

FERC-516H (OMB Control No. 1902-0303)
Final Rule (issued September 17, 2020)
Docket No. RM18-9-000
RIN 1902-AF73

**Supporting Statement for
FERC-516H (Electric Rate Schedules and Tariff Filings,
in Final Rule in Docket No. RM18-9-000)**

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve revisions of FERC-516H as revised in the final rule in Docket No. RM18-9-000.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Commission has issued a final rule¹ to amend 18 CFR 35.28, which is one of the regulations that address how the Commission ensures compliance with section 206 of the Federal Power Act (16 U.S.C. 824e). As revised in the final rule, 18 CFR 35.28 requires regional transmission organizations (RTOs) and independent system operators (ISOs) to revise their tariffs and thereby remove barriers to the participation of distributed energy resource (DER) aggregations in the capacity, energy, and ancillary service markets operated by RTOs and ISOs.

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

The final rule that the Commission issued on September 17, 2020 is a continuation of efforts to ensure that the RTO/ISO tariffs and market rules result in rates that are not unjust, unreasonable, or unduly discriminatory or preferential, in accordance with section 206 of the Federal Power Act. The Commission included FERC-516H in a Notice of Proposed Rulemaking (NOPR)² with the Docket Number RM16-23-000. In the NOPR, the Commission proposed to require each RTO and ISO to revise its tariff to implement a proposed participation model consisting of market rules that would facilitate participation of both electric storage resources and DER aggregations in RTO/ISO markets.

On March 6, 2018, the Commission issued a final rule in Docket Number RM16-23-000.³ In that final rule, the Commission revised and adopted provisions pertaining to electric storage resources, but announced that it would take no further action regarding DER aggregations under Docket Number RM16-23-000. Instead, the Commission stated its intention to continue exploring DER aggregation reforms under Docket Number RM18-9-000. The Commission issued a Notice of Technical Conference⁴ with questions related to the participation of DER aggregations in RTO/ISO markets.

¹ The final rule is posted in FERC's eLibrary at https://elibrary.ferc.gov/eLibrary/docinfo?document_id=14892834.

² 81 FR 86522 (Nov. 30, 2016).

³ 83 FR 9580 (March 6, 2018), Order on Rehearing and Clarification, 84 FR 23902 (May 23, 2019).

⁴ 83 FR 7703 (Feb. 22, 2018).

In the final rule that was issued on September 17, 2020, the Commission adopted the specific DER aggregation reforms proposed in the NOPR with revisions based on the record in Docket Number RM18-9-000, including pertinent public comments on the NOPR in Docket Number RM16-23-000 that are adopted into the record in Docket Number RM18-9-000.

In explaining the need for the rule, the Commission determined that DERs are technically capable of participating in the RTO/ISO markets on their own or through aggregation. Moreover, the Commission adopted the preliminary finding in the NOPR that existing RTO and ISO market rules are unjust and unreasonable because they present barriers to the participation of DER aggregations in the RTO/ISO markets, and such barriers reduce competition and fail to ensure just and reasonable rates.

Section 35.28, as revised by the final rule, requires each RTO and ISO to include in its tariff market rules that address:

- a. Eligibility to participate in the RTO or ISO markets through a DER aggregation;
- b. Locational requirements for DER aggregations;
- c. Distribution factors and bidding parameters for DER aggregations;
- d. Information and data requirements for DER aggregations;
- e. Modification to the list of resources in a DER aggregation;
- f. Metering and telemetry system requirements for DER aggregations;
- g. Coordination between the RTO or ISO, the DER aggregator, the distribution utility, and the relevant electric retail regulatory authorities; and
- h. Market participation agreements for DER aggregators.

Revised section 35.28 also requires each RTO and ISO to establish a minimum size requirement for DER aggregations that does not exceed 100 kW. In the preamble of the final rule, the Commission acknowledged that some commenters have concerns about the ability of modeling and dispatch software to handle a large number of small DER aggregations. Therefore, the Commission stated a commitment to consider any future post-implementation requests to increase the minimum size requirement above 100 kW if the RTO/ISO demonstrates that it is experiencing difficulty calculating efficient market results and there is not a viable software solution for improving such calculations. In addition, the Commission is including software updating among the estimated information collection burdens.

Finally, revised section 35.28 requires each RTO and ISO to accept bids from a DER aggregator if its aggregation includes DERs that are customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year, and prohibits an RTO or ISO from accepting bids from a DER aggregator if its aggregation includes distributed energy resources that are customers of utilities that distributed 4 million megawatt-hours or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers to be bid into RTO/ISO markets by a DER aggregator.

The requirements in this information collection are the minimum necessary to comply with section 206 of the Federal Power Act and the final rule. If this information was not collected or retained, there would be no data available to determine whether violations of the laws had occurred.

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

FERC implements its eTariff system for the electronic filing of tariffs. More information on eTariff is posted at <https://www.ferc.gov/ferc-online/etariff>.

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 the Commission's regulations and data requirements to identify duplication. The information to be submitted, generated, retained, or posted, pursuant to this Final Rule is not readily available from other sources.

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

Under the Small Business Administration's classification,⁵ the six RTOs/ISOs would be considered electric bulk power transmission and control, for which the small business size threshold is 500 or fewer employees. Because each RTO/ISO has more than 500 employees, none are considered small entities.

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

The Commission requires this 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 that electric utility rates and tariffs are not unjust, unreasonable, or unduly discriminatory or preferential. 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

⁵ 13 CFR 121.201 (2020) (Sector 22, Utilities).

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There are no special circumstances relating to this information collection.

