

Supporting Statement for
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 modified in the Notice of Proposed Rulemaking (NOPR) in Docket No. RM19-2-000

The Federal Energy Regulatory Commission (FERC or Commission) requests that the Office of Management and Budget (OMB) review and approve, 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; OMB Control Number 1902-0234), as proposed for modification in the NOPR in Docket No. RM19-2-000.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Compliance with Federal Power Act (FPA) Sections 205¹ and 206² make the FERC-919 information collection 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 (prior to the modifications proposed by the NOPR in Docket RM19-2-000) are:

- Initial market power analyses to qualify for authority to charge market-based rates³
- Triennial market power analysis in Category 2 seller updates⁴
- Notices of change in status⁵

In the NOPR in Docket No. RM19-2-000, FERC is proposing changes to modify the horizontal market power analysis for certain Regional Transmission Organization (RTO) and Independent System Operator (ISO) markets. The proposal would relieve market-based rate sellers (i.e. sellers seeking to obtain or retain authorization to make market-based rate sales) of the requirement to submit indicative screens for certain RTO/ISO

1 16 USC 824(d).

2 16 USC 824(e).

3 18 CFR 35.37(a).

4 18 CFR 35.37(a).

5 18 CFR 35.42.

markets and submarkets. This proposed modification of the Commission's horizontal market power analysis would apply in any RTO/ISO market with RTO/ISO-administered energy, ancillary services, and capacity markets subject to Commission-approved RTO/ISO monitoring and mitigation.

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, as Congress has mandated. 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 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.

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 Tariff⁶ 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; sites for generation capacity development; and physical coal supply

⁶ The relevant information collection requirements and burden are contained in FERC-516 (OMB Control Number 1902-0096).

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.

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 500 megawatts or more 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 or vertical market power. A pivotal supplier screen and a market share screen must be submitted and if the seller fails either screen, further evidence, such as a delivered price test analysis may 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 and include all materials referenced there.

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 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, 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 incorporated 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.

In 2015, the Commission issued Order No. 816, which implemented 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.

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.

The NOPR in Docket No. RM19-2-000

The Commission proposes to eliminate the need for sellers to submit indicative screens for markets where there is Commission-approved RTO/ISO market monitoring and mitigation for energy, capacity, and ancillary services that sellers may rely on to mitigate any market power that they may have in that market. This improves regulatory efficiency of Commission analysis and determination of market-based rate authority. It also helps reduce document preparation time overall (i.e. reduces paperwork burden upon affected sellers) and provides utilities with clearly defined requirements.

If the Commission no longer collects the indicative screen information in those specified RTO/ISO markets, the Commission would still be able to meet its statutory responsibility to ensure electric utility rates and tariffs are just and reasonable. The Commission will continue to receive other information, such as information on all of a seller's affiliates, assets, and data on sales made pursuant to the seller's market-based rate authority, which will assist in ensuring that 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.

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

The Commission continues to expand the list of filing types that may be submitted electronically to reduce the burden related to this information collection. However, the FERC-919 filings [specifically the 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) and change in status reports as required in 18 CFR

35.42(a) (including Appendix B)] 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. 714⁷ 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 tariffs do so by embedding electronic tariff and filing information within the XML schema of FERC's new 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 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.

The NOPR in Docket No. RM19-2-000 will relieve sellers in certain RTO/ISO markets of the requirement to file indicative screens as part of their market power analyses. This proposed modification of the Commission's horizontal market power analysis would apply in any RTO/ISO market with RTO/ISO-administered energy, ancillary services, and capacity markets subject to Commission-approved RTO/ISO monitoring and mitigation. The changes to the Commission's regulations for market-based rate sellers are estimated to cause a reduction of 41 percent in total annual burden to market-based rate sellers when filing triennial market power analyses and market power analyses in new applications for market-based rates, including small entities.

