

FERC-516C (OMB Control No.: 1902-0287)  
as approved by the Final Rule (issued 11/17/2016) in Docket No. RM16-5-000  
RIN: 1902-AF18  
(Updated on 1/19/2017)

Supporting Statement for  
**FERC-516C<sup>1</sup>, Offer Caps in Markets Operated by Regional Transmission Organizations  
and Independent System Operators,  
in Final Rule in Docket No. RM16-5-000**

The Federal Energy Regulatory Commission (FERC or Commission) requests that the Office of Management and Budget (OMB) review the information collection requirements in the Final Rule under Docket No. RM16-5-000 and contained within the FERC-516C information collection.

The burden associated with RM16-5-000 is being submitted to the FERC-516C information collection (OMB Control No. 1902-0287) to allow timely submission to OMB. FERC-516 is currently under review by OMB. Any burden hours related to RM16-5 applied to FERC-516C is intended eventually to reside in FERC-516 (OMB Control No. 1902-0096).

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

**FERC-516<sup>1</sup> (in general):** The Federal Power Act Sections 205 and 206<sup>2</sup> require the Federal Energy Regulatory Commission to ensure that the rates and charges for the wholesale sale of electric energy are just and reasonable. Sections 205 and 206 also require that the rules and regulations affecting or pertaining to the rates and charges for the wholesale sale of electric energy be just and reasonable.

**Final Rule in RM16-5-000.** In this Final Rule, FERC approves its regulations to require that each regional transmission organization (RTO) and independent system operator (ISO)<sup>3</sup> (1) cap each resource's incremental energy offer at the higher of \$1,000/MWh or that resource's verified cost-based incremental energy offer, and (2) cap verified cost-based incremental energy offers at \$2,000/MWh when calculating locational marginal prices (LMPs).

The Commission finds that the offer cap on incremental energy offers (offer cap) is no longer just and reasonable for several reasons. First, the offer cap may unjustly prevent a

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1 FERC-516 (OMB Control No. 1902-0096) is the data collection cited in RM16-5-000 Final Rule. It is where the burden for this Final Rule should reside. However, FERC-516 is currently under OMB's review for other unrelated Commission activities (ICR No. 201511-1902-005). Instead, RM16-5-000 Final Rule is being submitted under a temporary collection number (FERC-516C, OMB Control No. 1902-0287) to ensure timely submission.

2 16 U.S.C. 824d, 824e.

3 There are six ISOs and RTOs (California ISO, New York ISO, the Midcontinent ISO, ISO New England, PJM Interconnection, and Southwest Power Pool) affected by this final rule. More information on ISOs and RTOs is posted at <http://www.ferc.gov/industries/electric/indus-act/rto.asp> ..

resource from recouping its costs by not permitting that resource to include all of its short-run marginal costs within its energy offer. Second, the offer cap may result in unjust and unreasonable rates because it can suppress locational marginal prices (LMPs) to a level below the marginal cost of production during periods when fuel costs increase dramatically. Third, when several resources have short-run marginal costs above the offer cap but are unable to reflect those costs within their incremental energy offers due to the offer cap, the RTO/ISO is not able to dispatch the most efficient set of resources because it cannot distinguish among the resources' actual costs. Finally, because of the offer cap, a resource with short-run marginal costs above the offer cap may choose not to offer its supply to the RTO/ISO, even though the market may be willing to purchase that supply.

To remedy these potential problems associated with the offer cap, the Commission proposes to require that each RTO/ISO (1) cap each resource's incremental energy offer at the higher of \$1,000/MWh or that resource's verified cost-based incremental energy offer, and (2) cap verified cost-based incremental energy offers at \$2,000/MWh when calculating LMPs. Under this approval, for an incremental energy offer equal to or above \$1,000/MWh and less than or equal to \$2,000/MWh, the RTO/ISO or Market Monitoring Unit must verify that the offer is cost-based before the RTO/ISO may use the offer to calculate LMPs. For an incremental energy offer above \$2,000/MWh, the RTO/ISO or Market Monitoring Unit must also verify that the offer is cost-based. However, a verified incremental energy offer above \$2,000/MWh may not set LMP, though a resource with such a verified offer will be eligible to receive uplift. The approved offer cap would be resource neutral, that is, any resource, regardless of fuel-type, would be eligible to submit a cost-based incremental energy offer above \$1,000/MWh.

