

FERC- 919 (OMB Control No. 1902-0234)

Supporting Statement

FERC- 919: Market-Based Rates for Wholesale Sales of Electric Energy

Three-year approval of revisions requested

The Federal Energy Regulatory Commission (FERC or Commission) requests that the Office of Management and Budget (OMB) review and approve the FERC-919 (Market-Based Rates for Wholesale Sales of Electric Energy) information collection for a three-year period under OMB Control Number 1902-0234.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Compliance with Federal Power Act (FPA) Sections 205¹ and 206² make collection of this information necessary. Specifically, Section 205 of the FPA requires just and reasonable rates (MBR) 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 its original authorization to charge market-based rates.

The information collection requirements for FERC-919 are contained within the following categories:

- Initial market power analyses to qualify for authority to charge market-based rates;
- Triennial market power analysis in Category 2 seller updates³;
- Quarterly land acquisition reports⁴;
- Change in status reports⁵.

2. 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.

18 CFR 35 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

1 16 USC 824(d)

2 16 USC 824(e)

3 18 CFR 35.37(a)

4 18 CFR 35.42(d)

5 18 CFR 35.42(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 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.

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 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 contained separately within information collection FERC-516 (OMB Control Number 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 in 18 CFR 35 Subpart H, Appendix B.

Sellers unaffiliated 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, 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 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 format for sellers' use is in 18 CFR 35 Subpart H, Appendix B.

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 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 clarify 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 tariffs are just and reasonable. Failing to meet this responsibility would result in public utilities charging rates that are not just and reasonable.

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

There is an ongoing effort to determine the potential and value of improved information technology to reduce the burden. However, the FERC-919 filings are and will continue to be filed in varying forms of media 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 rate tariffs do so by embedding the 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 transmitted via email and then submitted in software applications accepted by FERC's eFiling system. As the Commission makes IT resources more available and formulates plans/policies for further automation, burden reduction via technological improvement will improve.

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

The Commission periodically reviews filing requirements as OMB review dates arise or as the Commission may deem necessary in carrying out its regulatory responsibilities. To date, the Commission has found no duplication of application data elsewhere. Moreover, the Commission can neither compile nor obtain the data and analyses from any other source but the filer. The information is specific to each filing applicant.

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

The Commission reviewed 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 Commission currently requires the submission of a market power analysis from all entities seeking authority to sell at market-based rates. The requested renewal of the FERC-919 does not alter which entities will be required to file these analyses. The Commission allows an applicant to make simplifying assumptions where appropriate. This allows the applicant to conduct a streamlined analysis for submission. The Commission believes that any burden affecting small entities will be minimal due to permission of these simplifying assumptions.

Additionally, the FERC market-based rate regulations require that each corporate family have on file at least one MBR tariff of general applicability with all affiliates with market-based rate authority separately identified in the tariff. Small entities affiliated with a parent utility have the option to concur with its parent utility's tariff by adding its name to the parent utility's tariff or submit their own tariff. Thus, burden on the small entity is decreased.

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

Section 205 of the FPA mandates just and reasonable rates. The Commission requires information gleaned via FERC-919 under the specific circumstances discussed previously to meet these continuous statutory requirements. It is not possible to collect this data less

frequently. If the Commission conducted the collection 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.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

There are no special circumstances related to the information collection.

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

In accordance with OMB requirements, the Commission published a 60-day notice⁶ and a 30-day notice⁷ to the public regarding this information collection on 10/11/2013 and 1/7/2014 respectively. Within the public notices, the Commission noted that it would be requesting a three-year extension of the public reporting burden. The Commission received no comments from the public regarding this information collection.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents in the FERC-919 requirements.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission does not consider the information collected in FERC-919 filings to be confidential. There are no confidentiality provisions associated with the data requirements of FERC-919.

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

There are no questions of a sensitive nature associated with the FERC-919 reporting requirements.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The Commission estimates the Public Reporting burden for the FERC-919 information collection as follows:

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6 78 FR 62006
7 79 FR 818

Requirements	Number of Respondents (A)	Number of Responses Per Respondent (B)	Total Number of Responses (A)x(B)=(C)	Average Burden Hours per Response (D)	Estimated Total Annual Burden (C)x(D)
Market Power Analysis in New Applications for Market-based Rates [18 CFR 35.37(a)]	213	1	213	250	53,250
Triennial market power analysis in seller updates [18 CFR 35.37(a)]	83 ⁸	1	83	250	20,750
Quarterly land acquisition reports [18 CFR 35.42(d)]	373	2.15 ⁹	802	4	3,208
Change in status reports [18 CFR 35.42]	237	1	237	34.75	8,236
TOTAL					85,444

The total estimated annual cost burden to respondents is \$7,268,721 [85,444 hours * \$85.07¹⁰] = \$7,268,721].

