

Supporting Statement for  
**FERC-919, Market Based Rates (MBRs) for Wholesale Sales of Electric Energy,  
Capacity and Ancillary Services by Public Utilities**

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve the extension (for a three-year period) of **FERC-919, Market Base Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities**. FERC-919 is a Commission data collection contained in Title 18 Code of Federal Regulations (CFR), Part 39, Subpart H. The data collection under FERC-919 is currently approved through 11/30/2010.

JUSTIFICATION

**CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY**

Compliance with Federal Power Act (FPA) sections 205 and 206 make collection of this information necessary. Specifically, Section 205 of the FPA requires just and reasonable rates and charges. Section 206 allows the Federal Energy Regulatory Commission (FERC or Commission) to revoke a seller's market-based rate authorization if it determines that the seller may have gained market power since its original authorization to charge market based rates.

The information collected under FERC-919 (OMB Control No. 1902-0234), allows the Commission to meet its statutory responsibilities by providing it with the following:

- initial market power analyses to qualify for authority to charge market based rates,
- triennial market power analysis in category 2<sup>1</sup> seller updates as required in 18 CFR 35.37(a),
- quarterly land acquisition reports, as required in 18 CFR 35.42(d) and
- change in status reports as required in 18 CFR 35.42(a) (including Appendix B).

---

<sup>1</sup> *Category 2* means any sellers not in *Category 1*. *Category 1 Sellers* means wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888, FERC Stats. & Regs. ¶ 31,036); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.

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

The Commission will use information collected under FERC-919 to ensure that market-based rates charged by public utilities are just and reasonable, as Congress has mandated it to do.

The Commission's modification of regulations in Subpart H to 18 Code of Federal Regulations (CFR) Part 35 (18 CFR 35) during 2007 and the new standards it adopted at that time for issuing and reviewing market based rates have provided it with detailed and summary economic information the Commission needs to determine whether a wholesale seller of electric energy, capacity or ancillary services qualifies for market-based rate authority.

Subpart H contains the regulations necessary to require sellers to submit market power analyses and related reports.

Because public utilities are natural monopolies, the market power analyses FERC requires must address both horizontal and vertical market power. To demonstrate lack of horizontal market power, the Commission requires two screens: a pivotal supplier power analysis, based on the annual peak demand of the relevant market, and a market share analysis applied on a seasonal basis. Together, these screens examine a seller's ability to exercise horizontal market power. A seller that fails either screen may submit a delivered price test analysis to rebut the presumption of horizontal market power. If a seller fails to rebut the presumption of horizontal market power, the Commission sets the just and reasonable rate at the default cost-based rate unless it approves different mitigation based on case-specific circumstances. For a seller already charging market-based rates, rates are not revoked and cost-based rates are not imposed until the Commission issues an order making a definitive finding that the seller has market power in generation or, where the seller accepts a presumption of market power, an order is issued addressing whether default cost-based rates or case-specific cost-based rates are to be applied. Once an order is issued, the Commission revokes the market-based rate authority in all geographic markets where a seller is found to have market power in generation.<sup>2</sup>

Sellers that own or control more than 500 megawatts of generation and/or that are affiliated with a transmission franchised public utility or transmission owner in a given geographic region are required to file updated market power analyses every three years. The updated market power analyses must demonstrate that a seller does not possess

---

<sup>2</sup> The seller has the option of withdrawing its market-based rate request in whole or in part.

horizontal market power. A pivotal supplier power analysis and a market share analysis must be submitted and if the seller fails either, a delivered price test analysis must be submitted as well. When submitting horizontal market power analyses, a seller must use the form provided in 18 CFR 35 Subpart H, Appendix A and include all materials referenced there.

To demonstrate a lack of vertical market power, a seller that owns, operates or controls transmission facilities must have on file with the Commission an Open Access Transmission Tariff (burden reported separately in information collection 1902-0096). To demonstrate a lack of vertical market power in wholesale energy markets through the affiliation, ownership, or control of inputs to electric power production, such as the transportation or distribution of the inputs to electric power production, a seller must submit: a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership or control over who may access transportation of coal supplies. In addition, a seller is required to make an affirmative statement that it has not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market. Lastly, the seller must include an appendix of assets with each change of status filing by using the format set out in 18 CFR 35 Subpart H, Appendix B.

Sellers that are not affiliated with franchised public utilities or transmission owners and that do not, together with all of their affiliates, own or control more than 500 MW of generation in the relevant region are not required to submit updated market power analyses. The Commission determines which utilities are in this category through information filed by the utility either when market-based rates are sought or through a separate filing made to request such a determination.