The Commission approves a generic change to the offer cap applicable to all RTOs/ISOs through a rulemaking to avoid exacerbating seams issues. Seams issues could arise if one RTO/ISO has an offer cap that materially differed from a neighboring RTO's/ISO's offer cap. Different offer caps in neighboring RTOs/ISOs could result in flows that depend on the level of the two offer caps as opposed to economics or reliability needs.

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

The reforms approved in this Final Rule amend the Commission's regulations to improve the operation of organized wholesale electric power markets operated by RTOs/ISOs. The Commission approves the requirement that each RTO/ISO (1) cap each resource's incremental energy offer at the higher of \$1,000/MWh or that resource's verified cost-based incremental energy offer; and (2) cap verified cost-based incremental energy offers at \$2,000/MWh when

calculating LMPs. The reforms approved in this Final Rule require one-time filings of tariffs with the Commission and potential software upgrades<sup>4</sup> to implement the reforms approved in this Final Rule. The Commission anticipates the reforms approved in this Final Rule, once implemented, would not significantly change currently existing burdens on an ongoing basis. With regard to those RTOs/ISOs that believe that they already comply with the reforms in this Final Rule, they could demonstrate their compliance in the compliance filing required 75 days after the effective date of this Final Rule.

If the Commission does not require RTOs/ISOs to submit the tariff filings, the Commission will not be able to ensure that (1) resources can recoup their short-run marginal costs, (2) LMPs are less likely to be suppressed, (3) RTOs/ISO are able to dispatch the most efficient set of resources, and (4) resources are not discouraged from offering supply into the market.

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

FERC implemented its eTariff system (fully implemented in 2010) for the electronic filing of tariffs. (eTariff is described more fully at <http://www.ferc.gov/docs-filing/etariff.asp>). The tariff compliance filing approved in this Final Rule will be eFiled.

**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**

FERC rules and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of FERC's regulations and data requirements to identify duplication. The information to be submitted, generated, kept, or posted, pursuant to this Final Rule is not readily available from other sources.

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

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<sup>4</sup> Commission staff did not include the cost of potential software upgrades within this information collection request because they believe most entities will not have to conduct software upgrades. Commission staff requested comment about these costs in the NOPR but did not receive any comments on this issue.

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The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>5</sup> The SBA revised its size standard for electric utilities (effective January 22, 2014) to a standard based on the number of employees, including affiliates (from a standard based on megawatt hours).<sup>6</sup>

The reforms approved in this Final Rule would apply to the RTOs and ISOs, all of which are transmission organizations and are included in the NAICS code 221121 (for Electric Bulk Power Transmission and Control), which has a threshold for small businesses of 500 employees. The Commission understands that each affected RTO and ISO has more than 500 employees, so the RTOs and ISO are not small entities.

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

This collection cannot occur less frequently since these are one-time filings. For them to be conducted less frequently than once, the filings would not occur at all. Without this information, the Commission would be unable to meet its statutory responsibility under Section 206 of the FPA to ensure electric utility rates are just and reasonable. Failing to meet this responsibility could result in public utilities charging rates that are not just and reasonable.

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

The FERC-516C presents no special circumstances.

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

Each FERC activity that results in the revision of an information collection is published in the Federal Register thereby 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 collections of data. The proposed rule was published in the Federal Register on 2/4/2016 (81 FR 5951).

The Commission received many comments in this proceeding on a variety of issues including, but not limited to, (1) the need to reform the offer caps, (2) the verification requirement, (3) the need for a hard cap, (4) the ability of the Market Monitoring Unit to timely

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<sup>5</sup> 13 CFR 121.101 (2016).

<sup>6</sup> SBA Final Rule on "Small Business Size Standards: Utilities," 78 FR 77,343 (Dec. 23, 2013).

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verify cost-based incremental energy offers, (5) the application of the proposed rule to imports and virtual transactions, and (6) the impact of the proposed rule on seams between RTOs/ISOs. None of the comments received regarded paperwork burden.

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

There are no gifts or payments given to the respondents.

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

Data filed are public information and, therefore, not confidential. However, a company may request confidential treatment of some or all parts of the information requirement under the FERC regulations at 18 CFR 388.112. The Commission will review each request for confidential treatment on a case-by-case basis.

**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 include any questions of a sensitive nature.

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

The estimated public reporting burden due to these approved revisions in Docket RM16-5-000 follows.

