

FERC Form No. 580 Interrogatory of Fuel and Energy Purchase Practices

FERC Staff Responses to F.R. Comments Office of Management and Budget (OMB) Received on FERC Request for 3-Year Renewal of the Collection

July 29, 2010

In accordance with 5 CFR § 1320.8 (d), the Federal Energy Regulatory Commission (FERC or Commission) issued a Federal Register notice and request to renew OMB approval for the Form No. 580 on June 21, 2010 (Attachment A).¹ OMB received one comment from the Edison Electric Institute (EEI) in response to this notice. (Attachment B).

FERC staff respectfully recommends that OMB accept two of the four EEI recommendations.

The specific EEI recommendations to OMB and FERC staff responses are as follows.

1. **EEI Recommendation:** FERC should not be allowed to collect formula rate information in Form No. 580 (Form 580) if informational filings already provide that information. EEI suggests this exclusion would be similar to the one the Commission allowed in Order No. 715.² Order No. 715 (Order 715) required filers to use footnotes to detail how formula rates differ from Form No. 1 (Form 1) information they submit unless the filer regularly submits informational filings about their formula rates. Filers write narrative descriptions and explanations in the Form 1 footnotes if their formula rate relies on Form 1 data and the input amounts to the formula rate differ from what is shown in their Form 1.

FERC Staff Response: OMB should deny this Recommendation. The Form 580 reporting requirement differs from Order 715 activities in several important ways. First, information requested in Form 580 is numeric, not narrative like the Form 1 footnote requirement. Second, the specific data sought by the Form 580 is not included in any single routine utility filing. To determine if data are available and to retrieve the data that might be there, FERC staff would have to locate and review a substantial number of utility filings. Third, these voluminous utility filings are in various electronic formats and may not be text-searchable. Finally, FERC staff

¹ The notice appeared in *Federal Register* 75 FR 5003.

² Revisions to Forms, Statements and Reporting Requirements for Electric Utilities and Licensees, Order No. 715, 124 FERC § 61,273 (2008) (Order No. 715).

would have to manually transcribe the data that is located in these files that are not text-searchable.

To conclude, the data that may be in some informational filings is not sufficient for FERC automatic adjustment clause (AAC) reviews. Moreover, the time it would take FERC staff to locate and copy the necessary data from informational filings into a database containing Form No. 580 information would be significantly greater than the time it would take utility staff to enter the data into Form 580 because the data is readily available and can be electronically moved from the utility's records and systems into the Form.

2. **EEI Recommendation:** OMB should preclude FERC from requiring reporting of transmission-only tariffs and agreements in the AAC sections of Form 580.

FERC Staff Response: FERC staff agrees with this recommendation and will reword the instructions in the Form 580 accordingly.

3. **EEI Recommendation:** OMB should preclude FERC from collecting fuel-supply contract data for fuels whose costs are not subject to automatic adjustment.

FERC Staff Response: FERC staff agrees with this recommendation and will reword Form 580 to clarify that the fuel-supply contract data requested is only for fuels whose costs are subject to automatic adjustment pursuant to 18 CFR 35.14.

4. **EEI Recommendation:** OMB should delay use of revised Form 580 until March 15, 2011 because it will take respondents time to implement Form 580 changes and establish processes for collecting the new data.

FERC Staff Response: FERC staff recommends utilities who cannot submit their responses by September 15, 2010 request an extension.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

[Docket Nos. IC10-580-001]

COMMISSION INFORMATION COLLECTION ACTIVITIES
(FERC Form No. 580)
REQUEST; SUBMITTED FOR OMB REVIEW

(June 15, 2010)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 USC 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collections described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (74FR 66114, 12/14/2009) requesting public comments. FERC received comments from Edison Electric Institute (EEI), American Electric Power Company (AEP), MidAmerican Energy Company (MidAmerican) and Pacific Gas and Electric Company (PG&E) and has made this notation in its submission to OMB.