In early 2005, the Commission clarified and standardized market-based rate sellers' reporting requirements for any change in status that departed from the characteristics the Commission relied on in initially authorizing sales at market-based rates. In Order No. 652,<sup>3</sup> the Commission required, as a condition of obtaining and retaining market-based rate authority, that sellers file notices of such changes no later than 30 days after the change in status occurs. Order No. 697 added regulatory text to clarify distinctions between generation facilities and transmission facilities, and incorporates minor revisions. The order is the source for codification of the requirement that each seller include an appendix identifying specified assets with each pertinent change in status notification filed. The standard from sellers use is in 18 CFR 35 Subpart H, Appendix B.

---

<sup>3</sup> Order No. 652 at P 47.

In order for a seller to demonstrate that it satisfies the Commission's vertical market power concerns, it must demonstrate that neither it nor its affiliates can erect barriers to entry (i.e., barriers other than transmission). Therefore in Order No. 697-C, the Commission began requiring all utilities with market-based rate authorization to report quarterly the sites where the utility has acquired control that would be suitable for new generation capacity equal to or greater than 100 megawatts. Information required in the land acquisition reports includes: the number of sites acquired; their relevant geographic market and the maximum number of megawatts that are reasonably commercially feasible on the sites.

Market power analyses help inform the Commission as to whether an entity seeking market-based rate authority lacks market power, and whether sales by that entity will be just and reasonable. The market power analyses as described above allow the Commission to monitor market-based rate authority to detect changes in market power or potential abuses of market power and permit the Commission to determine that continued market-based rate authority will still yield rates that are just and reasonable. The criteria and process outlined above clarifies Commission expectations for market-based rate tariffs and Commission review criteria. This improves regulatory efficiency of Commission analysis and determination of market-based rate authority. It also helps reduce document preparation time overall and provides utilities with clearly defined requirements.

Without this information, the Commission would be unable to meet its statutory responsibility to ensure electric utility rate and tariff filings are just and reasonable. Failing to meet this responsibility would result in public utilities charging rates that are not just and reasonable.

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

There is an ongoing effort at FERC to apply improved information technology to reduce the burden related to this information collection. However, the FERC-919 filings [that is, initial market power analyses to qualify for authority to charge market based rates, triennial market power analysis in category 2 seller updates as required in 18 CFR 35.37(a), quarterly land acquisition reports, as required in 18 CFR 35.42(d) and change in status reports as required in 18 CFR 35.42(a) (including Appendix B)] are and will continue to be filed in various media ranging from paper documents to XML data transfers. The latter is resulting from Order No. 714 wherein the Commission required that all tariffs, tariff revisions and rate change applications be filed electronically starting

April 1, 2010. Those who file FERC-919 information related to market based tariffs do so by embedding electronic tariff and filing information within the XML schema of FERC's new eTariff system. Providing FERC-919 filers this IT system to submit information has eliminated the need for copying and courier services as they relate to applications for market based rates. The other FERC-919 filings, however, arrive and will continue to arrive either in hard copy or via email in software applications accepted by FERC's eFiling system. This will be the case until IT resources become more available and plans are formulated and considered for possibly automating other aspects of FERC-919 as part of FERC's Capital Planning and Investment Control cycles.

**. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2.**

The information in the FERC-919 market power analyses, triennial reports, change in status filings and land acquisition filings focuses on transactions and operations, as well as existing and changed corporate relationships related to a particular company's market based rate authority. These data elements are specifically linked to the organization making the FERC-919 filing and its affected market based rates authority. The information is gathered by the FERC-919 filers and/or agents who are deeply knowledgeable about the company and its operation and who are working on their behalf; FERC cannot independently obtain and accurately compile the data and analyses from any other source except the filer. There are no other organizations, Federal agencies, or state agencies from which FERC can receive information in the FERC-919.

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

The Commission has reviewed those public utilities that constitute "small business concerns" under the Regulatory Flexibility Act for compliance with FERC-919 requirements. FERC has not identified any impact of the FERC-919 on small entities. The FERC-919 requirements are applicable to all public utilities seeking and currently possessing market-based rate authority. The Commission finds that the data collection activities proposed here should not have a significant impact on small businesses.

The submission of a market power analysis is currently required of all entities

seeking authority to sell at market-based rates, and the requested renewal of the FERC-919 does not alter which entities will be required to file these analyses. Because the Commission allows an applicant to make simplifying assumptions, where appropriate, and therefore to submit a streamlined analysis, the Commission believes that any burden affecting small entities will be minimal.

The FERC market based rate regulations require that each corporate family have on file one MBR tariff of general applicability, with all affiliates with market-based rate authority separately identified in the tariff. Although this initially increased the burden of document preparation and organization for parent utilities, long-term benefits have been realized that have reduced burdens on utilities and the Commission. For example, a tariff of general applicability decreases document preparation by providing a clearly defined statement of the information sought by the Commission. Moreover, a single tariff for each corporate family has reduced the filing burden on utilities. Small entities affiliated with a parent utility have not had to prepare a separate tariff; rather, they merely add their company name to their parent utility's tariff. Thus, the burden is decreased.

