

FERC-919 (OMB Control No. 1902-0234)
NOPR (issued 6/19/2014) in Docket No. RM14-14, RIN 1902-AE85
[updated 10/3/2014]

Supporting Statement for
**FERC- 919 (Market-Based Rates for Wholesale Sales of Electric Energy, Capacity
and Ancillary Services by Public Utilities),
as modified by NOPR in Docket RM14-14, issued 6/19/2014**
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, for a three-year period, the FERC-919¹ (Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities; OMB Control Number 1902-0234), as proposed for modification in the Notice of Proposed Rulemaking (NOPR) in Docket No. RM14-14.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Compliance with Federal Power Act (FPA) Sections 205² and 206³ make collection of this information necessary. Specifically, 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 (MBR) authorization if it determines that the seller may have gained market power since its original authorization to charge market-based rates.

The current information collection requirements for FERC-919 (before this NOPR in Docket RM14-14) are:

- Initial market power analyses to qualify for authority to charge market-based rates⁴
- Triennial market power analysis in Category 2 seller updates⁵
- Quarterly land acquisition reports⁶
- Change in status reports⁷.

In the NOPR in RM14-14, FERC is proposing changes to clarify and/or streamline some requirements, eliminate others, and make a few minor additions to obtain more detail. The proposals in RM14-14 include:

¹ The most recent renewal with no change (ICR 201312-1902-001) was approved by OMB on 2/27/2014.

² 16 USC 824(d)

³ 16 USC 824(e)

⁴ 18 CFR 35.37(a)

⁵ 18 CFR 35.37(a)

⁶ 18 CFR 35.42(d)

⁷ 18 CFR 35.42(a)

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- (1) eliminating the requirement for sellers in an RTO to file indicative screens
- (2) creating a threshold for reporting new affiliations only if they result in a 100 MW or more cumulative change in generation capacity
- (3) discontinuing quarterly land acquisition reports for market-based rate sellers
- (4) requiring organization charts
- (5) splitting some entries in Appendix A and Submittal 2 Table 2 to provide more detail.

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

Current Practice. The Commission uses information collected under FERC-919 to ensure that market-based rates charged by public utilities are just and reasonable, as Congress has mandated FERC 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 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 or that are affiliated with a franchised public utility or transmission owner in a given geographic region are considered to be Category 2 sellers and are required to file updated market power analyses every three years. The updated market power analyses must demonstrate that a

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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, it creates a presumption that the seller has market power. In response to a screen failure, a seller may submit a delivered price test analysis, or alternative evidence, or the seller may propose some form of mitigation (e.g., cost-based rate mitigation or limiting sales). 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 (i.e., Category 1 sellers) 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

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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.

Proposals in NOPR in RM14-14. After more than six years of experience with the implementation of Order No. 697, this NOPR in RM14-14 proposes certain changes and clarifications in order to streamline and simplify the market-based rate program, and to enhance and improve the program's processes and procedures. Based on experience, FERC has found that the burdens associated with some requirements may outweigh the benefits in certain circumstances. For these reasons, we propose a number of changes to the market-based rate program which, taken as a whole, will reduce the burden on industry and the Commission, while continuing to ensure that the standards for market-based rate sales of electric energy, capacity and ancillary services result in sales that are just and reasonable. The NOPR also includes proposed minor changes that will add clarity to, and improve transparency in, the market-based rate program. (The responses to Questions 1, 5 and 15 provide additional details.)

In general, 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 criteria and process outlined above clarify Commission expectations for market-based rate sellers 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 rates 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, electronic filing, 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 be submitted either in hard copy or electronically through FERC's eFiling system.

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.

The NOPR in RM14-14 is eliminating unnecessary reports and requirements while clarifying others and adding minimal data.

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

The Commission currently requires the submission of a market power analysis from all entities seeking authority to sell at market-based rates.

The proposed rule in RM14-14 will eliminate some requirements, streamline and clarify others, and add a few minimal requirements, resulting in a net reduction of burden on entities of all sizes (public utilities seeking and currently possessing market-based rate authority). Implementation of the proposals is expected to reduce total annual burden by 27 percent to the industry. Examples of proposed changes that will be helpful to small

entities follow.

- No longer requiring RTO sellers to file indicative screens will reduce the burden on all sellers in RTOs, including small entities in RTOs. The proposed rule also clarifies existing requirements, such as explaining that sellers with fully-committed generation may submit an explanation that their generation is fully committed in lieu of submitting indicative screens. Such clarification may be particularly helpful to small entities as many small entities have fully-committed generation.
- By adopting a reporting threshold of a 100 MW cumulative change in generation capacity for reporting changes in status regarding new affiliations, the Commission expects a reduction in the frequency of notice of change in status filings, which will necessarily reduce the burden on market-based rate sellers, including small entities.
- Discontinuing the quarterly land acquisition reports reduces burden on all market-based rate sellers, including small entities.
- The additional one-time burden to market-based rate sellers is expected to cause a minimal increase in burden only during initial implementation, and will decrease future burdens by allowing a streamlined analysis in subsequent filings.

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

In this proposed rule in RM14-14, FERC is proposing to eliminate some unnecessary reporting requirements and to clarify and simplify others. These proposed changes will reduce burden on industry while ensuring FERC receives the data it needs.

