

Supporting Statement
**FERC- 919 (Refinements to Policies and Procedures for
Market-Based Rates for Wholesale Sales of Electric Energy,
Capacity and Ancillary Services by Public Utilities),
as proposed for modification in the NOPR
in Docket No. RM16-3-000**

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review the information collection requirements in the FERC-919 (Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities), as proposed for modification in the Notice of Proposed Rulemaking (NOPR) in Docket No. RM16-3-000. FERC-919 (OMB Control No. 1902-0234) is a Commission data collection, contained in Title 18 Code of Federal Regulations (CFR) 35.37 through 35.40, and 35.42.

In this NOPR in RM16-3,¹ the Commission is proposing to amend its regulations to clarify the scope of ownership information that sellers seeking to obtain or retain market-based rate authority must provide. FERC proposes to find that the current policy that requires sellers to provide comprehensive ownership information is not necessary for the Commission's assessment of horizontal or vertical market power. The Commission further proposes to amend its regulations to clarify the types of ownership changes that must be reported to the Commission via a notice of change in status.

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

General. 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 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:

¹ The NOPR is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14074881>; the News Release is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14075002>.

² 16 USC 824(d).

³ 16 USC 824(e).

- Initial market power analyses to qualify for authority to charge market-based rates;
- Triennial market power analysis in Category 2 seller updates⁴,
- Change in status reports⁵.

NOPR in RM16-3. FERC proposes to amend its regulations to clarify the scope of ownership information that sellers seeking to obtain or retain market-based rate authority must provide. The Commission proposes to find that the current policy that requires sellers to provide comprehensive ownership information is not necessary for the Commission's assessment of horizontal or vertical market power. The Commission therefore proposes to amend its regulations by setting forth a less burdensome requirement that sellers identify two categories of "affiliate owners", defined as owners that are deemed to be affiliates under section 35.36(a)(9) of the Commission's regulations.⁶ First, the seller must identify its "ultimate affiliate owner(s)," defined as the furthest upstream affiliate owner(s). Identifying the ultimate affiliate owner is necessary for the Commission to form a meaningful picture of a seller's ownership structure and to understand what affiliates ultimately have the power to influence a seller's operations. Second, the seller must identify any affiliate owner that has a franchised service area or market-based rate authority, or that directly owns or controls: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies. This information assists the Commission in evaluating a sellers' horizontal and vertical market power. The Commission further proposes to amend its regulations to clarify the types of ownership changes that must be reported to the Commission via a notice of change in status.

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

Existing Regulations. 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.

⁴ 18 CFR 35.37(a).

⁵ 18 CFR 35.42(a).

⁶ 18 CFR 35.36(a)(9).

Because public utilities are natural monopolies, the market power analyses FERC requires must address both horizontal and vertical market power. To demonstrate a lack of horizontal market power, the Commission requires two screens: a pivotal supplier screen, based on the annual peak demand of the relevant market, and a market share screen, based on seasonal demand. 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 that has already been granted market-based rate authority, market-based rate authority is 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, control, or are affiliated with more than 500 megawatts of generation; own, operate, control, or are affiliated with transmission facilities in a given geographic region; and/or are affiliated with a franchised public utility in a given geographic region, are required to file updated market power analyses every three years. The updated market power analyses must demonstrate that the seller does not possess horizontal market power. A pivotal supplier screen and a market share screen must be submitted and if the seller fails either screen, a delivered price test analysis may be submitted as well. When submitting horizontal market power analyses, a seller must use a workable electronic spreadsheet in 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)] or qualify for a waiver of the requirement to have an Open Access Transmission Tariff on file. 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;; 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 and its affiliates have 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 to incorporate 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. Order No. 816⁷ requires that the appendix be submitted in a workable electronic spreadsheet.

NOPR in RM16-3. The Notice of Proposed Rulemaking in Docket No. RM16-13 proposes to clarify the scope of ownership information that sellers seeking to obtain or retain market-based rate authority must provide.