The triennial review submissions that provide updated market power analyses are required for the retention of market-based rate authority. Category 2 utilities must submit this analysis, which poses no change to the burden already in place. The qualified smaller utilities' (Category 1) have been able to retain market-based rate authority without having to make triennial review filings. Those who do have to file have been able to use simplifying assumptions.

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

Section 205 of the FPA mandates just and reasonable rates and FERC needs information it captures via FERC-919 under the specific circumstances discussed previously to meet this continuous statutory requirements. It is not possible to collect this data less frequently. If the collection were conducted less frequently, the Commission would be unable to perform its mandated oversight and review responsibilities with respect to electric market based rates being just and reasonable.

**. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION**

There are no special circumstances related to the information collection.

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

In accordance with 5 CFR 1320.8(d), the Commission's notice to renew its OMB approval of the FERC-919 information collection was published in the Federal Register on July 19, 2010 (see Attachment A below). The Commission received one comment in response to this Notice. A detailed summary of these comments can be found in Attachment B below. The FERC relied to these comments and issued a notice inviting further comments on the FERC-919 on November 12, 2010.

**9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS**

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

**10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS**

The Commission generally does not consider the data filed in rate filings to be confidential. There are no confidentiality provisions associated with the data requirements in FERC-919. Specific requests for confidential treatment to the extent permitted by law will be entertained pursuant to 18 C.F.R. Section 388.110. Section 205(c) of the FPA requires that every public utility have all of its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to the Commission and the public of any changes to its jurisdictional rates and tariffs, file such changes with the Commission, and make them available for public inspection, in such manner as directed by the Commission.<sup>4</sup>

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

There are no FERC-919 questions of a sensitive nature that are considered private.

---

<sup>4</sup> See *The Power Company of America, L.P. v. FERC*, 245 F.3d 839 (D.C. Cir. 2001) (*PCA*). In *PCA*, the court found, 245 F.3d at 846, that the Commission may alter its view of what information is required to be on file under section 205(c) of the FPA and § 35.15 of the Commission's regulations.

**12. ESTIMATED BURDEN ON COLLECTION OF INFORMATION**

The FERC revised the annual burden for triennial market power analysis in category 2 seller updates and the change in status filings in response to comments on the July 2010 Notice. These are shown below. There are also changes from the July 2010 Notice burden and cost estimates for market power analyses in new applications for market based rates because FERC has revised the average salary estimate for preparing market power analysis to more accurately reflect filers' costs of acquiring the expertise and assistance of lawyers, electrical engineers and economists to meet FERC-919 requirements. There are no changes to the burden estimates for the quarterly land acquisition reports, but the estimated annual number of respondents has been adjusted upward to 400 to correct a transposition error in the July 2010 Notice and continued in the November 2010 Notice. This error was corrected through an Errata FERC issued on November 24, 2010. The number of estimated change in status filings is an average of the number of change in status filings received over the last three years.

<b>FERC-919</b>	<b>Estimated No. of Respondents Annually (1)</b>	<b>Average No. of Responses per Respondent (2)</b>	<b>Average Burden Hours per Response (3)</b>	<b>Total Annual Burden hours (1)x(2)x(3)</b>
Market power analysis in new applications for market-based rates (required in 18 CFR 35.37(a))	155	1	250	38,750
Triennial market power analysis in category 2 seller updates (required in 18 CFR 35.37(a))	74	1	250	18,500
Quarterly land acquisition reports (required in 18 CFR 35.42(d))	400	1	4	1600
Change in Status Filings (required in 18 CFR 35.42(a))	58	1.38	34.75	2,780 <sup>5</sup>
<b>TOTAL</b>				<b>61,630</b>

5 Rounded off due to truncating the average number of responses per respondent to two decimal places.

### 13. ESTIMATE OF THE TOTAL COST BURDEN TO RESPONDENTS

The total estimated annual cost burden to respondents is **\$4,910,419**  $(((38,750+18,500+2500^6)/2,080^7 \text{ hours per year, times } \$166,602) + ((280^8+1600)/2080 \text{ hours per year, times } \$137,874) = \$4,910,419]$ . This number uses the average salary rate of \$166,602, which includes annual salaries, bonuses and benefits, of a mid-level economist, lawyer, and electrical engineer according to Salary.com data, for the hours required in 18 CFR 35.37(a) for market power analysis in new applications for market-based rates, triennial market power analysis in category 2 seller updates and major change in status filings. It uses the average salary rate for an internal professional of \$137,874, based on a FERC estimate, for preparation of the quarterly land acquisition reports and minor change in status filings.

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 organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

### 14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Annual Cost of Program Staff: \$2,619,606 (19 FTE at \$137,874 per year<sup>9</sup>)  
 Clearance Processing Cost: \$1,528  
**Total: \$2,621,134**

<sup>6</sup> Total number of burden hours for major change in status filings. Of the 80 responses per year, 10 are major (10 responses X 250 hours per response = 2500).

<sup>7</sup> Estimated number of hours an employee works each year.

