularly regarding formula rates and fuel costs. The formula rate information is already collected in a new schedule at page 106 of Form 1.
- Do not require submittal of fuel costs as they are already submitted in EIA-923.

Response:

The information collected in the EIA-923 and FERC Form No. 1 is insufficient for the Commission to meet its statutory requirements related to AACs. Both the EIA-923 and FERC Form No. 1 collections are designed for a different purpose than the Form 580. As such, the information in these collections that is similar to the Form 580 information does not have the granularity required for the FPA 205(f) review.

The Form 580 analysis requires the collection of fuel information by contract. In

⁷ 16 U.S.C. § 825f (2006).

⁸ *Cf.* 16 U.S.C. § 825j (2006) (section 311 of the Federal Power Act provides for collection of information necessary or appropriate as a basis for recommending legislation).

contrast, the EIA-923 form collects fuel information by supplier, and, in some cases, supplier information is further aggregated into line item information for "various suppliers".

FERC's Form No. 1 p. 106 only collects one data element related to the Form 580: *rate schedule or tariff number*. This data element will be used to help bridge the FERC Form No. 1 and Form 580 collections so that each can be used to support the analysis of the other. If the FERC Form No. 1 respondent files formula rate input changes at least annually, then an additional common data element is collected: the "docket number." The identification of the service schedule that contains the AAC and the rate schedule that houses the service schedule are needed for the efficiency and completeness of the Commission's Form 580 analysis. If only the rate schedule number were provided and not the service schedule identification, Commission staff would be required to search the many service schedules filed under each rate schedule to locate the AACs.

QUESTION 2 - BASIC AAC IDENTIFICATION:

Comment:

- Change the wording of the question to make clear that information regarding only AACs active during the reporting period are the subject of the question.

Response:

Question 2 reads: (a) Provide the following information regarding the AACs your utility had on file with the Commission **during calendar years 2008 and 2009** and (b) If any of the Utility's wholesale rate and/or service agreements containing an AAC, that was **used during 2008 and/or 2009**, was filed with the Commission before January 1, 1990, attach an electronic copy of it with this filing.

The Commission is not changing the wording of these two questions because the question clearly states the AAC must have been active during 2008 and/or 2009 for the requirement to be applicable. However, a note will be added for this question in the Desk Reference to reiterate that only tariffs active during the reporting period are the subject of the question.

Comment:

- The new form should not cover non-power tariffs or agreements such as transmission tariffs as it would be discriminatory to require transmission owners that own steam generation to report on their non-power tariffs while not requiring competing transmission owners that do not own steam generation over 50MW to do so.

Response

The Commission needs to know the magnitude of transmission tariffs on file that include service schedules where transmission costs are allowed to be passed-through an AAC. It would be difficult for the Commission and others who use the form to have a complete picture of the magnitude of the role played by AACs in transmission tariffs if this information was not collected.

QUESTION 3 – PURCHASED POWER:**Comments:**

- Do not require information related to energy and capacity transactions in organized markets and power pools as the price is set by the market.
- Do not require information on market pass-through costs and uplift charges in organized markets.

Response:

Question 3 is not a new question but one that has been asked in many previous Form 580 collections. The Commission's intent of the question has not changed. The commenter has not provided sufficient justification to remove from the Form, a long-standing question.

QUESTION 6 - THE COST AND QUALITY OF FUELS BY CONTRACT:**Comment:**

- Treat the fuel costs as privileged information.

Response:

While the Commission understands the desire of some of the respondents to treat the cost data in the Form 580 as privileged information, it is necessary that this data continue to be publicly reported for two reasons. First, the Commission and other government agencies need this data to carry out their statutory responsibilities (e.g., to ensure that the rates are just and reasonable and customers are protected from undue discrimination). Second, ratepayers need this information to evaluate whether the rates they are being charged are just and reasonable and not unduly discriminatory or preferential.

Comment:

- Delivered fuel characteristics, including quantity, may be competitively sensitive, especially at the facility level. Facility-level information is commercially sensitive.

Response:

The delivered fuel characteristics and quantities have been historically treated as public by both FERC and EIA at the plant level. EEI's comments are not sufficient to persuade the Commission to change its historic practice.

Comment:

- Question 6 should be limited to the costs of fuels that are passed through an AAC

Response:

Question 6 is limited to filers with fuel adjustment clauses only. There is a statement, in bolded red after question 4 that states: **NOTE: If the utility for which you are filing did not have any rate/service schedules on file with the Commission allowing the automatic adjustment of fuel and/or fuel-related items during 2008-09, STOP HERE, you are finished. File your responses to questions 1 through 4 with the Commission. Otherwise, continue with the questions that follow.**

Comment:

- Question 6 should be limited to the cost of primary fuels, not costs from incidental use of other fuels for auxiliary or start-up purposes.

Response:

Respondents have historically answered question 6 correctly with regard to which fuels to report and they should continue to answer the question in this manner. It is not the intent of the Commission to collect information on *de minimis* amounts of fuel necessary for ancillary equipment used for plant start-up.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

No gifts or payments have been made to the respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

With the exception of the Form 580 question 5 addenda (Attachment J), which may be filed as privileged, the information collected under the Form 580 is considered to be public. Following communication with OMB, the following verbiage has been added to the privileged version of Question 5:

“The Commission’s regulations, in certain circumstances, provide for privileged treatment of certain information submitted, 18 C.F.R. 388.107, 388.112-13 (2010), but any such information ultimately may be subject to disclosure pursuant to the Freedom of Information Act, 5 U.S.C. 552 (2006), and the Commission’s implementing regulations, 18 C.F.R. Part 388 (2010).”

No other assurance of confidentiality has been made to any respondent. All Form 580 filings will be treated as public information, except for Question 5 materials that are filed on the privileged version and correctly submitted in compliance with the Commission’s requirements and guidance.. For further discussion on privileged information, see the Commission’s response to comments in item no. 8 of this submission.

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 OF COLLECTION OF INFORMATION

The Commission limits the Form 580 biennial collection to electric power producers having electric generating plants with a rated capacity of 50 MW or greater. Below, the Commission estimates the burden of the electronic form that will be used for the 2010 filing cycle.

	No. of Respondents (1)	Annual No. of Responses per Respondent (2)	Average Burden Hours Per Response (3)	Total Annual Burden Hours (1)x(2)x(3)
Respondents with FACs	45	0.5	103 ⁹	2310
Respondents with AACs but no FACs	125	0.5	20	1250
Respondents with no AACs (no FACs)	40	0.5	2	40
Sub Total				3600
One-time burden of learning new software	45	.5	40	900
TOTAL				4500

A burden of 900 hours (450 hours per year) for respondents with FACs is added to the total burden to account for time necessary to learn how to use the new electronic

⁹ Rounded-off.

interrogatory and for familiarization with the new questions in the interrogatory.

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The estimated total annual cost to respondents is \$304,913.65.

Total respondent burden hours		No. of hours per staff year ¹⁰		Cost per staff employee ¹¹		Total annualized cost
4500	÷	2,080	x	\$137,874	=	\$298,285.10

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

(a) Forms Clearance, Processing, Review	\$ 6,507
(b) Dissemination of data (0.5 FTE)	\$68,937

Year of operation	\$75,444
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The estimate of the cost to the Federal Government is based on salaries for professional and clerical support, as well as direct overhead costs.

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

The only change to the burden is to add a one-time increase of 900 hours to cover the time spent working with the new electronic interrogatory. Otherwise, the changes to the Form 580 result in offsetting changes to the burden.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

The information collected in this Form 580 interrogatory is not published in a report. Filings are, however, made available to the public through their inclusion in the Commission's eLibrary. The eLibrary document repository is accessible from the Commission's web site: <http://www.ferc.gov>.

17. DISPLAY OF EXPIRATION DATE

¹⁰ Number of hours an employee works each year.

¹¹ The "Cost per Staff Employee" is based on the estimated average annual allocated cost per Commission employee for fiscal year 2010. The estimated \$137,874 "cost" includes salaries, benefits and overhead.

An expiration date is shown on Form 580 and respondents are informed on the impact of the burden and where they may send comments concerning the impacts of the Form 580.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There is an exception to the Paperwork Reduction Act Submission Certification. Because the information collected for this reporting requirement is not used for statistical purposes, the Commission does not use as stated in item 19(i) "effective and efficient statistical survey methodology." The information collected is case specific to each respondent.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS.

This is not a collection of information employing statistical methods.

ATTACHMENT A

UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

(Docket Nos. IC09-580-000, IN79-6)

COMMISSION INFORMATION COLLECTION ACTIVITIES, PROPOSED COLLECTION (FERC-580); COMMENT REQUEST

(December 4, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c) (2) (A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), the Federal Energy Regulatory Commission (FERC or Commission) is soliciting public comment on the proposed information collection described below.

DATES: Comments on the proposed collection of information are due 60 days after publication in the Federal Register.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC09-580-000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at <http://www.ferc.gov/help/submission-guide.asp>.

Comments may be eFiled. The eFiling option under the Documents & Filings tab on the Commission's home web page directs users to the eFiling web page. First time users will have to follow the eRegister instructions on the eFiling web page

<http://www.ferc.gov/docs-filing/eregistration.asp> to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling.