DATES: Comments on the collections of information are due by [30 days after publication of this Notice in the Federal Register].

ADDRESSES: Address comments on the collections of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention:

Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o oir_submission@omb.eop.gov and include the appropriate OMB Control Number(s) and collection number(s) as a point of reference. The Desk Officer may be reached by telephone at 202-395-4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC10-580-001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at <http://www.ferc.gov/help/submission-guide/electronic-media.asp>. To file the document electronically, access the Commission's website and click on Documents & Filing, E-Filing (<http://www.ferc.gov/docs-filing/efiling.asp>), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket Nos. IC10-580-001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact 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 e-mail at DataClearance@FERC.gov.

SUPPLEMENTARY INFORMATION: For the purpose of publishing this notice and seeking public comment, FERC requests comments on the following information collections:

FERC Form No. 580 "Interrogatory on Fuel and Energy Purchase Practices Pursuant to Section

205(f) (2) of the Federal Power Act", OMB Control No. 1902-0137;

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."³ 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 Form No. 580 "Interrogatory on Fuel and Energy Purchase Practices."

Public Comments and FERC Responses. A summary of the comments on the major issues filed by the public on the FERC Form No. 580 reporting requirements and FERC's

³ The review requirement is set forth in two paragraphs of Section 208 of PURPA, 49 Stat.851; 16 U.S.C. 824d

response, including proposed changes to the requirements is provided below. For a more detailed explanation please see the Commission's submission at <http://www.reginfo.gov/public/do/PRAMain>, scroll to "Currently under Review", key in "Federal Energy Regulatory Commission" and scroll to 1902-0137, "Interrogatory on Fuel and Energy Purchase Practices Pursuant to Section 205(f)(2) of the Federal Power Act", (FERC-580).

Public Disclosure

Fuel and Purchase Policies and Procedures. (Question No. 5): Commenters stated the information requested in response to this question should be treated as privileged. If the information is released, potential fuel sellers would be given a road map to a purchaser's buying policies and practices. This public disclosure of bidding and bid evaluation practices could facilitate gaming by potential suppliers. In addition, this disclosure would subject the utility to a greater risk of litigation from fuel suppliers.

FERC Response: The Commission has developed an addendum which sets forth a duplicate question 5 which may be filed as privileged, if the filer should choose to do so. The Commission has also added additional instructions to question 5 for those respondents who choose to label as privileged their response(s) to question 5. (For sub questions within question 5, please see item no. 8 of the FERC submission).

Contract Shortfalls, Buy-downs and Buy-Outs (Questions 7 & 8): Commenters indicated that the information requested in these two questions is commercially sensitive if reported when they are identified, instead of when these activities are later settled. If this information is made publicly available, at the earlier identification stage, disclosure of such information would impair a company's bargaining power.

FERC Response: The Commission has reworded the question to request information on shortfalls, but-downs and buy-outs for aged cases only. Respondents need not submit information for cases that are involved in ongoing litigation.

Prior Submissions

Submission of Previously Filed Information: One commenter requested that the Commission acknowledge data filed in 2008 in the format requested by the Commission for that submission.

FERC Response: The Commission will not enter previously filed data into the new form for two reasons: (1) 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; (2) The new Adobe PDF platform is

not compatible with the previously preferred Excel platform therefore the data cannot be flowed from one format to the other.

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 and eliminating the burden of subsequently entering data that doesn't change from year to year.

Reporting Burden: Several commenters have challenged the Commission's burden estimates and indicated that several questions in particular are burdensome in their preparation.

FERC Response: The Commission is eliminating 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 450 hours of burden to cover training, initial data entry, understanding of the new electronic filing software etc., which increased the total burden to 4,150 hours. The total burden will revert back to 3,600 hours for the 2012 collection.

Public Comments that were not incorporated and the FERC Responses

AAC

AAC Definition: 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 and/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.

FERC 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 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.”

⁴ 16 U.S.C. § 824d(f) (2006).

⁵ 16 U.S.C. § 824d(f)(b) (2006).