<sup>8</sup> Total number of burden hours for minor change in status filings. Of the 80 responses per year, 70 are minor (70 responses X 4 hours per response = 280).

<sup>9</sup> This is the fully loaded estimate for FERC staff and includes benefits and overhead.

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

The July 2010 notice and the November 2010 notice mistakenly announced there were only 40 quarterly land acquisition reports filed annually. That notice said the FERC had received 400 change in status reports. These filing counts were inadvertently transposed: the initial estimate as of July 2010 was that FERC received about 400 land acquisition reports each year and 40 change in status reports.

The FERC has changed the burden associated with the FERC-919 change in status reports to 34.75 hours per response. When the Commission directed the filing of changes in status in Order No. 652, the Commission found the ongoing burden associated with change in status filings to be de minimis.<sup>10</sup> As a result of that determination, the Commission did not attribute a burden estimate to this activity at that time; therefore, no authorization from OMB was needed for that data collection. In examining various aspects of its market-based rate program in Order No. 697, FERC compiled all market-based rate data requirements into the FERC-919. Although the consolidation of market-based rate data requirements in the FERC-919 included change in status filings, FERC did not estimate new burden hours for the change in status filings based on the assumption they were still a de minimis activity as determined in Order No. 652. In the July 2010, 60-day Federal Register Notice for the FERC-919 FERC estimated that the Appendix B addition to change in status filings would take one hour to complete. The comments FERC received to its July 2010 notice for renewing the FERC-919 suggested FERC's estimate of one hour to compile and submit change in status filings was too low. The estimate of 34.75 hours per response is based on FERC's reviewing and analyzing change-in-status filings filed during the previous 3-year collection cycle.

FERC has also changed burden and cost estimates from the July 2010 Notice for the FERC-919 market power analyses in new applications for market based rates because these analyses require the expertise of specialized professionals such as consultant economists, electrical engineers and lawyers whose average salary estimate is higher than the salary for professional FERC identified in the July 2010 Notice. Additionally, FERC increased the burden hours per response for the FERC-919 triennial market power analysis in category 2 seller updates to 250 hours per response: market power analyses in

---

<sup>10</sup> Order No. 652, FERC Stats. & Regs. . ¶ 31,175 at P 35 (“the time and effort required to prepare the notice of a change in status – consisting of a transmittal sheet and a brief narrative statement – will be *de minimis* and will constitute a fraction of that required to submit the [FPA] section 203 application or [FPA] section 205 filing. Furthermore, the information required to comply with the reporting requirement would normally be collected by the market-based rate seller in the ordinary course of preparing the underlying filing.”)

these filings showed a complexity approaching that of initial applications for market based rate authority.

FERC estimates the total number of filings expected under the FERC-919 to remain about the same as it has been for the last 3 years.

The total number of respondents has decreased since the last submission by 231. The reason for this is threefold. First, the estimate in the current inventory includes responses associated with one-time filings that are now concluded. Second, there are two reporting requirements that are not part of the current inventory that are now included in the new inventory. Lastly, the current inventory reflects a “best guess” of the estimates as new regulations were being implemented. The new inventory reflects our understanding of the actual number of respondents for this collection as based on our experience since the initial order was issued. The net change is a reduction of 231 in the number of responses annually.

#### **16. TIME SCHEDULE FOR THE PUBLICATION OF DATA**

This data will be available for viewing in eLibrary and through the eTariff public viewer.

#### **17. DISPLAY OF EXPIRATION DATE**

It is not appropriate to display the expiration date for OMB approval of the information collected in the FERC-919. Currently, the information on the tariff filings is not collected on a standard, preprinted form which would avail itself to this display. Rather, public utilities and licensees prepare and submit filings that reflect the unique or specific circumstances related to rates and services involved in the filing. In addition, the information contains a mixture of narrative descriptions and empirical support that varies depending on the nature of the services to be provided.

#### **18. EXCEPTION TO THE CERTIFICATION STATEMENT**

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

#### **B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS.**

This is not a collection of information employing statistical methods.

**ATTACHMENT A**  
**FERC's 60-Day Notice in Federal Register**  
**Published July 13, 2010**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. IC10-919-000]

COMMISSION INFORMATION COLLECTION ACTIVITIES (FERC-919);  
COMMENT REQUEST; EXTENSION

(July 13, 2010)

**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), (Pub. L. No. 104-13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

**DATES:** Comments in consideration of the collection of information are due 60 days after publication of this Notice in the Federal Register.

**ADDRESSES:** Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC10-919-000. 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>. eFiling instructions are available at: <http://www.ferc.gov/docs-filing/efiling.asp>. First time users must follow eRegister instructions at: <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 eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original and two (2) paper copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, 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 or downloaded remotely through FERC's eLibrary at <http://www.ferc.gov/docs-filing/elibrary.asp>, by searching on Docket No. IC10-919-000. For user assistance, contact FERC Online Support by e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or by phone at: (866) 208-3676 (toll-free) or (202) 502-8659 for TTY.