Commenters filing electronically should not make a paper filing. Commenters that are not able to file electronically must send an original and two (2) paper copies of the comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at <http://www.ferc.gov/docs-filing/esubscription.asp>). In addition, all comments and FERC issuances may be viewed, printed and downloaded remotely through the Commission's website using the "eLibrary" link and searching on Docket Number IC10-580. For user assistance, contact FERC Online Support by sending an e-mail to ferconlinesupport@ferc.gov, or call toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

FOR FURTHER INFORMATION: Michael Miller may be reached by telephone at (202) 502-8415, by fax at (202) 273-0873, and by email at michael.miller@ferc.gov.

SUPPLEMENTARY INFORMATION:

The Public Utility Regulatory Policies Act (PURPA), enacted November 8, 1978, amended the Federal Power Act (the Act) and directed the Commission to make comprehensive biennial reviews of certain matters related to automatic adjustment

clauses in wholesale rate schedules used by public utilities subject to the Commission's jurisdiction. Specifically, the Commission is required to examine whether the clauses effectively provide the incentives for efficient use of resources and also whether the clauses reflect only those costs that are either "subject to periodic fluctuations" or "not susceptible to precise determinations" in rate cases prior to the time the costs are incurred. The Commission is also required to review the practices of each public utility under automatic adjustment clauses "to insure efficient use of resources under such clauses."¹² In response to the PURPA directive, the Commission (in Docket No. IN79-6) established an investigation and began in 1982 to collect every other year the FERC-580 "Interrogatory on Fuel and Energy Purchase Practices." (OMB No. 1902-0137). In conjunction with the OMB information collection three-year renewal cycle, the Commission proposes to modify the questions in the interrogatory. Because it has been many years since the Commission collected information on automatic adjustment clauses other than fuel-adjustment clauses, the Commission proposes, in this cycle, to include questions necessary to collect basic information identifying automatic adjustment clauses of all types, through which costs have been flowed, during the current reporting period.

¹² The review requirement is set forth in two paragraphs of Section 208 of PURPA, 49 Stat.851; 16 U.S.C. 824d

Finally, the Commission proposes to expand previous interrogatory questions regarding fuel procurement practices and adjustment clause treatment of purchased power to elicit more complete information and eliminate the need for follow-up questions.

The Commission proposes to redesign the FERC-580 so as to eliminate the need for confidential treatment requests. To accomplish this, the Commission proposes to remove all of the transportation contract questions, the request for copies of fuel-related audits, as well as the request for information regarding supplier identification, fuel shipped for others, and liability. This information is not currently needed for the investigation.

The Commission has redesigned the FERC-580 so that the information may be collected electronically through a FERC-designed, easy-to-complete, fillable form that will include such user-friendly features such as pre-populated fields and dropdown menus. The program will automatically generate additional rows when needed, and will connect summary identification information (e.g. contract numbers and docket numbers) with their proper corresponding detail information to eliminate multiple entries of duplicative information. In subsequent cycles, respondents will be able to retrieve information for filings previously entered, thereby further reducing the filing burden.

A copy of the interrogatory, desk reference, and glossary are attached and part of this document, but they are not included in the Federal Register. They are available from the FERC's eLibrary (<http://www.ferc.gov/docs-filing/elibrary.asp>) by searching Docket No. IC09-580-000 and through the FERC's Public Reference Room 202-502-8731.

Interested parties may also request paper copies of the interrogatory, instructions, and glossary by contacting Michael Miller, by telephone at (202) 502-8415, by fax at (202) 273-0873, or by e-mail at michael.miller@ferc.gov.

In summary, the Commission seeks public comment on, and OMB approval of the proposed revised information collection (FERC-580, “Interrogatory on Fuel and Energy Purchase Practices”) and the related estimated burden.

ACTION: The Commission is requesting a three-year extension of the current expiration date for the proposed revised reporting requirements.

BURDEN STATEMENT: Public reporting burden for this collection is estimated at:

	No. of Respondents (1)	Annual No. of Responses per Respondent (2)	Average Burden Hours Per Response (3)	Total Annual Burden Hours (1)x(2)x(3)
Respondents with FACs	45	0.5	103 ¹³	2310
Respondents with AACs but no FACs	125	0.5	20	1250
Respondents with no AACs (no FACs)	40	0.5	2	40
TOTAL				3600

The total burden has not changed from previous years. The burden associated with interrogatory responses will vary by utility depending on whether the utility has or does not have an automatic adjustment clause and depending on whether or not those utilities

¹³ Rounded off

with adjustment clauses allow automatic adjustment of fuel cost. On average, the Commission estimates a cost burden to respondents of \$222,052.50. (3600 hours/2080 hours¹⁴ per year, times \$128,297¹⁵ equals \$222,052.50]. The cost per respondent is \$3,895.66

The reporting burden includes the total time, effort, and financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise providing the information.

The respondent's cost estimate is based on salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including

¹⁴ Number of hours an employee works each year.

¹⁵ Average annual salary per employee.

whether the information will have practical utility; (2) terms and definitions in the interrogatory and glossary; (3) the accuracy of the agency's burden estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information to be collected; and (5) ways to minimize respondent information collection burden.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

NOTE: The Attachments (interrogatory, instructions, and glossary) will not be included in the Federal Register. The Attachments are available on the FERC's eLibrary (<http://www.ferc.gov/docs-filing/elibrary.asp>) by searching Docket No. IC09-580-000, and through the FERC Public Reference Room.

ATTACHMENT B

Ques . no. in 2008 form	Ques . no. in 2010 form	Form 580 Question
1	1a	Select the name of the Utility for which you are filing and its Utility EIA code from the dropdown list.
1	1b	Identify the principal contact person for clarification and additional information concerning your utility's fuel procurement.
1	1c	Identify the principal contact person for clarification and additional information concerning your utility's energy purchases (purchased power).
2		File electronic versions of all audits, studies, reports, etc. in their entirety, (including exhibits and all attachments), prepared in both 2006 and/or 2007 and addressing: the Utility's fuel supply contracts,
2		File electronic versions of all audits, studies, reports, etc. in their entirety, (including exhibits and all attachments), prepared in both 2006 and/or 2007 and addressing: the Utility's fuel procurement policies and practices and
2		File electronic versions of all audits, studies, reports, etc. in their entirety, (including exhibits and all attachments), prepared in both 2006 and/or 2007 and addressing: fuel supply contracts, fuel procurement policies and practices and fuel prices.
	2a	Provide the following information regarding the wholesale automatic adjustment clauses (AACs) your utility had on file with the Commission during calendar years 2008 and 2009:
	2a	Docket number under which rate schedule containing AAC through which costs were passed during 2008 and/or 2009 was accepted for filing by FERC
	2a	Rate schedule or tariff number containing AAC
	2a	Date rate schedule was first accepted for filing by Commission
	2a	First effective date of rate schedule
	2a	Was rate schedule superseded or abandoned during 2008-2009? If so, provide dates.
	2a	Identify service agreement within rate schedule containing AAC
	2a	Type of costs that were passed through the AAC - if fuel, state fuel type
	2b	If any of the Utility's wholesale rate and/or service agreements containing an AAC that was used during 2008 and/or 2009 was filed with the Commission before January 1, 1990, attach an electronic copy of it with this filing. List the documents you are filing:
5		If any fuel has been shipped for others under the Utility's fuel transportation contracts during calendar years 2006 and/or 2007, describe how the Utility allocated the cost of transportation, taking into account any volume discounts, between itself, the other company(ies), and the Utility's wholesale ratepayers.
6		File organization chart(s) in electronic format, showing the corporate relationships during reporting years 2006 and 2007 between the Utility and all of its associated companies, affiliate companies, sister companies, subsidiaries, parent companies, etc., that are in any way involved with fossil or nuclear fuels, including, but not limited to: fuel supply; fuel purchase and/or lease; fuel production; fuel storage; fuel transportation; fuel transportation; fuel transfer and fuel reserve and/or lease.

Ques . no. in 2008 form	Ques . no. in 2010 form	Form 580 Question
7		Provide the information requested in the table below, regarding companies for which your Utility guaranteed the loans or assumed liability for financing, whether associated or not, if the companies, during reporting years 2006 and/or 2007, were involved in any aspect of fuel supply, purchase, lease, production, storage, transportation, transfer, or had owned fuel reserves or leases.
7		Reporting Year regarding companies for which your Utility guaranteed the loans or assumed liability for financing, whether associated or not, if the companies, during reporting years 2006 and/or 2007, were involved in any aspect of fuel supply, purchase, lease, production, storage, transportation, transfer, or had owned fuel reserves or leases.
7		Name of company for whom Utility guaranteed loans or provided financing, etc.
7		Description of services provided to the Utility by the company named
7		Extent of the Utility's financial commitment
8		Identify the assets involved, the investment amount, the asset use and the service life and salvage value used in determining the asset's depreciation expense, if your Utility carried on its books during reporting years 2006 or 2007, any assets relating to: Fuel production; off-site fuel storage; fuel transportation; fuel transfer facilities; fuel reserves; fuel leases.
8		Description of asset involved
8		Investment amount
8		Asset use
8		Service life used in determining the asset's depreciation expense
8		Salvage value used in determining the asset's depreciation expense
	3	If during the 2008-2009 period, the Utility had any contracts or agreements for the purchase of either energy or capacity under which all or any portion of the purchase costs were passed through the AAC, for each purchase provide the information requested in the table below. Provide the information separately for each reporting year 2008 and 2009. Do not report purchased power where none of the costs were recovered through an AAC.
4	3	Seller name
4		Amount of energy or capacity purchased
	3	Purchase cost
4	3	Amount (\$) recovered through an AAC
4	3	Does the Commission-accepted AAC used to recover this cost, allow for automatic recovery of purchased power costs?
	3	Cost item/s recovered through AAC
	3	Was the total of such charges, less than the total avoided variable costs?
	3	Was an after-the-fact comparison made of actual avoided costs against the purchase costs?
	3	Were the total costs of purchased power, less than the total avoided variable costs?