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 other circumstances discussed previously to

⁷ RM01-5-000 Final Rule (issued 9/19/2008)

meet continuous statutory requirements. It is not possible to collect this information less frequently. If the Commission conducted the information 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. In the NOPR in Docket No. RM19-2-000, the Commission is proposing to eliminate collection of indicative screen information in certain contexts, reducing regulatory burden for some sellers.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

There are no special circumstances related to the FERC-919 information collection.

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

A similar proposal to eliminate the requirement to submit indicative screens for RTO/ISO markets was proposed but not adopted in Docket No. RM14-14-000 and the Commission considered comments received in response to that proposal in drafting the NOPR in Docket No. RM19-2-000. In addition, the NOPR in Docket No. RM19-2-000 is requesting public comment and was published in the Federal Register⁸.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission does not consider the information collected in filings to be confidential. However, the Commission will consider specific requests for confidential treatment (e.g. Critical Energy/Electric Infrastructure Information [CEII] or non-public) to the extent permitted by law and our regulations.⁹ The Commission will review each request for confidential treatment on a case-by-case basis.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A

⁸ 84 FR 993 (2/1/2019)

⁹ 18 C.F.R. § 388.112. More information on the CEII definition, program and requirements is posted at <http://www.ferc.gov/legal/ceii-foia/ceii.asp>.

**SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND
ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT
ARE COMMONLY CONSIDERED PRIVATE.**

There are no questions of a sensitive nature associated with the FERC-919 reporting requirements.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

As discussed in questions 1 and 5, the NOPR proposes to reduce regulatory burden by relieving a subset of sellers of the requirement to file indicative screens in certain markets. The estimated burden and cost reductions proposed by this NOPR follow:

| Burden and Cost Reductions as Proposed in NOPR in Docket No. RM19-2-000¹⁰ | | | | | | |
|---|----------------------------------|--|--|--|---|--|
| Requirement | Number of Respondents (1) | Annual Number of Responses per Respondent (2) | Total Number of Responses (1)*(2)=(3) | Average Burden & Cost Per Response¹¹ (4) | Total Annual Burden Hours & Cost (3)*(4)=(5) | Annual Cost per Respondent (\$) (5)÷(1) |
| Market Power Analysis in New Applications for Market-based Rates for RTO/ISO Sellers | 72 | 1 | 72 | -230 hrs.; -\$21,203 | -16,560 hrs.; -\$1,526,666 | -\$21,203 |
| Triennial Market Power Analysis Updates for RTO/ISO Sellers | 33 | 1 | 33 | -230 hrs.; -\$21,203 | -7,590 hrs.; -\$699,722 | -\$21,203 |
| Total | | | 105 | | -24,150 hrs.; -\$2,226,388 | |

¹⁰ Due to the fact that change in status requirements may include the indicative screens in their market power analysis depending on the change reported, but are not necessary, we estimate the change in burden for change in status filings is *de minimis*. See 18 CFR 35.42.

¹¹ 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: \$71.98/hour
 Electrical Engineer: \$60.90/hour
 Lawyer: \$143.68/hour

The average hourly cost of the three categories is \$92.19 [(\$71.98+\$60.90+\$143.68) ÷ 3].

Residual Burden after Burden Reductions Proposed in NOPR in Docket No. RM19-2-000:

| Residual Burden and Cost after Reductions Proposed in NOPR in Docket No. RM19-2-000 ¹² | | | | | | |
|---|---------------------------|---|---------------------------------------|--|--|---|
| Requirement | Number of Respondents (1) | Annual Number of Responses per Respondent (2) | Total Number of Responses (1)*(2)=(3) | Average Burden & Cost Per Response ¹³ (4) | Total Annual Burden Hours & Cost (3)*(4)=(5) | Annual Cost per Respondent (\$) (5)÷(1) |
| Market Power Analysis in New Applications for Market-based Rates for RTO/ISO Sellers | 72 | 1 | 72 | 270 hrs; \$24,891 | 19,440 hrs.; \$1,792,174 | \$24,891 |
| Triennial Market Power Analysis Updates for RTO/ISO Sellers | 32 | 1 | 32 | 270.625 hrs.; \$24,949 | 8,660 hrs.; \$798,365 | \$24,949 |
| Change of Status Filings | 149 | 1 | 149 | 49 hrs; \$4,517 | 7,301 hrs.; \$673,079 | \$4,517 |
| Total | | | 253 | | 35,401 hrs.; \$3,263,618 | |

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no capital or start-up costs associated with either the FERC-919 information collection or the revisions proposed within this rulemaking.