**FOR FURTHER INFORMATION:** Michael Miller may be reached by e-mail at [DataClearance@FERC.gov](mailto:DataClearance@FERC.gov), telephone at (202)502-8415, and fax at (202)273-0873.

**SUPPLEMENTARY INFORMATION:** The information collected under FERC-919 (OMB Control No. 1902-0234) "Electric Rate Schedule Filings: RM04-7-000 Final Rule:

Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities“ is necessary to ensure that market-based rates charged by public utilities are just and reasonable as mandated by Federal Power Act (FPA) sections 205 and 206. Section 205 of the FPA requires just and reasonable rates and charges. Section 206 allows the Commission to revoke a seller’s market-based rate authorization if it determines that the seller may have gained market power since it was originally granted market-based rate authorization by the Commission.

On June 21, 2007, the Commission issued Order No. 697<sup>11</sup> to modify Subpart H to 18 Code of Federal Regulations (CFR) Part 35. In Order No. 697, the Commission revised and codified market-based rate standards for generating electric utilities for use in the Commission’s determination of whether a wholesale seller of electric energy, capacity or ancillary services qualifies for market-based rate authority. Subpart H contains the regulations necessary to mandate that sellers submit market power analyses and related reports.

Market power analyses must address both horizontal and vertical market power. To demonstrate lack of horizontal market power, two indicative market power screens are required under Order No. 697: the uncommitted pivotal supplier screen, which is based on the annual peak demand of the relevant market, and the uncommitted market share screen applied on a seasonal basis. These screens examine whether a seller has the

---

<sup>11</sup> Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Order No. 697, 72 Fed. Reg. 39,904 (Jul. 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007) (Final Rule).

ability to exercise horizontal market power. Sellers that fail either screen are rebuttably presumed to have market power, and a seller that fails either screen may submit a delivered price test analysis to rebut the presumption of horizontal market power. If a seller fails to rebut the presumption of horizontal market power, the Commission sets the just and reasonable rate at the default cost-based rate unless it approves different mitigation based on case-specific circumstances. For a seller that already makes wholesale sales at market-based rates, rates are not revoked and cost-based rates are not imposed until the Commission issues an order making a definitive finding that the seller has market power or, where the seller accepts a presumption of market power, an order is issued addressing whether default cost-based rates or case-specific cost-based rates are to be applied. Once an order is issued, the Commission revokes the market-based rate authority in all geographic markets where a seller is found to have market power.<sup>12</sup>

Sellers that own or control more than 500 megawatts of generation and/or that own, operate or control transmission facilities, are affiliated with any entity that owns, operates or controls transmission facilities in the same region as the seller's generation assets, or with a franchised public utility in the same region as the seller's generation assets are required to file updated market power analyses every three years. The updated market power analyses must demonstrate that a seller does not possess horizontal market power. A pivotal supplier power analysis and a market share analysis must be submitted, and if the seller fails either, a delivered price test analysis must be submitted as well.

---

<sup>12</sup> The seller has the option of withdrawing its market-based rate request in whole or in part.

When submitting horizontal market power analyses, a seller must use the form provided in Appendix A of Subpart H and include all materials referenced.

To demonstrate a lack of vertical market power, to the extent that a public utility with market-based rates, or any of its affiliates, owns, operates or controls transmission facilities, it must have on file with the Commission, a Commission-approved Open Access Transmission Tariff (burden reported separately in information collection 1902-0096). In addition, in order for a seller to demonstrate that it satisfies the Commission's vertical market power analysis, it must also demonstrate that neither it nor its affiliates can erect other barriers to entry. To demonstrate a lack of vertical market power in wholesale energy markets through the affiliation, ownership, or control of inputs to electric power production, such as the transportation or distribution of the inputs to electric power production, a seller must submit: a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership or control over who may access transportation of coal supplies. In addition, a seller is required to make an affirmative statement that it has not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.

Lastly, a seller must submit an asset appendix with its initial application for market-based rate authorization or updated market power analysis, and all relevant

change in status filings. The asset appendix must list, among other things, all affiliates that have market-based rate authority and identify any generation assets owned or controlled by the seller and any such affiliate. The appendix must list all generation assets owned (clearly identifying which affiliate owns which asset) or controlled (clearly identifying which affiliate controls which asset) by the corporate family by balancing authority area, and by geographic region, and provide the in-service date and nameplate and/or seasonal ratings by unit. In addition, the appendix must reflect all electric transmission and natural gas intrastate pipelines and/or gas storage facilities owned or controlled by the corporate family and the location of such facilities. (see Subpart H, Appendix B for standard form).

Wholesale power marketers and wholesale power producers that are not affiliated with franchised public utilities or transmission owners, that do not own transmission, and that do not, together with all of their affiliates, own or control more than 500 MW of generation in the relevant region are not required to submit updated market power analyses. The Commission determines which sellers are in this category through information filed by the utility either when the seller files its initial application for market-based rate authorization, or through a separate filing made to request such a determination.