Ques . no. in 2008 form	Ques . no. in 2010 form	Form 580 Question
	3	Was the duration of the purchased power equal to or less than twelve months?
	3	Did the AAC used for cost recovery; include the system reserve capacity criteria by which the system operator decides whether a reliability purchase is required?
	3	Were purchases made on an hourly economic dispatch basis?
	3	If the purchased power was wind-generated, was the avoided cost comparison done on a contract-by-contract basis?
	3	Name of any entity affiliated with the Utility that is involved in the procurement or transportation of its fuel
	3	Type of affiliation
	3	Affiliated entity involvement with the Utility
	4	Were emission allowance costs incurred by the Utility in 2008 and/or 2009 and recovered through an AAC?
	4a	If yes, emission allowance costs were recovered through an AAC, provide the following information:
	4a	Dollar value of emission allowance cost passed through an AAC
	4a	Docket number, if any, of Commission acceptance of emission allowance cost recovery through the AAC, and
	4a	Date Commission accepted AAC recovery of emission allowance costs for:
	4a	Self-generation
	4a	Purchased power
	4a	Economic power
	4a	Other
	4b	Were emission allowance costs recovered in other than through an AAC? If yes, how were they recovered? Include specific Commission rate schedule and service agreement notations.
	5	Provide the information requested below regarding the Utility's fuel procurement policies and practices in place during 2008 and/or 2009.
	5a1	How often does Utility management review the fuel procurement process?
	5a2	When was the last review?
	5a3	Who conducted the last review?
	5a4	What was covered in the last review?
	5b1	Does the Utility have a policy on fuel inventory levels?
	5b2	If so, does the policy state under what circumstance/s fuel inventory is increased or decreased?
	5b3	When was the fuel inventory policy last reviewed, and who last approved it?
	5b4	Who made the working decisions to change inventory levels?

Ques . no. in 2008 form	Ques . no. in 2010 form	Form 580 Question
	5c	Describe any use by the Utility of systematic procedures for periodic market investigations of fuel costs and availability, particularly prior to renewal or renegotiation of contracts.
	5d	Describe any environmental constraints which influenced the Utility's fuel purchase practices.
	5e	What quality characteristics were routinely specified in the Utility's fuel contracts?
	5f	What percentage of the Utility's fuel was purchased from utility-controlled (i.e. affiliate) sources?
	5g1	How were potential fuel suppliers qualified?
	5g2	What criteria were used to rank bidders?
	5g3	How were credit and performance ratings of potential fuel suppliers checked?
	5g4	Did you automatically select the lowest bidder?
	5g5	Describe the procurement procedures used on your most recent fuel procurement contract for both: the purchase from a non-affiliated company and the purchase from an affiliated company
	5h	Do the Utility's purchase policy's practices differ for associated companies? If so, what generally, are the differences?
3	6	For each fuel supply contract (including informal agreements with associated companies) in force at any time during 2008 and/or 2009, of one year duration or longer, provide the requested information. Report the data individually, for each contract, for each calendar year. [No response to any part of Question 6 for fuel oil no. 2 is necessary.] Report all fuels consumed for electric power generation and thermal energy associated with the production of electricity. Information for ALL FUELS (e.g. fossil fuels, wood chips), EXCEPT URANIUM, should be reported.
3a	6a	Contract ID / number
3a	6a	Reporting Year
3a	6a	Contract signing date
3a		Date of first delivery under contract
3a	6a	Contract expiration date
3a	6a	Coal contract type
3a	6a	Gas supply contract type
3a	6a	Gas transportation contract type
3e	6a	Gas quantity contracted
3e	6a	Oil quantity contracted
3e	6a	Coal quantity contracted
	6a	Other fuel quantity contracted
3e	6a	Gas quality contracted

Ques . no. in 2008 form	Ques . no. in 2010 form	Form 580 Question
3e	6a	Oil quality contracted
3e	6a	Coal quality contracted
	6a	Other fuel quality contracted
3e	6a	Sulfur content (%weight) contracted
3e	6a	Ash content (%weight) contracted
3e	6a	Moisture (%) contracted
	6b	State of origin
3d		Receipt point name
3d		2-letter State code of fuel's receipt point location
3d		If receipt point is located outside the U.S., enter region / country here
3d		Mine MSHA ID
3d		mine BOM District
3d	6b	Type of purchase point
3f		Destination plant name
3f	6b	EIA plant code (of destination plant)
3f	6b	Total fuel transportation distance (mi.) from Utility's receipt point to plant
3c		Fuel supplier's MSHA ID
3c		Fuel supplier's USDOT Number
3c		Fuel supplier's street address
3c		Fuel supplier's city
3c		Fuel supplier's state
3c		Fuel supplier's zip code
3f	6b	Gas ($\times 10^3$ mmbtu) quantity delivered
3f	6b	Oil ($\times 10^3$ bbls) quantity delivered
3f	6b	Coal ($\times 10^3$ tons) quantity delivered
	6b	Other non-fossil (state units) quantity delivered
3f	6b	Gas (Btu/ft ³) delivered quality
3f	6b	Oil (Btu/gal) delivered quality
3f	6b	Coal (Btu/lb) delivered quality
	6b	Other non-fossil (state units)
3f	6b	Sulfur content(%weight) of delivered fuel
3f	6b	Ash content (%weight) of delivered fuel
3f	6b	Moisture (%) of delivered fuel

Ques . no. in 2008 form	Ques . no. in 2010 form	Form 580 Question
3g	6b	Actual weighted average fuel price paid FOB origin/year (cents/mmBtu)
3g	6b	Actual weighted average fuel price paid FOB plant/year (cents/mmBtu)
3g		Type of cost component not included in the FOB fuel price
3g		Weighted average cost (cents/mmBtu) of cost component not included in the FOB fuel price
3h		For each fossil fuel supply contract, including informal agreements with associated companies, of longer than one year in duration, and in force at any time during 2006 or 2007, provide, for each contract separately, the transportation information requested in the table below.
3h		Route #
3h		Fuel receipt point name
3h		Transportation company name
3h		Transportation Company's USDOT Number
3h		Transportation mode <i>(choose from drop-down list)</i>
3h		Mode Distance (mi.)
3h		Weighted average transportation cost for each transportation mode (cents/mmBtu)
3h		Cost components not included in the transportation cost
3h		Type of cost component
3h		Weighted average cost (cents/mmBtu)
3k		Name of any entity listed in your filing that has any type of association with your Utility
3k		Entity Type of any entity listed in your filing that has any type of association with your Utility
3k		Entity MSHA or USDOT number (if applicable) of any entity listed in your filing that has any type of association with your Utility
3k		Type of Association with Utility
3k	6c	Name of any entity affiliated with the Utility that is involved in the procurement or transportation of its fuel
	6c	Type of affiliation
3k	6c	Affiliated entity involvement with the Utility
3i	7	For each fuel supply contract, including informal agreements with associated or affiliated companies, in force at any time during 2008 or 2009, WHERE CONTRACT SHORTFALL COSTS WERE PASSED THROUGH an AAC, provide for each contract separately, the information requested below. Only report the information requested for shortfalls that occurred under your contracts during reporting years 2008 or 2009.
3i	7a	Cause of the shortfall
3i	7b	Amount of shortfall costs passed through the AAC
3i	7c	Utility or Supplier-caused?

Ques . no. in 2008 form	Ques . no. in 2010 form	Form 580 Question
	7d	Did contract contain a provision for shortfall consequences?
3b	8	For each fuel supply contract that was bought-out or bought-down, including informal agreements with associated or affiliated companies in force at any time during 2008 or 2009, WHERE CONTRACT BUY-OUT AND/OR BUY-DOWN COSTS WERE PASSED THROUGH an AAC, provide for each contract separately, the information requested below. Only report the information requested for contract buy-downs and buy-outs that occurred under your contracts during reporting years 2008 or 2009.
3b	8a	Type of change
3b	8b	Effective date of buy-out or buy-down
3b	8c	Amount of any buy-out and buy-down costs that were passed through the AAC
3b	8d	Docket number of Commission waiver, if any, allowing recovery of contract buy-down and buy-out costs through the AAC.
3b		Party that initiated the change
3b		Provision before the change
3b		What prompted the contract change?
3b		Benefits received as a result of the payments made to the supplier or transporter to allow the contract change
2		File electronic versions of all audits, studies, reports, etc. in their entirety, (including exhibits and all attachments), prepared in both 2006 and/or 2007 and addressing: the utility's fuel supply contracts; the utility's fuel procurement policies and practices and fuel prices

ATTACHMENT C**FPA, SEC. 205. RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES**

(f)(1) Not later than 2 years after the date of the enactment of this subsection and not less often than every 4 years thereafter, the Commission shall make a thorough review of automatic adjustment clauses in public utility rate schedules to examine--

(A) whether or not each such clause effectively provides incentives for efficient use of resources (including economical purchase and use of fuel and electric energy), and

(B) whether any such clause reflects any costs other than costs which are--

(i) subject to periodic fluctuations and

(ii) not susceptible to precise determinations in rate cases prior to the time such costs are incurred.