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 the 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

⁶ 16 U.S.C. § 825c (2006).

to assist the Commission in the proper 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.

Basic AAC Identification (Question No. 2) Commenters requested that the Commission 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. In addition, the revised 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.

FERC 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, and 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

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).

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.

Confidential Treatment of Information (Question 6) EEI believes that fuel costs should be treated as privileged information. Specifically, delivered fuel characteristics, including the quantity may be competitively sensitive, particularly when reporting at the facility level. EEI also believes that information in response to question no. 6 should be limited to the cost of fuels that are passed through an Automatic Adjustment Clause (AAC). Further, question no. 6 should only ask for data on the cost of primary fuels, not the costs from incidental use or other fuels for auxiliary or start-up purposes.

FERC 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.

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.

Duplicative Reporting: Commenters stated that the Commission should not require reporting of information that is already collected elsewhere, particularly with regard to

formula rates and fuel costs. The formula rate information is already collected in a new schedule at page 106 of Form 1. The Commission should also not require the submittal of fuel costs as this information is already submitted on the Energy Information Administration's EIA-923 "Power Plant Operations Report."

FERC 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 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.

Reporting Thresholds: Commenters asked that the Commission only require information on natural gas contracts if such contracts in total account for more than, for example, 20% of the total recoveries under AACs during the period.

FERC 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.

ACTION: The Commission is requesting a three-year extension of the FERC Form No. 580 requirements, with changes to the FERC Form No. 580. The redesign of the FERC Form No. 580 provides for electronic submission in a user-friendly format.

BURDEN STATEMENT: The table below provides an estimate of the annual public reporting burdens followed by the associated public costs.⁹

	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	45	.5	20	450

⁹ These figures may not be exact, due to rounding and/or truncating.

software				
TOTAL				4150

The total annual cost to respondents¹⁰ is estimated as follows.

FERC Data Collection	Total Annual Burden Hours (1)	Estimated Hourly Cost Error: Reference source not found (\$) (2)	Estimated Total Annual Cost to Respondents (\$) Error: Reference source not found (2) X (1)
Form 580	4150	\$66.29	\$275,104

The reporting burden includes the total time, effort, or 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 disclosing the information.

The estimate of cost for respondents is based upon 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

¹⁰ Using 2,080 hours/year, the estimated cost for 1 full-time employee is \$137,874/year. The estimated hourly cost is \$66.29 (or \$137,874/2,080).

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 collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

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July 21, 2010

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By e-mail to oir_submission@omb.eop.gov

Re: **Commission Information Collection Activities (FERC Form No. 580) –
FERC Docket No. IC10-580-001
Comment Request at 75 Fed. Reg. 35003 (June 21, 2010)**

Dear Sir or Madam:

The Edison Electric Institute (EEI) is filing these comments in response to the Federal Energy Regulatory Commission's (Commission's or FERC's) recent request to the Office of Management and Budget (OMB) for authorization of the revised FERC Form No. 580 (Form 580). In a notice published at 75 Fed. Reg. 35003, FERC announced that it has submitted the form to OMB and invited comments by July 21, 2010.

As background, historically, the Commission has used the Form 580 to collect data associated with fuel adjustment clauses (FACs). The Commission has not used the Form 580 as a means for collecting information on rate schedules with automatic adjustment clauses (AACs) other than FACs. The narrow scope of the Form 580 has reflected the Commission's apparent understanding that its Congressional mandate under Federal Power Act Section 205(f) is to biennially review fuel purchasing and operating practices of public utilities and the uses of fuel resources. *Consolidated Edison Company of New York, Inc.*, 39 FERC ¶ 61,329 (1987).¹ The Commission now has decided to expand the

¹ Pursuant to section 205 of the Federal Power Act, the Commission must examine whether or not each AAC effectively provides incentives for efficient use of resources (including economical purchase and use of fuel and electric energy), and whether such AACs only reflect costs that are either (i) subject to periodic fluctuations or (ii) not

scope of the Form 580 to cover all AACs of those utilities obligated to file the form. One overarching result of this change in scope is that the very name of the interrogatory -- "Interrogatory of Fuel and Energy Purchase Practices" -- is now misleading.