In early 2005, the Commission clarified and standardized market-based rate sellers' reporting requirements for any change in status that departed from the

characteristics the Commission relied on in initially authorizing sales at market-based rates. In Order No. 652,<sup>13</sup> the Commission required, as a condition of obtaining and retaining market-base rate authority, that sellers file notices of such changes no later than 30 days after the change in status occurs. Order No. 697 incorporated minor revisions to the change in status reporting requirements. The order also codified the requirement that each seller include an appendix identifying specified assets with each pertinent change in status notification filed (see Subpart H, Appendix B for standard form).

In Order No. 697-C, in order to address concerns regarding a seller's ability to erect barriers to entry through its acquisition of control of sites for new generation capacity development, the Commission clarified that all entities with market-based rate authorization are required to report on a quarterly basis,<sup>14</sup> the acquisition of control of a site or sites for new generation capacity development for which site control has been demonstrated in the interconnection process and for which the potential number of megawatts that are reasonably commercially feasible on the site or sites for which new generation capacity development is equal to 100 megawatts or more. A notification of change in status that is submitted to report the acquisition of control of a site or sites for new generation capacity must include: the number of sites acquired; the relevant geographic market in which the sites are located; and the maximum number of megawatts that are reasonably commercially feasible on the sites reported.

---

<sup>13</sup> Order No. 652 at P 47.

<sup>14</sup> All other change in status reports must be filed no later than 30 days after the change in status occurs. 18 C.F.R. § 35.42 (2010).

The market power analyses required by Order No. 697 helps to inform the Commission as to whether an entity seeking market-based rate authority lacks market power, and whether sales by that entity will be made at rates that are just and reasonable. The updated market power analyses allow the Commission to monitor changes in a seller’s market power or potential abuses of market power, and enable the Commission to determine whether continued market-based rate authority will still yield rates that are just and reasonable. Market-based rate tariffs with standard provisions improve the efficiency of the Commission in its analysis and determination of whether a seller satisfies the requirements for market-based rate authority. These standardized market-based rate tariffs help to reduce document preparation time by applicants and sellers, and provide utilities with the clearly defined requirements of the Commission.

**ACTION:** The Commission is requesting a three-year extension of the FERC-919 reporting requirements, with no changes.

**BURDEN STATEMENT:** The estimated annual burden follows.

<b>FERC-919 (Orders 697-A, B, C, D)</b>	<b>No. of respondents filing annually</b>	<b>Hours per response</b>	<b>Total annual hours</b>
Market power analysis in new applications for market-based rates (required in 18 CFR 35.37(a))	155	250	38,750
Triennial market power analysis in category 2 seller updates (required in 18 CFR 35.37(a))	74	40	2,960
Quarterly land acquisition reports (required in 18 CFR 35.42(d))	40	4	160
Appendix B addition to change in	400	1	400

status reports 18 CFR 35.42(a)

**TOTALS**

42,270

The total estimated annual cost burden to respondents is \$2,801,891 (42,270 hours/2080 hours<sup>15</sup> per year, times \$137,874<sup>16</sup>).

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 organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

---

15 Estimated number of hours an employee works each year.

16 Estimated average annual cost per employee.

Comments are invited 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) the accuracy of the agency's estimate of the burden of the proposed collection 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 collection 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.

Kimberly D. Bose,  
Secretary.

**ATTACHMENT B**  
**Summary of Comments Received**  
**in July 13, 2010 Federal Register Notice**

**Public Comment: *Triennial Reviews.*** EEI asserts the ICR's burden estimate for the triennial review filings appears to be too low. Based on research and historical activity, FERC concluded 74 triennial market power analyses in category 2<sup>17</sup> were filed annually. FERC estimated that it took an average of 40 hours to prepare each of these. EEI states that "several member companies" take 400 to 720 hours or more of company and consultant time to prepare the triennial review applications. EEI states these companies reported to them that preparation of the triennial review entailed:

- 120 to 160 hours for internal engineering analyses, including calculation of simultaneous transmission import limits;
- 150 to 160 hours for internal legal and compliance analyses; and
- 110 to 450 hours for outside consultant market-power and legal analyses, including obtaining data pertaining to loads, generation resources, planned outages, remote generation, and power purchase arrangements in broad first and second tier balancing authority areas.

EEI states there is additional time devoted to regional coordination related to triennial

---

<sup>17</sup> *Category 2* means any sellers not in *Category 1*. *Category 1 Sellers* means wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888, FERC Stats. & Regs. ¶ 31,036); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.

review preparation.

