

Supporting Statement for  
**FERC-919, Final Rule on Refinements to Policies and Procedures for Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, 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 modified in the final rule in Docket No. RM19-2-000.

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

Compliance with Federal Power Act (FPA) sections 205<sup>1</sup> and 206<sup>2</sup> 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 authorization if it determines that the seller may have gained market power since its original authorization to charge market-based rates.

The previous information collection requirements for FERC-919 (prior to the modifications made by the final rule in Docket No. RM19-2-000) are:

- Initial market power analyses to qualify for authority to charge market-based rates<sup>3</sup>
- Triennial market power analysis in Category 2 seller updates<sup>4</sup>
- Notices of change in status<sup>5</sup>

In the final rule in Docket No. RM19-2-000, the Commission modifies § 35.37(c) of its regulations regarding the horizontal market power analysis for market-based rate sellers<sup>6</sup> studying certain Regional Transmission Organization (RTO) and Independent System Operator (ISO) markets. The changes adopted by the final rule relieve Sellers of the

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

<sup>2</sup> 16 U.S.C. 824e.

<sup>3</sup> 18 CFR 35.37(a).

<sup>4</sup> 18 CFR 35.37(a).

<sup>5</sup> 18 CFR 35.42.

<sup>6</sup> The term "Seller" is defined as any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates. 18 CFR 35.36(a)(1).

requirement to submit indicative screens for RTO/ISO markets with RTO/ISO-administered energy, ancillary services, and capacity markets subject to Commission-approved RTO/ISO monitoring and mitigation. Additionally, Sellers in RTOs or ISOs that do not have an RTO/ISO-administered capacity market will be relieved of the requirement to submit indicative screens if their market-based rate authority is limited to sales of energy and/or ancillary services.

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

The purpose for collecting this information is to ensure that market-based rates charged by public utilities are just and reasonable, as Congress has mandated. Part 35<sup>7</sup> of the Commission's regulations contains the regulations that require Sellers to submit market power analyses and related reports.

In general, market power analyses help inform the Commission whether an entity seeking market-based rate authority lacks or has adequately mitigated market power, and whether sales by that entity will be at rates that are just and reasonable. The criteria and process described above outline Commission expectations for market-based rate sellers and Commission review criteria.

In the final rule, the Commission eliminates the need for Sellers to submit indicative screens for RTO/ISO markets with Commission-approved RTO/ISO market monitoring and mitigation for energy, capacity, and ancillary services<sup>8</sup> and finds that Sellers may rely on such mitigation to mitigate any market power that they may have in that market.<sup>9</sup> As the Commission explained in the NOPR, the submission of indicative screens by Sellers in the RTO/ISO markets yields little practical benefit because it has been the Commission's practice to allow RTO/ISO Sellers<sup>10</sup> that fail the indicative screens to rely on Commission-approved RTO/ISO-administered monitoring and mitigation to mitigate

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<sup>7</sup> 18 CFR pt. 35.

<sup>8</sup> Currently, there are four RTOs/ISOs that administer energy, capacity and ancillary services markets with Commission-approved monitoring and mitigation. For purposes of the final rule, the Commission estimates that there are 105 respondents that currently submit indicative screens for these RTOs/ISOs. Those 105 respondents would be affected by this proposal.

<sup>9</sup> In Order No. 697-A, the Commission stated that "to the extent a seller seeking to obtain or retain market-based rate authority is relying on existing Commission-approved RTO/ISO market monitoring and mitigation, we adopt a rebuttable presumption that the existing mitigation is sufficient to address any market power concerns." Order No. 697-A, 123 FERC ¶ 61,055 at P 111.

<sup>10</sup> RTO/ISO Sellers are Sellers that have an RTO/ISO market as a relevant geographic market.

any market power that the Sellers may have. Thus, elimination of the requirement to submit indicative screens in these RTO/ISO markets will improve regulatory efficiency by simplifying the Commission's analysis and determination of market-based rate authority. It will also help reduce document preparation time overall (i.e. reduces paperwork burden upon affected Sellers) and provide utilities with clearly defined requirements when seeking or retaining market-based rate authority.

Even without the indicative screen information for the specified RTO/ISO markets, the Commission will still be able to meet its statutory responsibility to ensure public utility rates 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 rates are just and reasonable. If the Commission failed to collect this data, the Commission could fail in its statutory obligation to ensure that public utilities are charging rates that are 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. In Order No. 714,<sup>11</sup> 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 Commission'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 periodically reviews filing requirements as OMB review dates arise or

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<sup>11</sup> *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008), *order on reh'g*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).

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, including horizontal market power indicative screens, from all entities seeking authority to sell at market-based rates.

The final rule in Docket No. RM19-2-000 relieves Sellers in certain RTO/ISO markets of the requirement to file indicative screens as part of their market power analyses. This modification will 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 are estimated to reduce by 41 percent the total annual burden for 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 that comes from FERC-919 under other circumstances discussed previously to meet its 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 final rule in Docket No. RM19-2-000, the Commission eliminates 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**

Each FERC rulemaking (both proposed and final rules) 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 collections of data. The NOPR (issued December 20, 2018) was published in the Federal Register on February 1, 2019.<sup>12</sup> Many commenters state that the Commission's proposals will reduce administrative burdens. All other comments are summarized and addressed in the final rule. The final rule (issued July 18, 2019) was published in the Federal Register on July 26, 2019.<sup>13</sup>

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

The Commission does not make payment or provide gifts to respondents related to FERC-919.

