

Supporting Statement for  
**FERC-919, Refinements to Policies and Procedures for Market Based Rates (MBRs)  
for Wholesale Sales of Electric Energy,  
Capacity and Ancillary Services by Public Utilities**

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and extend its approval to information collection requirements in FERC-919, (Refinements to Policies and Procedures for Market Base Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, OMB Control No. 1902-0234).

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

Federal Power Act (FPA) sections 205<sup>1</sup> and 206 make collection of this information necessary. The FPA Section 205 requires the Commission to ensure that the rates and charges for the wholesale sale of electric energy are just and reasonable. Section 205 also requires that the rules and regulations affecting or pertaining to the rates and charges for the wholesale sale of electric energy be just and reasonable.

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 industry participants meets their statutory responsibilities by providing the Commission with the following:

- initial market power analyses to qualify for authority to make wholesale sales at market-based rates,

---

<sup>1</sup> 16 U.S.C. 824d(a)

- triennial market power analysis submitted by category 2<sup>2</sup> sellers as required in 18 CFR 35.37(a),
- notices of change in status as required in 18 CFR 35.42(a) (including Appendix B To Subpart H of Part 35—Corporate Entities And Assets Sample).

## **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. More specifically, 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 in generation 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 in generation.<sup>3</sup>

---

<sup>2</sup> *Category 2* means any sellers not in Category 1. *Category 1 Sellers* means wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888, FERC Stats. & Regs. ¶ 31,036); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.

<sup>3</sup> The seller has the option of withdrawing its market-based rate request in whole or in part.

Sellers that own or control 500 megawatts or more of generation and/or that are affiliated with a 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 or vertical market power. A pivotal supplier power analysis and a market share analysis must be submitted and if the seller fails either, further evidence, such as a delivered price test analysis must be submitted as well. When submitting horizontal market power analyses, a seller may use the form provided in 18 CFR 35 Subpart H, Appendix A (Appendix A To Subpart H Of Part 35—Standard Screen Format) 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 reported separately in FERC-516, OMB Control No. 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 set out in 18 CFR 35 Subpart H, Appendix B.

Sellers that are not affiliated 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 triennial 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,<sup>4</sup> the Commission required, as a condition of obtaining and retaining market-based 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 from sellers use is in 18 CFR 35 Subpart H, Appendix B.

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 tariff filings 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 FOR THE USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN**

FERC-919 filings<sup>5</sup> are and will continue to be filed in various media ranging 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

---

<sup>4</sup> Order No. 652 at P 47.

<sup>5</sup> initial market power analyses to qualify for authority to charge market based rates, triennial market power analysis in category 2 seller updates as required in 18 CFR 35.37(a), quarterly land acquisition reports, as required in 18 CFR 35.42(d) and change in status reports as required in 18 CFR 35.42(a) (including its Appendix B)].

market based tariffs do so by embedding electronic tariff and filing information within the XML schema of FERC's [eTariff](#) 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 published a 60-day notice in the Federal Register<sup>6</sup> to help identify any duplication of the information in FERC-919. The Commission received no comments regarding this collection. No similar information can be used or modified. There are no other Federal agencies responsible for providing information on the availability of firm long-term transmission rights. FERC-919 is a necessary information collection in order for the Commission to remain in compliance with EAct 2005 mandates.

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

Small entities have the option of filing electronically through the eFiling interface as a means of reducing their incurred burden. This is how the Commission attempts to minimize the burden of FERC-919 upon small entities. However, eFiling is a means of submission available to all respondents with no regard to size. The submission of a market power analysis is currently required of all entities seeking authority to sell at market-based rates, and the requested renewal of the FERC-919 does not alter which entities will be required to file these analyses. Because the Commission allows an applicant to make simplifying assumptions, where appropriate, and therefore to submit a streamlined analysis, the Commission believes that any burden affecting small entities will be minimal.

The FERC market based rate regulations require that each corporate family have on file one MBR tariff of general applicability, with all affiliates with market-based rate authority separately identified in the tariff. Although this initially increased the burden of document preparation and organization for parent utilities, long-term benefits have been realized that have reduced burdens on utilities and the Commission. For example, a tariff of general applicability decreases document preparation by providing a clearly defined statement of the information sought by the Commission.

---

<sup>6</sup>83 FR 50650 (10/09/2018)

The triennial review submissions that provide updated market power analyses are required for the retention of market-based rate authority. Category 2 utilities must submit this analysis, which poses no change to the burden already in place. The qualified smaller utilities' (Category 1) have been able to retain market-based rate authority without having to make triennial review filings. Those who do have to file have been able to use simplifying assumptions.