Moreover, EEI asserts that FERC's total estimated annual cost burden for triennial review applications is too low. In its 60-day notice, FERC estimated the total average annual cost burden for respondents filing the data required in the FERC-919 is \$2,801,891. This resulted from using an average cost estimate of \$137,874. This average cost was based on salaries for internal professional and clerical support, as well as direct and indirect overhead costs. EEI argues that this average cost is not an appropriate figure to use because the vast majority of the work done on triennial review applications is performed by highly paid professionals. They state that outside legal, engineering, and economic expertise costs far more than the estimate included in the July 2010 notice for this ICR.

EEI comments that the Commission's burden estimate for triennial review applications may be low by a factor of 10 or more.

***FERC Response.*** According to EEI comments, it is the association of the nation's shareholder-owned electric utilities, international affiliates, and industry associates worldwide. Its members represent approximately 70 percent of the U.S. electric power industry and serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry. EEI members include the majority of the public utilities that are subject to the Commission's rate jurisdiction under Federal Power Act section 205 and,

therefore, must submit MBR applications and change-in-status reports to obtain and to retain MBR authorizations.

In response to the EEI statement that “several EEI member companies” report a higher number of hours for preparing triennial reviews than FERC estimated in its ICR, FERC acknowledges that large transmission-owning utilities with market-based rate authority have to undertake more complex analyses in their triennial reviews than smaller companies who do not own transmission. However, there are significantly fewer entities that prepare complex analyses for their triennial reviews than there are small energy businesses that prepare the triennial reviews. FERC records show in September 2010 there were 1,590 organizations with authority to charge market-based rates. According to the Energy Information Administration’s most recent count from 2009, there are 201 investor owned utilities (generally larger than other respondents). These numbers give an order of magnitude as to how many more small sellers there are than big sellers. The filings of these smaller companies related to the activities of this ICR are far simpler and require significantly fewer resources and time to complete. It is this wide variation in the amount of effort required to prepare triennial reviews that led the Commission to conclude that basing its estimate on an average made the reporting burden in the July 2010 Notice as accurate as possible.

Nevertheless, in consideration of EEI’s concerns, FERC acknowledges in this Notice that the complexity characteristic of triennial reviews prepared by transmission-

owning utilities with market-based rate authority typically approaches what is done in the initial market power analysis where the utility first sought market-based rate authorization. FERC also recognizes that the complex analysis of triennial reviews for transmission-owning utilities results from the work of a diverse set of professions including consultant economists, lawyers, and electrical engineers. The costs of engaging these professionals may be somewhat higher than the estimate included in the July 2010 Notice of this ICR.

As a result of the foregoing, FERC has increased the estimated average hours per response for triennial review applications from 40 to 250—the same amount of time FERC estimates it takes to prepare a market power analysis for a new market-based rate application. The Commission has also increased the average annual salary figure associated with completing market power analysis in new applications for market-based rates as well as completing triennial reviews from \$137,874 to \$166,602. Even though EEI comments do not address the costs associated with initial applications for MBRs, FERC will use the revised \$166,602 annual salary rate for triennials as the average annual salary amount associated with its estimates for initial MBR filings. The latter is an average, including benefits and bonuses, of the salaries for a mid-level economist, lawyer, and electrical engineer according to Salary.com data. (See <http://salary.com>).

**Public Comment: *Change in status.*** EEI states that the ICR's burden estimate for

change in status filings appears to be too low. They argue that each change in status filing is unique and must be developed to fit specific circumstances. They state that FERC regulations require updated market-power analyses to accompany certain change in status filings, for example, any time there is a cumulative increase in ownership or control of 100 MW or more of generation capacity in a market. EEI states that the burden in such cases potentially is comparable to the burden of performing the market-power analysis portion of the triennial reviews. EEI asserts that the burden of complying is far higher than FERC's estimated one hour per report. Even in cases where a full market-power analysis is not required to be filed, EEI states that some analysis has to be done to determine whether such an analysis should be included in the filing. Also, beyond drafting and submitting the change in status filing, EEI notes in its comments that regulatory staff must constantly monitor business activities, and must train business unit staff to inform them of changes which may lead to a required change in status filing.

***FERC Response.*** As noted above, the Commission directed the filing of changes in status in Order No. 652. In that order, the Commission found the ongoing burden associated with change in status filings to be de minimis.<sup>18</sup> As a result of that determination, the Commission did not attribute a burden estimate to this activity at that

---

18 Order No. 652, FERC Stats. & Regs. . ¶ 31,175 at P 35 (“the time and effort required to prepare the notice of a change in status – consisting of a transmittal sheet and a brief narrative statement – will be *de minimis* and will constitute a fraction of that required to submit the [FPA] section 203 application or [FPA] section 205 filing. Furthermore, the information required to comply with the reporting requirement would normally be collected by the market-based rate seller in the ordinary course of preparing the underlying filing.”)

time; therefore, no authorization from OMB was needed for that data collection. In examining various aspects of its market-based rate program in Order No. 697, FERC compiled all market-based rate data requirements into this ICR, the FERC-919.