Such review may take place in individual rate proceedings or in generic or other separate proceedings applicable to one or more utilities.

(2) Not less frequently than every 2 years, in rate proceedings or in generic or other separate proceedings, the Commission shall review, with respect to each public utility, practices under any automatic adjustment clauses of such utility to insure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses.

(3) The Commission may, on its own motion or upon complaint, after an opportunity for an evidentiary hearing, order a public utility to--

(A) modify the terms and provisions of any automatic adjustment clause, or

(B) cease any practice in connection with the clause, if such clause or practice does not result in the economical purchase and use of fuel, electric

[5250]

energy, or other items, the cost of which is included in any rate schedule under an automatic adjustment clause.

(4) As used in this subsection, the term "automatic adjustment clause" means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does

not include any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate.

ATTACHMENT D**Investigation of Practices Under Automatic Adjustment Clauses, Docket No. IN79-6****[61,139]****Order Instituting Investigation of Practices Under Automatic Adjustment Clauses****(Issued April 26, 1979)****Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr. and George R. Hall.**

Section 205(f)(2) of the Federal Power Act ¹ requires that at least every two years the Commission review, with respect to each public utility, practices under any automatic adjustment clause of each utility "to insure to effect use of resources (including economical purchase and use of fuel and electric energy) under such clauses." PURPA defines an automatic adjustment clause as "a provision of a rate schedule which provides for increases or decreases (or both) without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility." ²

Pursuant to this requirement, the Commission intends to institute such a review of practices under automatic adjustment clauses employed by each public utility. This initial review will be conducted in addition to the ongoing field audits of the Commission, which will continue to examine all aspects of utility operations, including fuel programs, purchasing practices, management systems and other matters. The review will utilize the results of audits and other data filed with the Commission, in addition to the materials developed specifically by the review.

The Commission has determined that in order expeditiously to accomplish the review required under Section 208 of PURPA, it is appropriate to institute an investigation pursuant to Section 307(a) of the Federal Power Act.

The Commission has determined that in order to carry out the expeditious review required under Section 208(f)(2), it is appropriate to appoint a designated officer of the Commission who, pursuant to Section 307(b) of the Federal Power Act, will be empowered to administer oaths, subpoena witnesses, take evidence, require production of relevant documents and utilize all other powers enumerated in Section 307(b) of the Federal Power Act.

The designated officer is directed to invite state public utility commissions to cooperate in the review. Upon conclusion of his inquiry, the designated officer shall report his findings and recommendations to the Commission. Based on the foregoing,

The Commission finds:

(1) It is necessary and appropriate for purposes of the Federal Power Act to institute an investigation pursuant to Section 307(a) of the Federal Power Act into public utility practices under automatic adjustment clauses.

(2) It is necessary and appropriate to appoint a member of the Commission Staff as a designated officer of the Commission for the purposes of conducting this investigation.

The Commission orders:

(A) Pursuant to the Federal Power Act and the Commission's Rules and Regulations thereunder, an investigation of public utility practices under automatic adjustment clauses is hereby instituted.

(B) It is ordered that for the purposes of this investigation, William W. Lindsay is hereby designated an officer of this Commission and is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant to the inquiry and to perform all other duties in connection therewith as prescribed by law, and to designate other staff members of the Commission as officers of the Commission with all powers herein enumerated.

(C) The designated officer shall report his findings and recommendations to the Commission.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

-- Footnotes --

¹ Section 208 of the Public Utility Regulatory Policies Act of 1978 (PURPA) amended the Federal Power Act, adding, *inter alia*, Section 205(f)(2).

² Section 205(f)(4), Federal Power Act, as amended.

ATTACHMENT E

COMMENTS OF THE EDISON ELECTRIC INSTITUTE

Overview

The Edison Electric Institute (EEI) is submitting these comments in response to the Federal Energy Regulatory Commission's (FERC's or the Commission's) notice issued on December 4, 2009, and published at 74 Fed. Reg. 66114 on December 14, 2009, in the above referenced dockets (Notice). In the Notice, the Commission is proposing a substantial expansion in the FERC-580 that would dramatically increase the reporting burden imposed by the form, while making some streamlining changes. EEI is submitting these comments to encourage modification of the changes that would increase the reporting burden, while supporting the changes that would streamline the form. In most cases, the modifications proposed by EEI will decrease the burden by more precisely tailoring the questions without significantly limiting the amount of useful information available to the Commission.

EEI is the association of shareholder-owned electric utilities, international affiliates, and industry associates worldwide. Our U.S. members serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry and represent approximately 70 percent of the U.S. electric power industry. EEI's members are the primary respondents to FERC electricity-related forms, including the FERC-580, and so would be most affected by the proposed changes. As a result, EEI and its members have a direct interest in this proceeding.

The FERC-580 is a biennial information collection under the Docket No. IN79-6 investigation.¹ It is rooted in Federal Power Act (FPA) section 205(f), which was added by section 208 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

In the Notice, the Commission proposes to expand the FERC-580 to collect additional information regarding automatic adjustment clauses (AACs) used in FERC jurisdictional cost-based tariffs and agreements. The Commission proposes to require utilities having agreements with AACs to: (1) identify docket numbers and acceptance/effective dates of the agreements; (2) provide copies of pre-1990 agreements; (3) describe the types of costs that pass through the AACs; (4) report all purchased power agreements if costs were recovered through an AAC; and (5) report certain information regarding emission allowance costs that were recovered through AACs. The Notice states that the Commission is required to examine whether the AACs "effectively provide the incentives for efficient use of resources and also whether the clauses reflect only those costs that are either 'subject to periodic fluctuations' or 'not susceptible to precise determinations' in rate cases prior to the time the costs are incurred." Notice at 66114.

In addition, the Commission "proposes to expand previous interrogatory questions regarding fuel procurement practices and adjustment clause treatment of purchased power to elicit more complete information." *Id.* at 66115.

¹ See *Investigation of Practices Under Automatic Adjustment Clauses*, 7 FERC ¶ 61,090 (1979) (instituting investigation pursuant to FPA section 307(a)).

Further, the Commission proposes several streamlining changes. The Commission proposes to remove: (1) all fuel transportation contract questions; (2) the request for fuel-related audit materials; and (3) the request for information regarding supplier identification, fuel shipped for others, and liability – noting that "this information is not currently needed for a Commission investigation." The Commission also proposes to implement a new user-friendly format suitable for electronic submission that includes drop-down menus and pre-populated fields. *Ibid.*

EI Supports the Commission's Proposed Streamlining Measures

EI supports the Commission's plan to make the FERC-580 reporting process simpler by providing a user-friendly electronic version of the form with pre-populated fields and drop-down menus. If properly implemented, this change should ease both submittal of the form and access to information filed using the new version.

At the same time, EI encourages the Commission to allow respondents the option to continue submitting the form via the FERC eFiling web portal using standard word-processing software accepted by eFiling, at least until after the electronic version of the form has been field tested by respondents who elect to use it for the next reporting cycle. This would help to ensure that any bugs have been worked out of the form before its use is widely required. In addition, the new version of the form should not require resubmittal of information already filed using the old version of the form, but should apply only prospectively.

EI also supports the proposed removal of inquiries concerning fuel-related transportation contracts, audit information, supplier identification, shipments for others, and liability. We applaud the Commission for acknowledging that this information is not needed for a Commission investigation, and in turn for proposing not to collect such unnecessary information. The submittal of this information also raises substantial concerns with respect to harmful competitive impacts, particularly if the information is made public – concerns that are addressed by no longer collecting the information.

EI Recommends Several Changes in the Proposed Form

1. Limit reporting to tariffs and agreements covered by FPA section 205(f)(4), excluding tariffs and agreements subject to public review and/or refund.

The Commission should ensure that the FERC-580 and its glossary, instructions, and drop-down menus carefully track the FPA section 205(f)(4) definition of "automatic adjustment clauses." In particular, section 205(f)(4) specifies the types of rate schedules that are subject to the Commission's interrogatory under section 205(f), noting that "automatic adjustment clause" means "a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate."²

² 16 U.S.C. § 824d(f)(4) (emphasis added). *See also* 7 FERC at 61,139.

Yet as currently proposed, the FERC-580 glossary defines AAC as “[a] provision of a rate schedule which provides for increases or decreases (or both) without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility” without the underlined section 205(f)(4) qualifier.³ That qualifier needs to be added to the glossary definition and applied throughout FERC-580. The Commission should not require submittal of FERC-580 with respect to fuel clauses or AACs that are subject to review and refund

Similarly, the proposed drop-down menu for “Type/s of AAC” under question 2(a) includes “formula rates.” However, many formula rate tariffs and agreements on file with the Commission are subject to public true-up proceedings and/or refund. Such tariffs and agreements seem clearly covered by the second sentence of section 205(f)(4) and thus not within the statutory definition of AAC for purposes of FERC-580. As the Commission recognized in Order No. 715, annual informational filings required under comprehensive formula rate tariffs or individual formula rate contracts involve a section 205 rate review process with “transparency provided by requiring utilities to make information on costs underlying rates publicly available. This cost information is, in turn, used by the Commission, state commissions, and customers to review and monitor a utility’s rates....”⁴ To conform with section 205(f)(4), such tariffs and agreements should not be treated as AACs for purposes of FERC-580 or otherwise subject to the form. This approach would be consistent with the Commission’s recent modification of FERC Form 1 in Order No. 715, which states that the new Form 1 formula rate requirements “will only apply to utilities with formula rates that do not make regular (i.e., at least annual) informational filings of cost data with the Commission.”⁵ EEI believes this clarification is necessary so that the Commission’s proposed changes do not add an unnecessary, duplicative burden on respondents.