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

The consequence of not collecting or collecting this information within the FERC-919 less frequently would be the Commission's inability to fulfill its statutory mandates under Section 205 of the FPA which mandates just and reasonable rates. FERC needs information it collects via FERC-919 under the specific circumstances discussed previously to meet this continuous statutory requirements. It is not possible to collect this data less frequently. If the collection were conducted 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 AGENCY'S RESPONSE TO THESE COMMENTS**

In accordance with 5 CFR 1320.8(d), the Commission's notice to renew its OMB approval of the FERC-919 information collection was published in the Federal Register on October 9, 2018. The Commission received no comments in response to this Notice. The FERC published a 30-day notice inviting further comments on the FERC-919 on December 18, 2018 in the Fed. Reg.

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

There are no payments or gifts to respondents associated with FERC-919.

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

The Commission generally does not consider the data filed in rate filings to be confidential. There are no confidentiality provisions associated with the data requirements in FERC-919. Specific requests for confidential treatment to the extent permitted by law will be entertained pursuant to 18 C.F.R. Section 388.110. Section 205(c) of the FPA requires that every public utility have all of its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to the Commission and the public of any changes to its jurisdictional rates and tariffs, file such changes with the Commission, and make them available for public inspection, in such manner as directed by the Commission.<sup>7</sup>

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

The Commission does not consider any of the questions within the FERC-919 of a sensitive nature that would be considered private.

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

Based on the Commission's recent information with the burden of FERC-919, the estimated burden<sup>8</sup> and cost<sup>9</sup> is:

---

<sup>7</sup> See The Power Company of America, L.P. v. FERC, 245 F.3d 839 (D.C. Cir. 2001) (PCA). In PCA, the court found, 245 F.3d at 846, that the Commission may alter its view of what information is required to be on file under section 205(c) of the FPA and § 35.15 of the Commission's regulations.

<sup>8</sup> Burden is defined as 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. Refer to 5 CFR 1320.3 for additional information.

<sup>9</sup> The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's FY (Fiscal Year) 2018 average cost (for wages plus benefits), \$79.00/hour is used

<b>FERC-919, Refinements to Policies and Procedures for Market Based Rates for Wholesale Sales of Electric Energy</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<sup>10</sup> (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	65	1	65	250 hrs.; \$23,500	16,250 hrs.; \$1,527,500	\$23,500
Appendix B addition to change in status reports <sup>11</sup>	149	1	149	49 hrs.; \$4,606	7,301 hrs.; \$686,294	\$4,606
<b>Total</b>			358		59,551 hrs.; \$5,597,794	

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

<sup>10</sup>The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2017 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 May 2017 (available at [https://www.bls.gov/oes/current/naics2\\_22.htm](https://www.bls.gov/oes/current/naics2_22.htm)). The hourly estimates for salary plus benefits are:

Economist (Occupation Code: 19-3011), \$71.98

Electrical Engineer (Occupation Code: 17-2071), \$66.90

Legal (Occupation Code: 23-0000), \$143.68

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

<sup>11</sup> Some change in status filings contain indicative screens, while others do not. Change in status filings that contain indicative screens are generally more burdensome than filings that do not. These numbers reflect the total average hours for a change in status, weighted against the amount of estimated change in status filings with and without screens.



There are no non-labor costs currently associated with the FERC-919.

All costs are associated with burden hours (labor) and are addressed in Question #12 and Question #15.

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

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 made 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, and other changes to the collection.

The estimated annualized cost to the Federal Government for FERC-919 follows:

	<b>Number of Employees (FTE)</b>	<b>Estimated Annual Federal Cost</b>
FERC-919, Analysis and Processing of filings <sup>12</sup>	1	\$164,820
PRA Administrative Cost		\$4,193
<b>FERC Total</b>		<b>\$169,013</b>

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

---

<sup>12</sup>This is based upon FERC’s FY (Fiscal Year) 2018 average annual salary plus benefits per FTE (full-time equivalent) of \$164,820.

There is a reduction (adjustment in estimate) from 509 responses to 358 responses which is a decrease in 151 responses/respondents. The burden for FERC-919 also decreases by 24,919 burden hours, to 59,551 burden hours. These reductions are due to a more accurate estimate on the number of responses and burden hours.

<b>FERC-919</b>	<b>Total Request</b>	<b>Previously Approved</b>	<b>Change due to Adjustment in Estimate</b>	<b>Change Due to Agency Discretion</b>
Annual Number of Responses	358	509	-151	0
Annual Time Burden (Hr)	59,551	84,470	-24,919	0
Annual Cost Burden (\$)	\$0	\$0	\$0	\$0

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

FERC does not publish any data associated with this collection.

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

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

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

There are no exceptions.