¹² Due to the fact that change in status requirements may include the indicative screens in their market power analysis depending on the change reported, but are not necessary, we estimate the change in burden for change in status filings is *de minimis*. See 18 CFR 35.42.

¹³ 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: \$71.98/hour
 Electrical Engineer: \$60.90/hour
 Lawyer: \$143.68/hour

The average hourly cost of the three categories is \$92.19 [(\$71.98+\$60.90+\$143.68) ÷ 3].

14. ESTIMATE OF THE TOTAL ANNUAL COST TO FEDERAL GOVERNMENT

The estimate of the cost for ‘analysis and processing of filings’¹⁴ is based 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 collections. The estimates for the ‘analysis and processing of filings’ are for the entire FERC-919, not simply for the areas affected by, or additions due to, the NOPR in RM18-20-000.

The Paperwork Reduction Act (PRA) Administrative Cost¹⁵ is the average annual FERC cost associated with preparing, issuing, and submitting materials necessary to comply with the PRA for rulemakings, orders, or any other vehicle used to create, modify, extend, or discontinue an information collection. It also includes the cost of publishing the necessary notices in the Federal Register.

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

| | Number of Employees (FTE) | Estimated Annual Federal Cost |
|--|---------------------------|-------------------------------|
| FERC-919, Analysis and Processing of filings ¹⁶ | 1 | \$164,820 |
| PRA Administrative Cost | | \$4,193 |
| FERC Total | | \$169,013 |

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

As described above in Questions #1, 2, and 5, in the NOPR in Docket No. RM19-2-000, FERC is proposing to relieve sellers in certain RTO/ISO markets of the requirement to file indicative screens as part of their market power analyses. This proposed modification of the Commission’s horizontal market power analysis would apply in any RTO/ISO market with RTO/ISO-administered energy, ancillary services, and capacity markets subject to Commission-approved RTO/ISO monitoring and mitigation.

14 The estimate uses the FERC’s FY 2018 average annual salary plus benefits of one FERC FTE (full-time equivalent [\$164,820 per year or \$79.00 per hour]). (These estimates were updated in May 2018.)

15 This estimate was updated May 2018.

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

The indicative screens require extensive data collection, with some of this data being costly and difficult to collect. The proposal recognizes the burden of submitting these screens may outweigh the benefits given the Commission’s previous findings that RTO/ISO monitoring and mitigation adequately mitigate a seller’s market power. Further, the availability of other data regarding horizontal market power suggests that the indicative screens would provide only marginal additional market power protections.

The changes to the Commission’s regulations for market-based rate sellers are estimated to cause a reduction of 41 percent in total annual burden (from 59,551 hours to 35,401 hours) to market-based rate sellers when filing triennial market power analyses and market power analyses in new applications for market-based rates. There is also a 29 percent reduction of the number of sellers that would comply with FERC-919 reporting requirements (from 358 annually to 253 annually).

A comparison of the current OMB-approved inventory with the changes proposed in the NOPR in Docket No. RM19-2-000 follows:

| FERC-919 | Total Request | Previously Approved | Change due to Adjustment in Estimate | Change Due to Agency Discretion |
|----------------------------|----------------------|----------------------------|---|--|
| Annual Number of Responses | 253 | 358 | 0 | -105 |
| Annual Time Burden (Hr.) | 35,401 | 59,551 | 0 | -24,150 |
| 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 dates are posted on ferc.gov at <http://www.ferc.gov/docs-filing/info-collections.asp>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.

FERC-919 (OMB Control No. 1902-0234)
NOPR (issued 12/20/2018) in Docket No. RM19-2-000
RIN: 1902-AF61