2. Do not require reporting of information already collected elsewhere, in particular as to formula rates and fuel costs.

The Commission should ensure that the FERC-580 does not collect information the Commission or other agencies already collect elsewhere. The Paperwork Reduction Act, under which this current review of the FERC-580 is being conducted, requires agencies to avoid collecting unnecessary or duplicative information.⁶

³ Proposed FERC-580, page 11 of 12.

⁴ *Revisions to Forms, Statements and Reporting Requirements for Electric Utilities and Licensees*, 124 FERC ¶ 61,273 (2008), at P 40.

⁵ *Id.* at P 36.

⁶ 44 U.S.C. §§ 3501 *et seq.* (requiring federal agencies to strive to minimize the reporting burden and avoid duplicative reporting requirements).

In particular, the Commission should exclude reporting in the FERC-580 of information on formula rates that is already reported elsewhere. In Order No. 715, the Commission has required companies to report certain information related to their formula rate tariffs in the FERC Form 1 unless already reported in annual or more frequent informational filings required when the Commission approved the rates. The formula rate information is centralized in a new schedule at page 106 of Form 1, in which filers (a) indicate whether they have formula rates, (b) provide certain details about those formula rates, and (c) indicate whether the filer makes regular informational filings and the location of those filings.⁷ Thus, detailed information about formula rates, including a centralized location for reporting certain information about those rates and associated informational filings, is already required as part of other Commission-required reports and is sufficient to enable the Commission to assure the consistency of charges under formula rates comply with the just and reasonable standard under FPA section 205. The Commission should not require duplicative reporting of such formula rate information in the FERC-580.

In addition, proposed question 6 asks for the total delivered cost and origin cost for coal and natural gas. This information is already provided on a monthly basis to the Energy Information Administration (EIA) on form EIA-923. The Commission should not require it to be reported again on the FERC-580.

3. Avoid collecting unnecessary and burdensome information, such as energy and capacity purchases involving AACs in organized markets and power pools, and fuel procurement policies and practices.

Proposed question 3 of the FERC-580 asks for detailed information about energy or capacity purchases under contracts or agreements with AACs. Specifically, question 3 asks respondents to identify purchase agreements where “all or any portion of the purchase costs were passed through the AAC.” However, to the extent such transactions occur in organized markets, prices are set by the market and the purchaser has no opportunity to bargain for or obtain a different price. Any information related to such transactions would be of no real use to the Commission in analyzing the operation of an AAC. Furthermore, these data often would be very burdensome, if not impossible, to provide, in particular for organized markets and power pools. Many organized markets and power pools do not directly match purchases with sales, so the information the Commission seeks often will not be available. In addition, if the data are available, the data are likely to be voluminous because purchases from the market are made hour-by-hour throughout the 2-year FERC-580 reporting period. Also, to the extent this question requests data not requested under the old form 580, it may include data the respondent had no way of knowing that it would need for reporting purchases and to which the respondent may no longer have access or which may be unduly burdensome to obtain. At a minimum, question 3 should be modified to exclude purchases made through organized markets and power pools, and for other purchases to require reporting of a representative sample of data using only current data that are readily available.

⁷ Order No. 715 at P 45.

For similar reasons, the FERC-580 should exclude reporting of market passthrough costs and uplift charges in organized markets. Participation in organized markets carries with it the burden of such pass-through costs and uplift charges. Just as energy and capacity charges in organized markets are set by the market, so are the related passthrough costs. It would be burdensome and inefficient to require reporting of these types of charges in the FERC-580.

Proposed question 5 of the FERC-580 asks about utility fuel procurement policies and practices. However, most company procurement policies and practices are not engraved in stone but depend on each company's view of the market, and those policies and practices change or evolve frequently depending on changes in the market. The practices and procedures are aimed at day-to-day buyer activities and responsibilities, the knowledge of which would be of little value to anyone outside the organization, except for inappropriate purposes such as leverage by counterparties in fuel-procurement negotiations. Furthermore, state public service commissions generally monitor company practices and procurements. To submit such information to FERC every two years would take significant company resources but produce little or no benefit. In addition, as discussed below, the information sought in this question is highly commercially sensitive. The Commission should eliminate the question.

4. Clarify that the FERC-580 applies only to power sale tariffs or agreements.

Because respondents have to file the proposed FERC-580 only if they own 50MW or more of steam generation, EEI assumes that the new form does not cover non-power tariffs or agreements such as transmission tariffs (e.g., open access transmission tariffs) that contain AACs. Otherwise, the FERC-580 would be discriminatory, requiring transmission owners/providers that own steam generation to report on their non-power tariffs and agreements, while not requiring competing transmission owners/providers that do not own steam generation to do so. Moreover, given that the FERC-580 is titled "Interrogatory on Fuel and Energy Purchase Practices," if its purpose is to cover all costbased AACs including non-power AACs, the title is misleading and provides inadequate notice that non-power AACs fall within its scope. FERC-580 has never been applied to transmission owner/provider tariffs and agreements, and if this is the intent of the revised form, this proceeding should be re-noticed with an appropriate form title, an explanation of the need for the additional information, and an opportunity for comment.

5. Clarify that the FERC-580 is not required to be completed for AACs that have not been transacted under during the reporting period.

Proposed question 2 requires utilities to provide "information regarding the wholesale automatic adjustment clauses" that were "on file with the Commission during calendar years 2008 and 2009." However, many utilities have old or inactive tariffs on file with the Commission. As a result, the proposed expansion of the FERC-580 would require some respondents to submit information about AACs that have not been used during the reporting period. To avoid unnecessary burden on respondents, and to better use FERC's time and resources, the Commission should clarify that tariffs or agreements on file but that were not transacted under during the reporting period are not subject to the proposed reporting requirements.

6. Clarify that AACs do not include simple pass-through components of formula rates.

The Commission should clarify that the definition of AACs does not capture the simple pass-through components of formula rates. As defined in the Commission's proposal, an AAC is "[a] provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, *in rates* reflecting increases or decreases (or both) in costs incurred by an electric utility."⁸ Because an AAC allows for the "increase or decrease" "in rates" without a prior hearing, there must be a pre-established *rate* that is being adjusted. As such, a simple pass-through component, which does not include a pre-established rate, should not be considered an AAC under the proposed changes.

7. Make other changes to clarify or assist in responding to questions.

In proposed question 2.a, about wholesale automatic adjustment clauses: Add "for cost-based agreements" after "(AACs)." The "Types of AAC" drop-down box should allow selection of multiple options. "Types of AAC" should clearly indicate which selection would apply to tolling agreements (i.e. agreements under which a utility purchases fuel used by a third party to generate power). The "Types of costs passed through AAC" drop-down box also should allow selection of multiple options. Does "fuel" include just fossil fuels or all fuels? To the extent this question seeks information about pass-through of RTO/ISO charges, appropriate drop down boxes should be provided.

If proposed question 5 is retained: Collect information only about practices related to purchased fuels whose costs actually go through an AAC. The old version of form 580 dealt only with Fuel Adjustment Clauses, which reflected all fuel costs. But not all AACs work the same way. For example, fuel-related AAC contracts often look at fuel costs just from certain of a company's coal plants. Collecting gas and oil costs would shed little light on the workings of the company's AAC, except to the extent that the company's cost for oil and gas used for plant start-up are reflected in fuel costs at those plants. Question 5 should be limited to costs of fuels that are passed through an AAC and should be limited to costs of primary fuels, not costs from incidental use of other fuels for auxiliary or start-up purposes. Also, which fuels are covered by this question – fossil, wood, nuclear? Are studies, etc. that must be provided limited to those generated during the period covered by the report? What studies, review, and reports of a utility's fuel procurement procedures and practices etc. are intended to be covered by this question? The Notice indicates that the Commission will no longer require provision of audit reports; however, the scope of the request is broad enough to encompass audit reports and similar types of reports that may contain confidential or competitively sensitive information. What is the significance of the review information requested in question 5c? Will the form provide optionality for different responses depending on fuel type? We assume that

⁸ Proposed FERC-580, page 11 of 12 (emphasis added).

questions i1-i7 are limited to arrangements extending longer than a period of one month – is this correct? In question j1, what is an "associated" company? If proposed question 6 is retained:

Under fuel quality for gas, most contracts do not specify gas based on BTUs but rather require that the gas be “pipeline quality.” The form should reflect this industry convention and not require reporting in BTUs. In section 6.b, why is information needed by facility? EEI is concerned that facility-level information is competitively sensitive, as discussed further below.

EEI Requests that the Commission Treat Certain Information as Confidential

Though the Commission is proposing to delete several data elements from the FERC-580 that have raised confidentiality concerns in the past, the Commission is proposing to add or retain a number of data elements in the revised form that will still raise such concerns. We are particularly concerned that much of the data being requested in proposed questions 5, 6, 7, and 8 is competitively sensitive. EEI requests that the Commission recognize these concerns and provide confidential treatment for these data.