It is important to recognize that by expanding the interrogatory to focus not merely on utilities with FACs, but also to include utilities with cost-based rates that include AACs, a far larger group of utilities (or respondents) will be impacted. Notably, as reflected in the Federal Register Notice, the number of respondents with no FACs, but with AACs is 125. EEI's comments outlined herein are provided to streamline FERC's proposed changes where appropriate in order to eliminate unnecessary reporting burdens that will result from this much broader scope.

EEI Has a Direct Interest in Ensuring that FERC Avoids Unnecessary Reporting Burdens

EEI is the association of U.S. shareholder-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. members serve 95 percent of all customers served by the shareholder-owned segment of the industry. They generate almost 60 percent of all electricity generated by electric companies in the country, and serve 67 percent of all ultimate customers in the nation.

EEI has members that file the Form 580 and will be directly impacted by any changes approved by the OMB. Historically, these reporting requirements have imposed a substantial, costly burden on certain EEI members, namely those members with rates that include FACs, and careful consideration should be given to changes to the form that increase or expand that burden.

Though our members willingly provide information to FERC when needed, they do encourage FERC and other agencies to minimize the reporting burden by (a) avoiding the collection of unnecessary information; (b) avoiding duplicative reporting requirements; (c) avoiding unnecessary changes in forms at each review period; and (d) providing adequate time to adjust to any changes that are made.

Many of FERC's proposed changes to the Form 580 relating to the FAC sections meet the above goals and EEI's members appreciate FERC's efforts to reduce the reporting burden. At the same time, however, FERC will be greatly expanding the reporting requirements by now requiring that information related to AACs other than FACs also be

susceptible to precise determinations in rate cases prior to the time such costs are incurred. Also, the Commission must review practices under AACs to insure efficient use of resources (including economical purchase and use of fuel and electric energy). The Commission previously has explained that this "biennial review of automatic adjustment clauses under FPA section 205(f)(2) is a broad industry review of fuel prices. It does not involve a comprehensive study of each utility's individual contracts to determine prudence." *Re Interstate Power Co.*, 61 FERC ¶ 61,037 at 61,186 (1992).

included. Therefore, EEI has a direct interest in what Form 580 changes are approved by the OMB

EEI Raised Concerns about the Proposed Form 580 Changes in Earlier Comments to FERC

As discussed in FERC's Supplemental Supporting Statement filed with the OMB, EEI previously filed comments with FERC on February 12, 2010, regarding the proposed Form 580 changes. Although some of EEI's comments were adopted by FERC, subsequent discussions with FERC Staff have led EEI to conclude that some of its prior comments were misunderstood and that further clarifications and examples are warranted. We are writing to highlight some of EEI's prior comments that were not adopted by FERC that are of particular concern to us, given that they impose a substantial burden. As discussed in more detail below, the comments relate to (1) excluding tariffs/agreements that have associated informational filings from AAC reporting sections of the form; (2) excluding transmission-only tariffs/agreements from the AAC reporting sections of the form; and (3) excluding fuel supply contract data for fuels whose costs are not subject to automatic adjustment. We request that OMB work with FERC to make the changes necessary to address these concerns, as a condition of approving the form.

OMB Should Preclude FERC from Requiring Duplicative Reporting of Information Already Reported Through Informational Filings

Given the very broad definition of AACs, most cost-based formula rates will be categorized as AACs. Many cost-based tariffs and agreements that include formula rates on file with the Commission are subject to regular informational filing requirements. Through these informational filings, respondents provide FERC with detailed information regarding how formula rates operate, including the operation of AACs, on oftentimes an annual basis. Therefore, FERC should exclude reporting in the Form 580 of information on formula rates that is already reported through informational filings on an annual or more frequent basis. That is, the Commission need not rely on the Form 580 to provide it the information that would allow the Commission to perform the analyses that Congress requires it to perform. Instead, the Commission can perform any requisite analysis based on the informational filings it already receives, which may be even more detailed than the information that would be provided under FERC's proposed changes to the Form 580.