Overall Program. Market power analyses help inform the Commission as to whether an entity seeking market-based rate authority lacks market power, and, thus, 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-

⁷ Order 816 was issued 10/16/2015 in Docket RM14-14 and is available in FERC's eLibrary at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14016286>.

based rate authority 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 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. Accordingly, RM14-14 requires market-based rate sellers to submit pivotal supplier and market share screens in Appendix A in electronic spreadsheet formats. Submitting electronic spreadsheets will allow the Commission to reduce mathematical errors and further reduce burden on industry and the Commission by minimizing phone calls and amendments for corrections to the pivotal supplier and market share screens. RM14-14 also requires that the asset appendix be submitted in a workable electronic spreadsheet format, which allows staff to verify calculations and more easily search and sort the data provided. This will reduce filing burdens, improve accuracy and minimize phone calls and amendments.

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

This NOPR in Docket RM16-3 reduces the amount and scope of ownership information that sellers must provide in their market-based rate filings. This NOPR proposes to reduce (for small and large entities) the burden and expense associated with filing market-based rate applications and triennial market power updates by clarifying the current regulations and by requiring identification of only the ultimate affiliate owner(s) and any affiliate owner that has a franchised service area or market-based rate authority, or that directly owns or controls: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies. In addition, the Commission clarifies and limits the types of ownership changes that must be reported to the Commission via a notice of change in status.

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**

For the FERC-919, the proposed rule will be published in the Federal Register,⁸ providing public utilities and licensees, state commissions, Federal agencies, and other interested parties an opportunity to submit data, views, comments or suggestions concerning the approved collection of data.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts made to respondents.

**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 is no specific confidentiality provision associated with the data requirements of FERC-919.

In general, filers may request privileged treatment of any submittal to the Commission as provided in 18 CFR 388.112.

**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**

The Commission does not consider any of the questions to be sensitive or private.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The following table provides the estimated burden reduction (decrease of 20,360 burden hrs. and decrease of \$1,963,722) proposed in the NOPR in RM16-3⁹:

⁸ 80FR80302, 12/24/2015

⁹ In Order No. 697-A, the Commission required that sellers seeking to obtain or retain market-based rate authority identify all upstream owners and affiliates. Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, at P 181 n.258. The Commission most recently updated the burden estimates associated with the market-based rate program in Order No. 816, which will become effective on January 28, 2016.

FERC-919, Estimated Changes, due to NOPR in RM16-3					
Type of Requirement	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden Hours & Cost per Response ¹⁰ (4)	Annual Burden Hours & Total Annual Cost (3)*(4)=(5)
Reduction of requirement for sellers to describe entire ownership structure in Initial Applications and Triennial Updated Market Power Analyses, & Change of Status -- [Decrease in burden and cost]	509 [No change]	1 [No change]	509 [No change]	-40 hrs.; -\$3,858	-20,360 hrs.; -\$1,963,722

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 Cost
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On 12/22/2015, the PRA package and burden estimates for Order No. 816 (Final Rule, issued 10/16/2015, in Docket RM14-14) were approved by OMB (under ICR No. 201510-1902-002).

10 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 average hourly cost (salary plus benefits) of \$96.45 is based on the following occupational categories:

- Lawyer (Code 23-0000), \$129.87/hour
- Management Analyst (Code 13-1111), \$63.03/hour

Analysis and Processing of filings ¹¹	20	\$2,989,780
PRA ¹² Administrative Cost		\$5,193
FERC Total		\$2,994,973

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 in this docket), and other changes to the collection.

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

As described above, FERC is reducing the amount and scope of ownership information that sellers must provide in their market-based rate filings. The total burden estimate for all market-based rate sellers is estimated to be a reduction of 20,360 hrs. annually (and corresponding reduction of \$1,963,722)

A comparison of the current OMB-approved inventory with the changes proposed in RM16-3 follows.

FERC-919	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	509	509	0	0
Annual Time Burden (Hr)	64,110	84,470		-20,360
Annual Cost Burden (\$)	0	0	0	0

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

¹¹ Based upon 2015 FTE average salary plus benefits (\$149,489/year).

¹² Paperwork Reduction Act of 1995 (PRA).

FERC does not publish any data associated with this collection.

17. DISPLAY OF EXPIRATION DATE

The OMB expiration dates are posted on <http://www.ferc.gov/docs-filing/info-collections.asp>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.