Most of the information requested in proposed question 5, if question 5 is retained, should not be made publicly available. For example:

- Questions 5.a-d and 5.i ask for highly sensitive information about company fuel purchase policies and practices. If publicly disclosed, this information would give potential fuel sellers a road map to a purchaser's buying policies and practices and would significantly compromise the purchaser's ability to negotiate favorable contract terms. The eventual losers would be the entities purchasing under the AACs and their wholesale and retail customers.
- Question 5.d asks about inventory policy. If it was publicly known that a company's inventory policy designated levels at which it would conserve fuel by purchasing electricity, potential sellers could raise the prices they would otherwise quote the company knowing that the company was under duress.
- Question 5.e asks about practices associated with contract negotiations. Disclosure of this information would place FERC-580 respondents at a disadvantage in negotiations with fuel suppliers. The suppliers would know company procedures for market investigation and be able to determine what the company did or did not know about the market. On the other hand, there would be no requirement for the fuel suppliers to divulge their procedures. In any form of negotiation, information or lack thereof can have major ramifications.
- Question 5.f asks about environmental constraints that influenced fuel purchase practices. If it became publicly known that a particular facility was constrained to a very limited set of supplies, the facility's suppliers could extract economic rents.
- Questions 5.i.1-7 ask about bidding and bid evaluation practices. Public disclosure of this information could facilitate “gaming” by potential suppliers. Fuel suppliers would quickly move to extract maximum economic rents. Public disclosure also could subject the utility to a greater risk of litigation from fuel suppliers. Ultimately this would increase the cost of energy for consumers.

Respondents should be granted confidential status for responses to at least these parts of question 5, if the question is retained.

Likewise, proposed question 6 asks for commercially sensitive information that should be treated as confidential:

- Pre and post transportation costs – The Notice indicates that the proposed FERC-580 "remove[s] all of the transportation contract questions," thus assertedly eliminating the need for confidential treatment. However, question 6.b requires data that would indirectly reveal fuel transportation costs, namely the fuel price paid "FOB origin" and "FOB plant." All one has to do is to subtract the first from the second to arrive at the cost of transportation. If the Commission needs such information, the FERC-580 should ask for one or the other (preferably the second), but not both, unless the Commission treats the information as confidential.
- Fuel purchase quantities by contract – This provides a lot of valuable information to competitor suppliers and is potentially harmful to company procurement strategies.
- Delivered characteristics of fuel may be competitively sensitive, especially at a facility-by-facility level.

This information also should be treated as confidential.

Lastly, questions 7 and 8 deal with shortfalls and buy-throughs, which can be very commercially sensitive if reported when identified instead of when later settled. At the earlier identification stage, disclosure of such information would impair a company's bargaining power. Again, such information should be treated as confidential.

Conclusion, Contact Information

In conclusion, EEI supports the Commission's proposals to streamline the fuel and energy purchase practices interrogatory form FERC-580, by deleting several categories of information no longer needed by the Commission, and providing a simplified electronic filing mechanism. We recommend offering the new electronic filing mechanism as an option, especially until field tested by volunteers this round.

We also encourage the Commission to further improve the form by: (1) limiting it to the tariffs and agreements covered by the authorizing FPA section 205(f)(4), and reflecting this in the form, glossary, and drop-down menus; (2) not collecting information already collected elsewhere, in particular as to formula rates, and coal and gas cost information; (3) not collecting information that is unnecessary, intrusive, and burdensome, in particular as to energy and capacity transactions in organized markets and power pools and for every hour of the two-year reporting period, and as to company fuel procurement practices and policies; (4) clarifying that the FERC-580 applies only to power sale tariffs or agreements; (5) clarifying that the FERC-580 is not required to be completed for AACs that have not been transacted under during the reporting period; (6) clarifying that AACs do not include simple pass-through components of formula rates; and (7) clarifying and providing assistance in responding to several questions, in particular as to fuel information relating to AACs.

Lastly, we request that the Commission provide confidentiality to information that is commercially sensitive, in particular as to company fuel purchase policies and practices, fuel transportation costs, and shortfalls and buy-throughs.

If the Commission or staff have any questions, please contact me or Henri Bartholomot on EEI staff.

Respectfully submitted,

- signature -

David K. Owens
Executive Vice President,
Business Operations
Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 508-5000
February 12, 2010

ATTACHMENT F

AEP comments to FERC Submitted 2-11-2010

American Electric Power Service Corp. would like to submit the following comments on behalf of those affiliates that will be filing responses to the FERC-580:

1

- In the FERC-580 proposed questions, some questions ask for information about each fuel supply contract. A contract is typically an agreement that lasts longer than a year. Consistent with FERC's position in the previous FERC 580 filing, AEP plans to report on contracts with a term greater than one year unless otherwise told by FERC. AEP also plans to report on contracts with a term greater than one year on questions that ask for information about "any contracts or agreements", such as question number 3.

- Proposed Question Number(s) 5a-c:
 - AEP's procurement policy information has been filed as confidential in previous state and jurisdictional filings and should not be made public. AEP is requesting that these responses be filed confidentially.

- Proposed Question Number 5d:
 - AEP's fuel inventory policy has been filed as confidential in previous state and jurisdictional filings and should not be made public. Making this information public would put AEP at a competitive disadvantage by allowing other utilities and counterparties to review AEP's confidential inventory policy. AEP determines inventory targets based on the probability of interruptions of the fuel supply, how long such interruptions may last, plant burn calculations, and how much fuel is necessary to provide for these contingencies. All of these factors are confidential and should remain confidential in order for AEP to conduct business competitively. AEP is requesting that this response be filed confidentially.

- Proposed Question Number 5f:
 - Plant-related environmental constraints are confidential and highly sensitive information. Making this information public would put AEP at a competitive disadvantage. Some of our plants are already limited as to what coal can be burned because of geographic location, transportation limitations, and other factors. If confidential plant specific environmental constraints were to be made public information, counterparties would have an advantage. AEP is strongly urging FERC to remove this question or at a minimum, this response be made confidential.

- Proposed Question(s) 5i-j:
 - Making this information public would put AEP at a disadvantage by allowing other companies to review confidential procedures. AEP is requesting that these responses be filed confidentially.

- o Question Number 5.i7 specifically asks for the respondent to “Illustrate in detail, the procurement procedures used on your most recent fuel procurement contract for ...”. AEP is requesting that FERC clarify what is meant by “Illustrate” in this question.
- o Proposed Question Number 6b:
 - One line in the instructions for the section that asks for “Fuel Cost” reads, “If the fuel is purchased on a delivered basis, then the FOB origin price should be left blank.” However, if the fuel is purchased FOB origin, there are no instructions saying that the FOB plant price should be left blank. If fuel bought FOB origin has to show both prices (an FOB origin price and an FOB plant price), then the difference between those two prices would be the cost of transportation. Transportation pricing information is treated confidentially. Even though specific vendor information is not provided, this information must remain confidential to keep AEP competitive in the marketplace, particularly due to the limited number of rail carriers who can transport coal to many of AEP’s plants. AEP would like FERC to clarify whether the information being requested here includes any transportation costs, or purely fuel costs. If all that is being requested is fuel costs, AEP understands that only one price should be provided, per contract, regardless of whether the fuel was purchased FOB origin or FOB plant, and AEP sees no problem filing this question as non-confidential. If both fuel costs and transportation costs are being requested, and the request for contracts that purchase fuel FOB origin will show an FOB origin price and a delivered price in the FOB plant box, then AEP requests filing this response as confidential to keep transportation costs confidential information.

ATTACHMENT G

COMMENT OF MIDAMERICAN ENERGY COMPANY

Pursuant to the Comment Request issued December 4, 2009 by the Federal Energy Regulatory Commission (“Commission”) in this proceeding (“Comment Request”),¹ MidAmerican Energy Company (“MidAmerican”) respectfully submits the following comments.

I. Description and Interest of MidAmerican

The exact name of MidAmerican is MidAmerican Energy Company. MidAmerican, an Iowa corporation, is an electric and natural gas utility serving bundled regulated retail customers in the states of Iowa, Illinois, South Dakota, and Nebraska, and competitive retail customers in the central and eastern United States. Additionally, MidAmerican is actively engaged in marketing wholesale electric power in various regions. MidAmerican is a transmission-owning member of the Midwest Independent Transmission System Operator, Inc. Its corporate headquarters is located at 666 Grand Avenue, Suite 500, Des Moines, Iowa 50309-2580. MidAmerican is subject to the jurisdiction of the Commission, the Iowa Utilities Board, the Illinois Commerce

Commission, the South Dakota Public Utilities Commission, and certain Nebraska municipalities.

MidAmerican serves the city of Fonda, Iowa (2000 census population, 648) under a Commission-jurisdictional tariff containing an automatic adjustment clause (“AAC”). As a result, MidAmerican will be affected by the issues in this proceeding.

II. Service List Designations

MidAmerican designates the following persons to receive service and communications on its behalf with regard to this proceeding:

Paul J. Leighton

Vice President and Senior Trading Attorney
MidAmerican Energy Company

4299 NW Urbandale Drive
Urbandale, IA 50322

515-242-4099 (voice)

515-281-2460 (facsimile)

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Gregory C. Schaefer

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MidAmerican Energy Company

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gcschaefer@midamerican.com

¹ Commission Information Collection Activities, Proposed Collection (FERC– 580); Comment Request, 74 FR 66114 (December 14, 2009).

