

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. IC18-20-000]

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

(December 11, 2018)

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC-919 (Refinement to Policies and Procedures for Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities), which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

**DATES:** Comments on the collection of information are due **[Insert date that is 30 days after publication in the Federal Register.]**.

**ADDRESSES:** Comments filed with OMB, identified by OMB Control No. 1902-0234, should be sent via email to the Office of Information and Regulatory Affairs:

[oir\\_submission@omb.gov](mailto:oir_submission@omb.gov). Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202-395-8528.

A copy of the comments should also be sent to the Commission, in Docket No. IC18-20-000 by either of the following methods:

- eFiling at Commission's Web Site: <http://www.ferc.gov/docs-filing/efiling.asp>
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov/help/submission-guide.asp>. 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.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by e-mail at [DataClearance@FERC.gov](mailto:DataClearance@FERC.gov), telephone at (202) 502-8663, and fax at (202) 273-0873.

**SUPPLEMENTARY INFORMATION:**

*Title:* FERC-919, Refinement to Policies and Procedures for Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities

*OMB Control No.:* 1902-0234

*Type of Request:* Three-year extension of the FERC-919 information collection requirements with no changes to the current reporting requirements.

*Abstract:* The FERC-919 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.

In 18 Code of Federal Regulations (CFR) Part 35, Subpart H<sup>1</sup>, the Commission codifies 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 qualify for market-based rate authority. Subpart H mandates that sellers submit market power analyses and related filings.

### **Horizontal Market Power Analysis**

Market power analyses must address both horizontal and vertical market power. To demonstrate lack of horizontal market power, the Commission requires two indicative market power screens: 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. The Commission presumes sellers that fail either screen to have market power and such sellers may submit a delivered price test analysis or alternative evidence 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. When submitting horizontal market power analyses, a

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<sup>1</sup> Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Order No. 697, 72 FR 39904 (Jul. 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007) (Final Rule).

seller must use the workable electronic spreadsheet provided in Appendix A of Subpart H and include all materials referenced.

### **Vertical Market Power Analysis**

To demonstrate a lack of vertical market power, if a public utility with market-based rates, or any of its affiliates, owns, operates or controls transmission facilities, that public utility must:

- Have on file a Commission-approved Open Access Transmission Tariff<sup>2</sup>
- 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
- Make an affirmative statement that it has not erected and will not erect barriers to entry into the relevant market

### **Asset Appendix**

In addition to the market power analyses, 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:

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<sup>2</sup> A part of the associated burden is reported separately in information collections FERC–516 (OMB Control Number: 1902–0096)

- List, among other things, all affiliates that have market-based rate authority
- 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
- Must reflect all electric transmissions and natural gas interstate pipelines and/or gas storage facilities owned or controlled by the corporate family and the location of such facilities.<sup>3</sup>

### **Triennial Market Power Analysis**

Sellers that own or control 500 megawatts or more 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.

### **Change in Status Filings**

Concerning change of status filings, the Commission requires that sellers file notices of such changes no later than 30 days after the change in status occurs. The Commission also requires that each seller include an appendix identifying specified assets with each pertinent change in status notification filed.

### **Exemptions from Submitting Updated Market Power Analyses**

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<sup>3</sup> 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 500 MW or more of generation in a 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.

*Type of Respondents:* Public utilities, wholesale electricity sellers.

*Estimate of Annual Burden<sup>4</sup>:* The Commission estimates the total annual burden and cost<sup>5</sup> for this information collection as follows.

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<sup>4</sup> “Burden” is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

<sup>5</sup> The estimated hourly costs (for wages and benefits) provided in this section are based on the figures for May 2017 posted by the Bureau of Labor Statistics (BLS) for the Utilities section available (at [https://www.bls.gov/oes/current/naics2\\_22.htm](https://www.bls.gov/oes/current/naics2_22.htm)) and benefits information (for December 2017, issued March 20, 2018, at <https://www.bls.gov/news.release/ecec.nr0.htm>). The hourly estimates for salary plus benefits are:

- Economist (Occupation Code: 19-3011), \$71.98
- Electrical Engineers (Occupation Code: 17-2071), \$66.90
- Lawyers (Occupation Code: 23-0000), \$143.68

The average hourly cost (salary plus benefits), weighing all of these skill sets evenly, is \$94.18. The Commission rounds it down to \$94/hour.

<b>FERC-919, Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities</b>						
<b>Requirement</b>	<b>Number of Respondents (1)</b>	<b>Annual Number of Responses per Respondent (2)</b>	<b>Total Number of Responses (1)*(2)=(3)</b>	<b>Average Burden &amp; Cost Per Response (4)</b>	<b>Total Annual Burden Hours &amp; Cost (3)*(4)=(5)</b>	<b>Annual Cost per Respondent (\$) (5)÷(1)</b>
Market Power Analysis in New Applications for Market-based rates	144	1	144	250 hrs.; \$23,500	36,000 hrs.; \$3,384,000	\$23,500
Triennial market power analysis in seller updates	65	1	65	250 hrs.; \$23,500	16,250 hrs.; \$1,527,500	\$23,500
Appendix B addition to change in status reports	149	1	149	49 hrs.; \$4,606	7,301 hrs.; \$686,294	\$4,606
<b>Total</b>			358		59,551 hrs.; \$5,597,794	

*Comments:* Comments are invited on: (1) whether the 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 and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Kimberly D. Bose,  
Secretary.