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no capital or start-up costs associated with this collection. All of the costs are associated with the burden hours and accounted for in Question #12.

14. ESTIMATE OF THE TOTAL ANNUAL COST TO FEDERAL GOVERNMENT

	Number of Employees (FTE)	Estimated Annual Federal
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8 This figure is the yearly average of triennial filings over a three-year period.

9 Quarterly land acquisition reports are often jointly filed with multiple filers per land acquisition report. See Question #15 for additional information.

10 The Commission staff calculated this figure using an average of salaries (including benefits:

<http://www.bls.gov/news.release/ecec.nr0.htm>) between three occupational categories

(http://bls.gov/oes/current/naics2_22.htm):

- Economist: \$67.57/hour
- Electrical Engineer: \$59.62/hour
- Lawyer: \$128.02/hour

(\$67.57+\$59.62+\$128.02) ÷ 3 = \$85.07/hour

		Cost
Analysis and Processing of filings ¹¹	20	\$2,916,360
PRA ¹² Administrative Cost		\$2,250
FERC Total		\$2,918,610

The Commission bases its estimate of the “Analysis and Processing of filings” cost to the Federal Government on salaries and benefits for professional and clerical support. This estimated cost represents staff analysis, decision-making, and review of any actual filings submitted in response to the information collection.

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

The estimates for number of responses are based on records the Commission maintains about the number of market-based rate filings received at the Commission. The Commission estimates that there is approximately one response (filing) per respondent (filer) for entities filing initial applications, changes in status, and triennial filings. These numbers are based on an average number of initial applications and change in status filings received per year from September 1, 2011 to August 31, 2013. The estimated number of triennial filings was based on the average number of triennial filings received over the course of three years from June 2010 to June 2013.

Quarterly land acquisition reports are often jointly filed with multiple filers per land acquisition report. Due to the large number of filers per land acquisition report, the Commission counted the number of land acquisition filers over four quarters from July 2012 to June 2013. Over those four quarters, 802 filers made land acquisition reports. Approximately, 373 of those filers filed more than one land acquisition report over the course of a year.

In addition to updates regarding estimates, the December 2013 Notice for the FERC-919 revised the description of one of the requirements from “Appendix B addition to change in status reports” to “change in status reports” to clarify that the 237 estimated annual number of filings accounts for all types of change in status filings rather than only “Appendix B addition of change in status filings”. The modification of the description explains the increase in estimated respondents from 58 in the July 2010 Notice for the FERC-919 to 237 in the October 2013 Notice for the FERC-919, which estimated all change in status reports rather than just change in status filings that add an asset appendix as directed in Appendix B to Order No. 697. The October 2013 Notice mistakenly described “change in status filings” as just change in status filings that add an asset appendix, which is only a subset of all change in status filings that the Commission receives. Commission staff corrected this within the 30-day notice for this renewal.

The Commission has not changed the average burden hours estimates for any of the requirements used in the July 2010 FERC-919 renewal because none of the requirements have changed since 2010. In addition, no comments were submitted in the October 2013 Notice to

¹¹ Based upon 2013 FTE average salary plus benefits (\$145,818)

¹² Paperwork Reduction Act of 1995 (PRA)

challenge any of the burden estimates.

The Commission's records show that the amount of filings per year has increased for all categories of filings since 2010. Fluctuations in the amounts of filings received may be attributed to an increase in the total number of entities with market-based rate authorization since three years ago. In addition, the Commission's records of filings have become easier to search and collect information on under the electronic filing system in effect since April 1, 2010 that was mentioned above in Question #3. This electronic filing system has contributed to making the Commission estimates more accurate, which may account for some of the variation in estimates.

The Commission estimates the total number of filings expected under the FERC-919 to continue to increase because more entities are seeking market-based rate authority each year over the previous year.

FERC-919	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	1,335	709	626	0
Annual Time Burden (Hr)	85,444	61,630	23,814	0
Annual Cost Burden (\$)	0	0	0	0

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

There are no tabulations, statistical analysis, or publications of information planned for the FERC-919 information collection. The Commission intends to use the data for regulatory purposes only.

17. DISPLAY OF EXPIRATION DATE

The Commission does not collect FERC-919 data on a standard, preprinted form which would avail itself to display of the expiration date. Therefore, it is not appropriate to display the expiration date for OMB approval of the information collected under the FERC-919.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

The Commission will not be using statistical survey methodology for this information collection.