III. Comments

A. Background

The Comment Request announced the Commission's intent to revise FERC-580, "Interrogatory on Fuel and Energy Purchase Practices," the reporting form used to collect information biennially on AACs. Among other things, the Commission proposes to:

- o seek information on AACs of all types, not just fuel adjustment clauses;
- o expand the questions regarding fuel procurement practices and purchased power;
- o remove transportation contract questions; the request for copies of fuel-related audits; and the request for information regarding supplier identification, fuel shipped for others, and liability; and
- o redesign FERC-580 using an electronic form.

The Commission seeks comment on: (1) whether the proposed collection of information is necessary; (2) the terms and definitions in the interrogatory and glossary; (3) the accuracy of the Commission's estimate of the burden to submit information; (4) ways to enhance the collection; and (5) ways to minimize respondent information collection burden.

B. General Comments

MidAmerican appreciates the Commission's concern for the reporting burden on jurisdictional entities. In particular, MidAmerican appreciates the proposal to eliminate certain questions related to transportation contracts, fuel audits, and supplier information that the Commission no longer deems necessary. Generally, MidAmerican supports the migration to electronic filing forms, and found the electronic spreadsheet that was initiated in 2008 to be a substantial improvement over the prior paper reporting. However, MidAmerican offers several comments below on the inflexible nature of the proposed forms.

MidAmerican supports the comments of the Edison Electric Institute filed in this proceeding.

The reporting burden

While MidAmerican appreciates the proposed elimination of certain questions from FERC-580, MidAmerican believes the proposed changes would nonetheless increase the total reporting burden. The addition of questions pertaining to purchased power and recoveries of costs other than fossil fuel, as well as additional specific detailed questions regarding fuel procurement policies and practices, would significantly increase MidAmerican's reporting burden. The collection of new data in newly prescribed formats will necessitate additional reporting effort, particularly in the first reporting cycle.

MidAmerican also sees no need to expand the questions on fuel procurement practices and purchased power "to elicit more complete information and eliminate the need for follow-up questions."²

² Comment Request at 3.

MidAmerican believes that the Commission has effectively regulated MidAmerican's wholesale fuel adjustment clause in the past. MidAmerican is unaware of instances that required follow-up. To further ease the reporting burden while ensuring appropriate regulatory oversight, the Commission should consider establishing an additional threshold below which utilities need submit responses only to Question Nos. 1 and 2 of FERC-580.³

For example, MidAmerican's own wholesale sales subject to AACs have dwindled in recent years. Such sales averaged less than 3500 MWh annually during the 2007 through 2008 reporting period, an average load of less than 0.5 MW. Total AAC recoveries averaged about \$10,000 per year during this period. The Commission estimates that the average utility with a fuel adjustment clause will expend roughly \$3400 annually to submit the FERC-580.⁴ This is equivalent to over 30% of MidAmerican's total recoveries under its AAC.

By establishing a threshold for AAC recoveries – say, \$50,000 annually – below which a jurisdictional utility would respond only to the first two questions of the FERC-

580, the Commission would maintain an adequate record of all AACs in existence. The Commission could pose follow-up questions on an as-needed basis without imposing an undue burden on either the respondents to FERC-580 or the Commission itself in reviewing those responses.

Confidential treatment

MidAmerican strongly disagrees that the proposed changes will eliminate the need to request confidential treatment. For example, the detailed fuel procurement policies and practices identified in proposed Question No. 5 involve confidential information that would harm MidAmerican's competitive position if released publically.

Likewise, the data requested in Question No. 6 related to fuel contract terms, quantities, qualities, and weighted average costs (both FOB origin and FOB plant) must continue to be filed confidentially. Although the information reported in FERC-580 relates to prior calendar years, coal and coal transportation contracts are often multi-year in duration. Thus the publication of historical information can still cause the release of current contract information. MidAmerican has consistently treated the information about its coal and transportation suppliers as both secret and proprietary and, indeed, the resulting contracts are confidential in nature. Disclosure of certain information would result in suppliers and potential suppliers having competitive information about MidAmerican's fuel inventory and procurement practices which could cause MidAmerican to pay more for its coal and transportation of coal. These higher prices would disadvantage MidAmerican in its competition in retail, wholesale and off-system energy markets.

³ Commission regulations already establish certain reporting thresholds; for example, utilities that do not own or operate at least one steam station of 50 MW or greater need not submit FERC-580 at all. (See proposed FERC-580 2010 Desk Reference.)

⁴ Comment Request at 6. The Comment Request cites annual estimated costs of \$3,393.82, equivalent to a cost of roughly \$6800 to submit each biennial filing.

Implementation schedule

MidAmerican is concerned that any revisions to FERC-580 be adopted promptly. During the last reporting cycle, the Microsoft Excel version of the FERC-580 filing document was not released until two months before the filing deadline. By that time, MidAmerican had already completed much of the data collection and report preparation. Thus most of the filing documents had to be prepared twice. It is important that the FERC-580, including any related electronic forms, be finalized promptly.

C. Comments on FERC-580 Interrogatory

Question No. 2

Question No. 2 requests information on the wholesale AACs on file with the Commission. The proposed drop-down menus assume that there is a separate clause for each type of fuel or energy cost listed. This may not be the case. The drop-down fields should be flexible enough to accommodate variances in AAC structure from utility to utility.

Question No. 2 also requests an electronic copy of AACs filed with the Commission before January 1, 1990. Flexibility in the electronic format (Microsoft Word, Adobe PDF, etc.) is necessary. Historical documents may only be available as paper documents that must be converted, resulting in additional effort and burden.

Question No. 4

Question No. 4 requests information on emission allowance costs passed through an AAC. Although certain data on emission allowance costs had been reported prior to the last FERC-580 cycle covering 2006 and 2007, the proposed form requests new information on docket numbers and approval dates. This will increase the reporting burden by requiring additional research.

Unlike proposed Question Nos. 3 and 5 through 8 (which explicitly do not require a response if none of the related costs was recovered through a Commission-jurisdictional AAC), proposed Question No. 4 may be read to require information on the origin of emission allowance costs even if these costs were not recovered from wholesale customers. This is in conflict with the step-by step instructions for Question No. 4a contained in the desk reference, which requires amounts to be reported only:

[i]f the Utility incurred emission allowance costs during the reporting year, *and recovered any part of such costs through an AAC....* (Emphasis added.)

There is no reason to collect information on FERC-580 regarding costs which were not recovered via either an AAC or other means. Proposed Question No. 4 should be modified as follows:

Were emission allowance costs incurred by the Utility in 2008 and/or 2009 and recovered through an AAC or other means?

- a) If yes emission allowance costs were recovered through an AAC, provide the following information.
- b) Were If emission allowance costs were recovered in other than through an AAC? If yes, how were they recovered? Include specific Commission rate schedule and service agreement notations.

Question No. 5

The Commission proposes to add a new Question No. 5:

Provide the information requested below regarding the Utility's fuel procurement policies and practices in place during 2008 and/or 2009.

MidAmerican believes such information is highly confidential and must be filed as privileged information. In addition, the proposed FERC-580 seeks much more detail than prior forms. MidAmerican has well-documented fuel procurement policies and practices, and believes it is sufficient to provide these documents as in prior years. The itemization required by proposed subparts "c" through "j" is burdensome and redundant. Respondents should be permitted to respond to subparts "c" through "j" by referencing appropriate portions of their responses to subparts "a" and "b."

Question No. 6

Proposed Question No. 6 requests information for each fuel supply contract. In prior FERC-580s, information was not requested for contracts with durations less than one year.

MidAmerican notes that the proposed language would further increase the reporting burden. Coal volumes as small as one trainload are sometimes purchased, sold or exchanged for operational reasons. The proposed revision to FERC-580 would require the reporting of these frequent but small amounts that have a *de minimis* impact on AAC recoveries. For the 2008-09 reporting period, over one-quarter of MidAmerican's coal contracts were for periods less than one year, yet these accounted for less than 15% of all coal deliveries.

MidAmerican is particularly concerned about the burden of reporting contracts for natural gas. The great majority of MidAmerican's natural gas for electric generation is secured on a day-to-day basis since its gas-fired generation is used primarily for peaking purposes. In MidAmerican's case, the proposed language would increase the regulatory burden without providing measurable value, since natural gas accounts for less than six percent of the total 2009 recoveries under MidAmerican's AACs. The Commission should require information on natural gas contracts only if such contracts in total account for more than, say, 20% of the total recoveries under AACs during the period.

Appendix A

In Appendix A, the heading "Coal Contact Types" should presumably read "Coal Contract Types."

D. Comments on Desk Reference

The header for the step-by-step instructions for Question No. 2b refers to a onetime filing of documents older than *thirty* years. However, the instructions that follow that header (as well as Question No. 2b of the interrogatory itself) request a copy of filings made prior to January 1, 1990. The Commission should clarify whether it seeks documents filed more than thirty years ago (that is, prior to 1980), or documents filed prior to 1990.

IV. Conclusion

MidAmerican respectfully asks the Commission to give these comments due consideration in this proceeding.

DATED this 12th day of February, 2010.