The Commission requires FERC-919 information (much of which is unaffected by this NOPR) in order to perform its mandated oversight and review responsibilities with respect to electric market-based rates being just and reasonable. 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

Without this information, the Commission would be unable to meet its statutory responsibility under Section 205 of the FPA to ensure electric utility rates and tariffs are just and reasonable. Failing to meet this responsibility would result in public utilities charging rates that are not just and reasonable.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

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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**

The NOPR in RM14-14 is requesting public comment and being published in the Federal Register.

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. However, sellers may request confidential treatment for their filing under § 388.112 of the Commission's regulations.

**11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A
SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND
ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT
ARE COMMONLY CONSIDERED PRIVATE.**

This collection does not contain any questions of a sensitive nature.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The current burden (pre-implementation of the NOPR in RM14-14) for the FERC-919 information collection follows:

**FERC-919: Market Based Rates for Wholesale Sales of Electric Energy,
Capacity and Ancillary Services by Public Utilities
(pre-implementation of the NOPR in RM14-14)**

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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(a)]	237	1	237	34.75	8,236
TOTAL			1,335		85,444

The total estimated annual cost burden to respondents is \$7,268,721 [85,444 hours * \$85.07¹⁰] = \$7,268,721]; this figure is based on BLS hourly cost figures from the last time this was cleared.

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.

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

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 burden hours and accounted for in Questions #12 and #15.

14. ESTIMATE OF THE TOTAL ANNUAL COST TO FEDERAL GOVERNMENT

	Number of Employees (FTE)	Estimated Annual Federal Cost
Analysis and Processing of filings ¹¹	20	\$2,931,820
PRA ¹² Administrative Cost		\$5,092
FERC Total		\$2,936,912

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.

The PRA Administrative Cost is a Federal Cost associated with preparing, issuing, and submitting materials necessary to comply with the Paperwork Reduction Act (PRA) for rulemakings, orders, or any other vehicle used to create, modify, extend, or discontinue an information collection. This average annual cost includes requests for extensions, all associated rulemakings (not just this NOPR in Docket No. RM14-14), and other changes to the collection.

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

As described above in #1, 2, and 5, in the NOPR in RM14-14, FERC is proposing to eliminate some filings (quarterly land acquisition reports) and requirements, clarify others, and add minimal requirements, culminating in an approximate 60% reduction in the estimated number of responses (802) required annually from respondents. The total burden hour estimate for all market-based rate sellers after the Proposed Rule goes into effect is expected to be an annual net reduction of 27% (decrease of 22,824 hours from

¹¹ Based upon FERC’s 2014 FTE average salary plus benefits (\$146,591)

¹² Paperwork Reduction Act of 1995 (PRA)

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the existing 85,444 hours). The total cost for market-based rate sellers after revising the market-based rate requirements is expected to be as follows:¹³

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	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 Hours (C)x(D)
New applications for market-based rates [18 CFR 35.37], With Screens	107	1	107	250	26,750
New applications for market-based rates [18 CFR 35.37], No Screens	106	1	106	120	12,720
Triennial market power analysis in Category 2 seller updates [18 CFR 35.37], With Screens	42	1	42	250	10,500
Triennial market power analysis in Category 2 seller updates [18 CFR 35.37], No Screens	41	1	41	120	4,920
Quarterly land acquisition reports	0	0	0	0	0

¹³ Order No. 697 included the burden for Appendix A Parts I and II. The burden was not modified when Appendix A Part II was inadvertently omitted in Order No. 697-A; the burden related to Appendix A Part II continues to be included in the FERC-919.

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[18 CFR 35.42(d)]					
Change in status reports [18 CFR 35.42(a)], With Screens	13	1	13	250	3,250
Change in status reports [18 CFR 35.42(a)], No Screens	224	1	224	20	4,480
TOTAL			533		62,620

After implementation of the proposed changes, the total estimated annual cost burden to respondents is \$5,497,409.80 [62,620 hours * \$87.79¹⁴] = \$5,497,409.80]. This represents a reduction in total annual burden for FERC-919 of 22,824 hours¹⁵ (to 62,620 hours from 85,444 hours) or a 27 percent reduction.

A comparison of the current OMB-approved inventory with the changes proposed in the NOPR in RM14-14 follows.

FERC-919	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	533	1,335	0	-802
Annual Time Burden (Hr)	62,620	85,444	0	-22,824
Annual Cost Burden (\$)	0	0	0	0

14 The Commission estimates this figure based on the Bureau of Labor Statistics data (for the Utilities sector, at http://www.bls.gov/oes/current/naics2_22.htm, plus benefits information at <http://www.bls.gov/news.release/ecec.nr0.htm>). The salaries (plus benefits) for the three occupational categories are:

- Economist: \$74.29/hour
- Electrical Engineer: \$60.70/hour
- Lawyer: \$128.39/hour

The average hourly cost of the three categories is \$87.79 [(\$74.29+\$60.70+\$128.39)/3].

15 This includes reductions for: new applications for market-based rates of 13,780 hours; triennial market power analysis of 5,330 hours; quarterly land acquisition reports of 3,208 hours; and change in status reports of 506 hours.

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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.

The clearance information and expiration date are available at <http://www.ferc.gov/docs-filing/info-collections.asp>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

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