### **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 Commission regulations.<sup>14</sup> 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.**

There are no questions of a sensitive nature associated that are considered private in FERC-919.

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

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<sup>12</sup> 84 FR 993 (Feb. 1, 2019)

<sup>13</sup> 84 FR 36374 (July 26, 2019).

<sup>14</sup> 18 CFR § 388.112. More information on the CEII definition, program and requirements is posted at <http://www.ferc.gov/legal/ceii-foia/ceii.asp>.

As discussed in Questions No.1 and 5, the final rule reduces regulatory burden by relieving a subset of Sellers of the requirement to file indicative screens in certain markets. The estimated burden and cost reductions as a result of the final rule follow:

<b>Burden and Cost Reductions as in the Final Rule in Docket No. RM19-2-000<sup>15</sup></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<sup>16</sup> (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 for RTO/ISO Sellers	72	1	72	-230 hrs. -\$21,620	-16,560 hrs. -\$1,556,640	-\$21,620
Triennial Market Power Analysis Updates for RTO/ISO Sellers	33	1	33	-230 hrs. -\$21,620	-7,590 hrs. -\$713,460	-\$21,620
<b>Total</b>			<b>105</b>		<b>-24,150 hrs. -\$2,270,100</b>	

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

There are no start-up or other non-labor costs associated with FERC-919. All of the costs in the final rule are associated with the burden hours and accounted for in Questions #12 and #15.

### **14. ESTIMATE OF THE TOTAL ANNUAL COST TO FEDERAL**

<sup>15</sup> Although some Sellers may include the indicative screens when submitting a change in status filing, this is not required by the Commission's regulations. Thus, we estimate that the change in burden for change in status filings is *de minimis*. See 18 CFR 35.42.

<sup>16</sup> The estimated hourly cost (salary plus benefits) provided in this section are based on the figures for May 2018 posted by the Bureau of Labor Statistics for the Utilities sector (available at [http://www.bls.gov/oes/current/naics2\\_22.htm](http://www.bls.gov/oes/current/naics2_22.htm)) and updated March 2019 for benefits information (at <http://www.bls.gov/news.release/ecec.nr0.htm>). The hourly estimates for salary plus benefits are:

Economist: \$70.83/hour

Electrical Engineer: \$68.17/hour

Lawyer: \$142.86/hour

The average hourly cost of the three categories is \$93.95 [(\$70.83+\$68.17+\$142.86)/3]. The Commission rounds it up to \$94.00/hour.

## GOVERNMENT

The Commission bases its estimate of the “Analysis and Processing of filings” cost 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 estimates provided below include the entire FERC-919, not simply for the areas affected by the final rule in Docket No. RM19-2-000.

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>17</sup>	28 <sup>18</sup>	\$4,678,548
PRA Administrative Cost <sup>19</sup>		\$4,832 <sup>20</sup>
<b>FERC Total</b>		<b>\$4,683,380</b>

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

As described above in Questions No.1, 2, and 5, the final rule in Docket No. RM19-2-000 relieves Sellers in certain RTO/ISO markets of the requirement to file indicative screens as part of their market power analyses, reducing burden. This modification of the Commission’s regulations regarding the horizontal market power analysis would apply to RTO/ISO markets with RTO/ISO-administered energy, ancillary services, and capacity markets subject to Commission-approved RTO/ISO monitoring and mitigation.

The indicative screens require extensive data collection, with some of this data being costly and difficult to collect. The Commission recognizes the burden of submitting these screens outweigh the benefits given the Commission’s rebuttable presumption that

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<sup>17</sup> Based upon FERC’s 2019 average annual salary plus benefits of one FTE (full-time equivalent): \$167,091 per year.

<sup>18</sup> 28 FTEs include: 20 (Office of Energy Market Regulation - market-based rate program staff) + 4 (Office of General Council) + 1 (Office of Enforcement) + 1 (Office of Electric Reliability) + 2 (Senior Staff/Commissioners & Staff/Office of Secretary).

<sup>19</sup> The Paperwork Reduction Act (PRA) Administrative Cost is a Federal 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. This average annual cost includes requests for extensions, all associated rulemakings and other changes to the collection, as well as necessary publications in the Federal Register.

<sup>20</sup> Based upon FERC’s 2019 estimated average annual PRA Administrative Cost: \$4,832.

RTO/ISO monitoring and mitigation adequately mitigate a Seller's market power.<sup>21</sup> 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 are estimated to result in a reduction of 41 percent in total annual burden for Sellers when filing triennial market power analyses and market power analyses in new applications for market-based rates.

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

<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	358	0	0
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.

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<sup>21</sup> In Order No. 697-A, 123 FERC ¶ 61,055 at P 111, the Commission stated that "to the extent a seller seeking to obtain or retain market-based rate authority is relying on existing Commission-approved RTO/ISO market monitoring and mitigation, we adopt a rebuttable presumption that the existing mitigation is sufficient to address any market power concerns."