FERC-516C, as approved by Final Rule in Docket RM16-5-000						
	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)×(2)=(3)	Average Burden (Hours) & Cost Per Response (4)	Total Annual Burden Hours & Total Annual Cost (3)×(4)=(5)	Cost per Respondent (\$) (5)÷(1)
One-Time Tariff Filings (Year 1)	6	1	6	500 hrs.; \$37,000 <sup>7</sup>	3,000 hrs.; \$222,000	\$37,000

<sup>7</sup>The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May

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The Commission notes that these cost estimates below do not include costs for software or hardware or for increased time spent validating cost-based incremental energy offers above \$1,000/MWh. Software or hardware upgrades may not be required.

Please note that the burden associated with RM16-5-000 is being submitted to the FERC-516C temporary information collection number (OMB Control No. 1902-0287) to allow timely submission to OMB. FERC-516 is currently under review by OMB in an unrelated item. Only one item per OMB Control No. can be pending review at a time. Any burden hours added to FERC-516C by Docket RM16-5 is intended eventually to reside in FERC-516 (OMB Control No. 1902-0096).

As discussed in #15, the one-time burden is being averaged over Years 1-3.

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

There are no start-up or other non-labor costs.

Total Capital and Start-up cost: \$0

Total Operation, Maintenance, and Purchase of Services: \$0

All of the costs in the final rule are associated with burden hours (labor) and described in Questions #12 and #15 in this supporting statement.

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

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2015 posted by the Bureau of Labor Statistics for the Utilities sector (*available at* [http://www.bls.gov/oes/current/naics2\\_22.htm#13-0000](http://www.bls.gov/oes/current/naics2_22.htm#13-0000)) and scaled to reflect benefits using the relative importance of employer costs in employee compensation from June 2016 (*available at* <http://www.bls.gov/news.release/ecec.nr0.htm>). The hourly estimates for salary plus benefits are:

- Legal (code 23-0000), \$128.94
- Computer and mathematical (code 15-0000), \$60.54
- Information systems manager (code 11-3021), \$91.63
- IT security analyst (code 15-1122), \$63.55
- Auditing and accounting (code 13-2011), \$53.78
- Information and record clerk (code 43-4199), \$37.69
- Electrical Engineer (code 17-2071), \$64.20
- Economist (code 19-3011), \$74.43
- Management (code 11-0000), \$88.94

The average hourly cost (salary plus benefits), weighting all of these skill sets evenly, is \$73.74. The Commission rounds it to \$74 per hour.

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The estimated annualized cost to the Federal Government for FERC-516C as related to the requirements in the proposed revisions in RM16-5-000.

FERC-516C	Number of Employees (FTEs)	Estimated Annual Federal Cost
Analysis and Processing of filings <sup>8</sup>	2.5	\$386,618
Paperwork Reduction Act Administrative Cost <sup>9</sup>		\$5,481
<b>TOTAL</b>		<b>\$392,099</b>

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

The existing tariff filings (covered by FERC-516) related to the electric utility industry are not affected by this Final Rule in RM16-5-000. FERC requires this new information in order to perform its mandated oversight and review responsibilities with respect to electric market-based rates being just and reasonable. Without this information, the Commission would be unable to meet its statutory responsibility under Section 206 of the FPA to ensure public utility rates and tariffs are just and reasonable. Failing to meet this responsibility could result in public utilities charging rates that are not just and reasonable.

The table below represents the additional, one-time burden being added due to the approved revisions RM16-5-000 within the FERC-516C information collection number:

FERC-516C	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	6	0	0	6
Annual Time Burden (Hr.)	1,000	0	0	1,000 <sup>10</sup>
Annual Cost Burden (\$)	\$0	\$0	\$0	\$0

8 Based upon 2016 FTE average annual salary plus benefits (\$154,647). \$386,618 = \$154,647 (FERC average annual salary at \$74.50) \* 2.5 FTEs..

9 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 rulemaking), and other changes to the collection.

10 The one-time burden associated with RM16-5 is 3,000 hours. In this submission, the one-time burden is being averaged over Years 1, 2, and 3 (3,000 hours ÷ 3 years = 1,000 hours/year)

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

There are no tabulating, statistical or tabulating analysis or publication plans for the collection of information.

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

The expiration dates are displayed in a table posted on ferc.gov at <http://www.ferc.gov/docs-filing/info-collections.asp>.

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

There are no exceptions.