FERC recently adopted a similar exclusion in the expansion of the FERC Form 1 related to formula rates. More specifically, in Order No. 715, FERC stated 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." Thus, FERC 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. To avoid unnecessary duplicative reporting, a similar approach is warranted for the Form 580 because sufficient information is available through the informational filings to enable the Commission to assure the charges under formula rates comply with the Federal Power Act.

In response to EEI's earlier similar comments, FERC stated the "FERC Form No. 1 is insufficient for the Commission to meet its statutory requirements related to AACs." However, the purpose of EEI's prior comments was not to show that the Form 1 information was sufficient for FERC's AAC reviews, but that the data provided through regular *informational filings* was sufficient for FERC's AAC reviews. EEI's use of the FERC Form 1 reference was primarily to show that FERC had previously granted similar exemptions. EEI offers this clarification of its prior comments and believes that this exemption is necessary so that FERC's proposed changes do not add an unnecessary, duplicative burden on respondents. The Paperwork Reduction Act, under which this current review of the Form 580 is being conducted, requires agencies to avoid collecting such unnecessary or duplicative information.

OMB Should Preclude FERC from Requiring Reporting of Transmission-Only Agreements in the AAC Sections of the Form Because of the Limited Usefulness of Such Information

The requirements of section 205(f)(2) of the Federal Power Act must be understood in the context in which they were adopted. Although EEI recognizes that the Congressional mandate of Section 205(f) is arguably quite broad, it was drafted at a time when formula rates (i.e., AACs) for transmission were unheard of. Indeed, the Section was enacted in 1978 as part of PURPA, when open access was well over a decade away and concerns over usage of oil and gas were paramount. The fact that the statute refers to "economical purchase and use of fuel and electric energy" and the "economical purchase and use of fuel, electric energy, or other items" confirms that Congress was not concerned with inputs into transmission rates. In the cases cited *supra*, the Commission states that the purpose of the review of AACs is limited in scope and relates to fuel purchases and prices. Nonetheless, and despite the name of the interrogatory, the Commission rejected EEI's comments that the Commission should not expand the Form 580 to apply to "transmission AACs," i.e., AACs for transmission service, wholesale distribution service, interconnection service, and other transmission services. The use of AACs in transmission tariffs has grown rapidly in the last decade, as most transmission owners/providers have adopted formula rates. Also, virtually every interconnection agreement, facilities agreement, and engineering and procurement agreement entered into is a cost-based contract that contains a cost estimate that is then trued-up to reflect actual cost. Such contracts under FERC's definitions may be considered to include AACs.

EEI's position in its prior comments that transmission AACs should not be covered is fully supported by the fact that respondents have to file the proposed Form 580 only if they own 50 MW or more of steam generation. Because a significant number of transmission owners/providers do not own steam generation, collecting data on transmission AACs through the Form 580 will only result in obtaining data on a partial subset of utilities that have transmission AACs. As a result, the Commission will only have information to analyze a subset of utilities that use AACs for transmission services

rates. Moreover, ISOs and RTOs themselves use AACs extensively but certainly own no steam generation. In response to EEI's comments, FERC stated:

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.

However, as noted above, a large portion of transmission owners/providers do not own steam generation and therefore are not subject to the Form 580 filings requirements.

Therefore, a "complete picture" of transmission AACs will not be accomplished through the Form 580 and such tariffs and agreements should be excluded. Any analysis performed on such data could be profoundly skewed and misleading.