Although the consolidation of market-based rate data requirements in the FERC-919 included change in status filings, FERC did not estimate burden hours for the change in status filings based on the assumption they were still a de minimis activity as determined in Order No. 652. In the July Notice for this ICR FERC did, however, estimate that the Appendix B addition to change in status filings would take one hour to complete.

As an initial matter, FERC would like to clarify an apparent misunderstanding regarding whether an updated market power analysis is required to be submitted with a change in status filing. FERC does not, in all instances, require market-based rate sellers to include an updated market power analysis with a change in status filing that involves an increase in ownership or control of 100 MW or more of capacity. The Commission has left it to the market-based rate seller to determine whether a change in status is a material change and to provide adequate support and analysis for that conclusion, including submission of an updated market power analysis if it chooses.<sup>19</sup> However, it is hereby noted that the Commission retains the right to require additional information, including an updated market power analysis where necessary to determine the effect of a

---

<sup>19</sup> See Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 504 (“In Order No. 652, the Commission clarified and standardized market-based rate sellers’ reporting requirement for changes in status and the Commission considered and rejected the idea that change in status filing include an updated market power analysis. The Commission explained that it is incumbent on an applicant to decide whether a change in status is a material change and that an applicant should provide adequate support and analysis, including an updated market power analysis if it chooses.”) See also Order No. 652, FERC Stats. & Regs. ¶ 31,175 at P 95.

seller's change in status on its market-based rate authority.<sup>20</sup>

In response to EEI's comments, FERC reviewed change in status filings made October 21, 2008 to October 20, 2010. To facilitate its analyses, FERC divided change in status filings into two categories based on the complexity and amount of work evident in the filing. Those filings that were voluminous, provided detailed economic and market data, undertook market power analyses and provided substantive information about current operational dynamics were categorized as "major" change in status filings. These filings most commonly included a full market power analysis with significant amount of detail and complexity. Filings that did not include detailed market power analyses but instead relied on simplified assumptions based on previously submitted market power analyses to conclude that the change in status did not reflect a departure from the characteristics the Commission relied upon in granting the seller market-based rate authority were categorized as "minor." The change in status filings categorized as "minor" were often from a market-based rate seller who simply pointed to a recent market power study for the same market as support for its contention that, given the size of the market and the size of the seller's uncommitted generation capacity, the seller does not have market power in the market; thus, the acquisition has not changed any of the facts upon which the Commission relied in granting the seller market-based rate authority. FERC also noted that sellers sometimes make supplemental filings providing additional information relating to previously submitted change in status. These

---

<sup>20</sup> See Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 505.

supplemental filings can similarly be categorized as “major” or “minor.”

FERC assessment and tally of these filings is as follows:

**Total Number of Change in Status Filings at FERC: 82**

(10-21-2009 to 10-20-2010)

All Change in Status Filings	Change In Status (CIS) Filings			Supplemental CIS Filings		
	Initial CIS Filing	CIS Requiring Major Work	CIS Requiring Minor Work	CIS Previously Filed	Major Work	Minor Work
<b>Total Filings</b>						
<b>82</b>	62	9	53	20	3	17

**Total Number of Change in Status Filings at FERC: 78**

(10-21-2008 to 10-20-2009)

All Change in Status Filings	Change In Status (CIS) Filings			Supplemental CIS Filings		
	Initial	CIS	CIS	CIS	Major	Minor
<b>Total Filings</b>						

	1 CIS Filing	Requiring Major Work	Requiring Minor Work	Previously Filed	Work	Work
<b>78</b>	77	8	69	1		1

From October 21, 2009 to October 20, 2010, there were a total of 82 change in status filings. Sixty-two of these were initial change in status filings, nine of which were categorized as “major” and 53 of which were categorized as “minor.” The remaining 20 filings were supplements to initial notice of change in status filings submitted by companies to provide additional information regarding a filing they had already made; 3 of these supplemental filings were categorized as “major” and 17 were categorized as “minor.” Between October 21, 2008 to October 20, 2009, there were a total of 78 change in status filings. Seventy-seven were initial change in status filings, eight of which were “major” and 69 of which were categorized as “minor.” One of the 78 filings was a “minor” supplement to an initial change in status.

Based on the EEI’s comments and historical data regarding change in status filings, FERC has decided to increase its assessment of the reporting burden hours for change in status filings to 34.75 hours per response, which includes preparation of the associated asset appendices. FERC estimates an average of 80 change in status filings per year  $[(82 + 78) / 2 = 80]$ . Of these, it estimates that 10 will be major (250 hours per response) and 70 will be minor (4 hours per response). By taking an average, FERC estimates that the total annual burden for change in status filings is 2,780 hours  $[(250 * 10 = 2500) + (70 * 4 = 280) = 2,780]$ . FERC

estimates an average of 58 respondents per year each filing an average of 1.38 responses (80 filings per year / 58 = 1.38<sup>7</sup>). Using the above estimates the average burden hours per response is 34.75 (2,780 total hours/80 responses = 34.75).