Respectfully submitted,
MidAmerican Energy Company
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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Commission Information Collection
Activities, Proposed Collection (FERC-580)

Docket Nos. IC10-580-000, IN79-6

**COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY**

Pursuant to the notice of proposed information collection and request for comments ("NOIC") issued on December 4, 2009 and published on December 14, 2009 in the above referenced proceedings,¹ Pacific Gas and Electric Company ("PG&E") of the following comments.

I. EXECUTIVE SUMMARY

The Commission seeks public comment on its proposed revisions to information collection FERC-580, "Interrogatory on Fuel and Energy Purchase Practices». The purpose of FERC-580 is to enable the Commission to determine whether automatic adjustment clauses ("AACs") in wholesale rate schedules used by public utilities provide effective incentives for efficient use of resources, and reflect only costs that are either "subject to periodic fluctuations" or "not susceptible to precise determinations."

The proposed questions are intended to identify all types of AACs through which costs have been flowed during the current reporting period and elicit more complete information about fuel procurement practices and adjustment clause treatment of purchased power. The Commission proposes to redesign FERC-580 to eliminate the need for confidential treatment

¹ Commission Information Collection Activities, Proposed Collection (FERC-580), [Federal Register: December 14, 2009 (Volume 74, Number 238)] [Notices] [Page 66114-66115]

requests, eliminate unnecessary questions, and allow the submission of information electronically.

While PG&E generally supports the Commission's efforts to increase the transparency of its regulatory process, confidential treatment may still be required to protect some of the requested information. In addition, the burden of responding to certain interrogatories so clearly outweighs the usefulness of information obtained that the Commission should adopt a threshold for applying the interrogatory. The reporting obligation should not apply to a respondent for which costs subject to AACs represent a *de minimis* percentage of total billed revenues.

The NOIC specifically invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) terms and definitions in the interrogatory and glossary; (3) the accuracy of the agency's burden estimate; (4) suggestions for enhancing the quality, utility and clarity of the information to be collected; and (5) suggestions for minimizing the burden of collecting responsive information.

PG&E's comments on the Commission's identified issues of interest are summarized as follows:

(1) The proposed collection of information should be limited to tariffs covered by Federal Power Act ("FPA") § 205(f)(4) in accordance with the Commission's authority to review automatic adjustment clauses set forth in the FPA. FPA § 205(1)(4) applies to "[a] provision of a rate schedule which provides for increases or decreases (or both) in costs incurred by an electric utility. Such that does not include any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate." To conform with § 205(f)(4), the many rate tariffs on file at the Commission which are subject to public review or refund should

not be treated as AACs for FERC-580 reporting requirements. Moreover, the proposed collection of information is not necessary and useful for the Commission's performance because it would require reporting by respondents whose costs collected through AACs are so *de minimis* that the Commission could not reasonably determine whether the AAC impacts the respondent's decisions to use its resources in an efficient manner.

(2) The terms and definitions in the proposed interrogatory and glossary require the submission of market sensitive information so the Commission should not suggest that requests for confidential treatment will be unnecessary.

(3) The Commission's estimate of the burden of data collection is reasonable, from PG&E's perspective, for prior years. However, the NOIC proposes to expand the FERC-580 during the current reporting cycle to include questions relate to all automatic adjustment clauses and additional questions regarding fuel procurement practices. This expansion may increase the filing burden for FERC-580 respondents. The filing burden should be weighed against the value of the information to be obtained;

(4) No revision to the interrogatory is necessary.

(5) Utilities should be exempt from FERC-580 reporting requirements if they recover less than one percent (1 %) of their total billed revenues from AACs. PG&E's average billed revenues under the AACs for were approximately 0.0015% of total revenues.

II. PG&E'S INTEREST.

PG&E is required to respond to FERC-580 because PG&E currently collects certain fuel and other costs through the AAC in Rate Schedule FERC No. 114.

III. COMMUNICATIONS.

All communications with PG&E regarding this matter should be addressed to:

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Charles R. Middlekauff
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Facsimile: (415) 973-5520
Email: ECL8@pge.com

PG&E requests that any overnight deliveries be made to:

Evelyn C. Lee
Pacific Gas and Electric Company
77 Beale Street, Mail Code B30A
San Francisco, CA 94105

PG&E further requests that an additional copy of any correspondence and orders be sent to:

Pacific Gas and Electric Company Regulatory File Room
77 Beale Street, Room 3120, B30A
San Francisco, CA 94105
E-mail: LawFercCases@pge.com

IV. COMMENTS.

A. Burden.

The Commission has specifically asked FERC-580 respondents to comment upon the Commission's estimate of the burden required to prepare FERC-580 and ways to reduce this filing burden. PG&E believes that the Commission's estimate of 103 hours per respondent represents the number of hours previously required by PG&E employees to prepare FERC-S80.

However, the re-designed form imposes a burden that far outweighs any reasonable benefit from the Commission's access to the information that PG&E would be required to provide. The

² Person designated for official service pursuant to Rule 2010. See 18 C.F.R. § 385.2010.

burden of responding to FERC-580 should be evaluated not in absolute dollar terms but in relation to the value of the submitted information. As PG&E explains below, the expenses reported in its last FERC-580 report were so small compared to PG&E's total sales that the Commission could not reasonably determine whether the AAC impacts the respondent's decisions to use its resources in an efficient manner. In this case, the burden on PG&E is not justified.

For example PG&E currently has one wholesale customer that regularly purchases power subject to a fuel cost adjustment clause. PG&E's 2008 fuel cost adjustment ("FCA") revenues related to this customer only amounted to \$35,006.³ PG&E's total billed revenues for 2008 were \$11,550,507,109⁴ Thus, FCA revenues in 2008 represented only 0.0003% of total revenues.⁵ As a result, PG&E proposes that the Commission consider implementing a materiality threshold for respondents required to prepare FERC-S80, such as one percent (1%). Respondents with FCA or other AAC billings who do not meet the materiality threshold should be exempt from completing

Alternatively, PG&E recommends that at threshold be implemented for the reporting of information at individual contract levels (see proposed Questions 3 and 6). The problem arises from the fact that information for all fuel supply contracts must be reported, for each calendar year, regardless of the relative or absolute size of the fuel supply contract. The resources expended to obtain the information requested is identical for each contract, yet contracts below a certain cost or volumetric threshold will not contain pass-through costs of any consequence.

B. Confidentiality.

The NOIC suggests that the FERC-580 questions have been re-drafted to eliminate the need

³ FERC Form 1 for the Year Ended December 31, 2008, page 311.

⁴ Id. at 304.3

⁵ FERC estimates that the total cost per respondent to prepare FERC-580 is approximately \$3,393.82. Stated as a percentage of FCA revenues, PG&E's FERC-580 filing burden is approximately 10% of the cost of FCA revenues.

for confidential treatment of FERC-580 responses. However, confidential treatment may still be required if the response constitutes “market sensitive information; that is, information that, if obtained by a market participant, could be used to increase the price of electricity paid by a utility's customers. This principal has been adopted by the California Public Utilities Commission (“CPUC”)⁶ to limit public access to information filed at the CPUC and is appropriate for determining the need for confidential treatment of information requested by FERC-580.

For example, Question 5.a. requires submission of an electronic version of all Utility fuel procurement policies and practices. One of PG&E's practices is to minimize the risk of above-market procurement through a hedging strategy, the effectiveness of which would be compromised if it were made public. For the benefit of its customers, PG&E would respond to Question 5.a. by either seeking a waiver of the requirement to file its hedging strategy or requesting confidential treatment of its hedging strategy. The Commission should allow for confidential treatment of information if it is necessary to prevent the disclosure of information that could be used to affect the prices faced by the utility's customers

However, it is clear that Question 6.b., “Delivered characteristics - fuel cost” seeks market sensitive information that must be treated confidentially. Disclosure of the “actual weighed average fuel price paid FOB –origin/year and plant/year (in cents/MMBtu)” - could be used by market participants to establish a floor for fuel prices and may encourage potential fuel sellers to bid consistently above this average, leading to an overall increase in bid prices and higher costs to consumers.

PG&E has identified obvious examples of market-sensitive information that would be

⁶ CPUC Rulemaking (R.)05-06-040, Order Instituting Rulemaking to Implement Senate Bill No. 1488 (2004 Cal., Stats., Cit. 690 (Sept. 22, 2004)) Relating to Confidentiality of Information; Decision (D.) 06-06-066 Interim

Opinion; and D.08-04-023 Decision Adopting Model Protective Order (End Non-Disclosure Agreement. Resolving
Petition for Modification and Ratifying Administrative Law Judge Ruling.

publicly disclosed under the current draft of FERC-580~ but because the circumstances of each respondent are likely to vary) PG&E recommends that the current confidential treatment process be retained when FERC-580 is adopted. Flexibility to request confidential treatment is important, because each utility's response to a particular question may, or may not be sensitive.

V. CONCLUSION.

PG&E respectfully requests that FERC-580 not be adopted as proposed because in its present form, it imposes an undue burden on regulated utilities and exposes utility customers to potential economic harm by assuming that certain market sensitive information should be publicly available. The final FERC-580 should exempt from its terms utilities that recover less than one percent (1%) of their total billed revenues from AACs; alternatively, *de minimis* transactions should not be reported. the Commission should clarify that confidential treatment may still be requested because as drafted~ FERC-580 seeks market sensitive information.

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Respectfully Submitted,
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ATTACHMENT I

(See attached Adobe Acrobat file)