OMB Should Preclude FERC from Collecting Procurement and Fuel Supply Contract Data for Fuels Whose Costs Are Not Subject to Automatic Adjustment

As discussed above, the purpose of Form 580 is to provide the Commission information that will enable it to examine whether or not each AAC effectively provides incentives for efficient use of resources. EEI believes that the revisions FERC has proposed for the form combine in certain circumstances to inadvertently call for the provision of one type of information that does not further, and may even interfere with, that purpose. Questions 5 and 6 may call for fuel procurement and fuel cost information related to fuel purchases that are not subject to an adjustment clause.

EEI raised this issue briefly on pages 10-11 of its December 2009 comments. On page 12 of its June 21, 2010 Supplemental Supporting Statement for FERC Form No. 580, the Commission addressed that EEI comment. The Commission's Response on page 12, indicates that the Commission may not have fully understood EEI's comment. The Response also adds ambiguity to what information is called for by Questions 5 and 6. The Comment and Response read as follows:

"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 fuelrelated 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.”

Proposed Question 6 states:

“6. For each fuel supply contract (including informal agreements with **associated companies**) in force at any time during 2008 and/or 2009, 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.] **Information for ALL FUELS (e.g. fossil fuels, wood chips), EXCEPT URANIUM, should be reported.”**

EEI’s concern is that the applicability of Form 580 is being expanded to address AACs rather than just FACs. Some fuel-related adjustment clauses adjust only for certain fuel types. For example, one EEI member has a Rate Schedule on file with a clause that adjusts energy charges based on the cost of coal for certain specific generating plants. The cost of oil and natural gas used at other plants is not reflected in the resulting charges. But oil and natural gas purchase data may arguably be required under Question 6.

Including such fuel costs in response to Form 580 would not further the purpose of the form. On the contrary, combining non-adjustment clause fuel cost data with adjustment clause fuel cost data could actually interfere with the Commission’s attempt to analyze the impact of AACs on the efficient use of resources. Providing such non-adjustment clause fuel cost information would also be unnecessarily burdensome for respondents. There would be no point in requiring respondents to devote the resources needed to provide such information.

It is not clear whether the Commission’s June 21 Response addresses that concern. It refers to “filers with fuel adjustment clauses.” That could be read to refer to “filers of Fuel Adjustment Clauses (FACs)” or it could be read to refer to “filers of fuel-related Automatic Adjustment Clauses.” The Rate Schedule cited as an example above, does not have a classic FAC, but it does have a fuel-related AAC. The Commission’s Response leaves it unclear as to whether and how Question 6 (and presumably Question 5) apply to such a Rate Schedule. It is possible that no fuel information at all is required, since the Rate Schedule does not have a FAC. It is possible that information is required on all fuels purchased, even though oil and natural gas purchases are not subject to an adjustment clause.

EEI respectfully requests that OMB consider the matter and direct FERC to clarify: 1) that Questions 5 and 6 only apply to tariffs and agreements with FACs and 2) that information on fuels not passed through FACs can be excluded in response to Questions

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5 and 6. EEI submits that there is no reason to require filers to provide information on fuel purchases that are not subject to adjustment under a clause.

OMB Should Delay Use of the Revised Form until March 15, 2011

The Form 580 is generally due on even numbered years on September 15th. Because it will take respondents time to implement the form changes and establish processes for collecting the new data, EEI requests that OMB delay use of the revised form by six (6) months, to March 15, 2011.

Summary of EEI Requests to OMB

In closing, to address EEI's concerns about the proposed revised Form 580, we request that OMB work with FERC:

- (1) to exclude tariffs and agreements that have regular informational filings (i.e., at least annually) from the AAC sections of the form;
- (2) to exclude transmission tariffs and agreements from the AAC sections of the form;
- (3) to avoid collecting procurement and fuel supply contract data for fuels whose costs are not subject to automatic adjustment; and
- (4) to extend the filing date six (6) months to March 15, 2011, to allow for adequate implementation of the revised form.

If OMB or FERC have any questions about these comments, please contact Henri Bartholomot at 202/ 508-5622 on EEI staff. Thank you.

Sincerely,

- signature -

Edward H. Comer
Enclosure: Prior EEI comments to FERC