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

The Commission included FERC-516H in the NOPR⁶ in Docket Number RM16-23-000. In the NOPR, the Commission proposed to require each RTO and ISO to revise its tariff to implement a proposed participation model consisting of market rules that would facilitate participation of both electric storage resources and DER aggregations in RTO/ISO markets.

The final rule issued in 2018 in Docket Number RM16-23-000 pertains only to electric storage resources. The final rule issued on September 17, 2020 revises FERC-516H in Docket Number RM18-9-000, taking into account public comments on the NOPR, input from a Commission technical conference convened April 10-11, 2018, responses to a post-technical conference notice, and responses to the Commission's September 5, 2019 Data Requests to RTOs/ISOs on policies and procedures that affect the interconnection of DERs.

Need for Reforms

Most commenters, including state entities and RTOs/ISOs, supported requiring RTOs/ISOs to remove barriers to the participation of DER aggregations in their markets, subject to the Commission's adopting certain modifications to the NOPR proposals and/or allowing for regional flexibility in implementing reforms in any eventual final rule. Among other things, these commenters identified improved competition and reliability as benefits of the proposed reforms and noted that they provide a better way to provide price signals to DERs than current retail programs, which may reduce the cost of meeting power system needs. Commenters also stated that the removal of barriers to, and integration of, DER aggregations could spur innovation, and allow these aggregations to serve important roles on the grid. Several commenters emphasized that a DER aggregation framework must ensure that aggregated DERs can provide all the services that they are capable of providing, while competing on a level and technology-neutral playing field with other resources.

In the final rule issued on September 17, 2020, the Commission affirmed the preliminary finding in the NOPR that existing RTO/ISO market rules are unjust and unreasonable because they present barriers to the participation of DER aggregations in the RTO/ISO markets, and such barriers reduce competition and fail to ensure just and reasonable rates. The Commission also found that the reforms adopted in the final rule will remove the barriers that qualification and performance requirements currently pose to the participation of DER in the RTO/ISO markets.

⁶ 81 FR 86522 (Nov. 30, 2016).

Submission and Implementation of Tariff Provisions

In the NOPR, the Commission proposed to require each RTO/ISO to submit a compliance filing within six months of the date of a final rule in Docket Number RM16-23-000. The Commission stated that it believed that six months is sufficient for each RTO/ISO to develop and submit its compliance filing, but recognized that implementation of the reforms proposed in the NOPR could take more time due to the changes that may be necessary to each RTO's/ISO's modeling and dispatch software. Therefore, the Commission proposed to allow 12 months from the date of the compliance filing for implementation of the proposed reforms to become effective.

Most RTO/ISO commenters indicated that they would need to modify their existing rules to appropriately integrate DER aggregations. One commenter stated that it does not require significant modifications because it already has developed many tools that can be adapted for DER aggregations, but that improved coordination with electric distribution providers may be a challenge. Other commenters suggested various methods for addressing the complexities of including DER aggregations in RTO/ISO markets. For example, one commenter suggested undertaking a pilot project, and another commenter recommended observing and testing new technologies before DER integration.

After considering the comments submitted, the Commission decided to provide RTOs/ISOs with additional time to submit their proposed tariff revisions in response to the final rule. The Commission stated in the preamble of the final rule that each RTO/ISO must file the tariff changes within 270 days of the publication date of the final rule in the *Federal Register*. The Commission stated that, to the extent that an RTO/ISO proposes to comply with any or all of the requirements in this final rule using its currently effective requirements for DERs, it must demonstrate on compliance that its existing approach meets the requirements in the final rule.

In light of comments submitted about the complexity of changes to RTO/ISO market rules and systems, the Commission stated in the preamble of the final rule that implementation of the tariff provisions will not be required within 12 months from the date of the compliance filing, as proposed in the NOPR. Instead, the Commission will require each RTO/ISO to propose a reasonable implementation date, together with adequate support explaining how the proposal is appropriately tailored for its region and implements the final rule in a timely manner. The Commission will establish on compliance the effective date for each RTO's/ISO's compliance filing.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents of this collection.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission does not consider the information collected in FERC-516H filings to be

confidential.

Generally, the Commission does not consider this information to be confidential. If an entity chooses to seek confidential treatment of the information, they must submit a request for the Commission to treat this information as confidential and non-public, consistent with 18 CFR 388.112.

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 with the reporting requirements.

12. ESTIMATED BURDEN COLLECTION OF INFORMATION

The Commission estimates the total annual burden⁷ and cost⁸ for this IC in the following table:

Table 12-1: Additions to FERC-516H, as Implemented in the Final Rule in Docket No. RM18-9-000						
A. Types of Responses	B. No. of Respondents	C. Avg. No. of Responses per Respondent	D. Total No. of Responses (Col. B x Col. C)	E. Avg. Burden Hours and Cost per Response	F. Total Annual Burden Hours and Total Annual Cost (Col. D x Col. E)	G. Cost per Respondent (Col. F ÷ Col. B)
One-Time Tariff Filing Due to RM18-9 Final Rule	6	1	6	1,529 hrs; \$126,907	9,174 hrs; \$761,442	\$126,907

⁷ “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 5 CFR 1320.3.

⁸ Commission staff believes that industry is similarly situated in terms of cost for wages and benefits. Therefore, we are using the FERC 2020 average cost (for wages plus benefits) for one FERC full-time equivalent (FTE) of \$172,329 (\$83.00 per hour).

Software Update	6	1	6	1,500 hrs; \$124,500	9,000 hrs; \$747,000	\$124,500
Total Burden				3029 hrs; \$251,407	18,174 hrs; \$1,508,442	\$251,407

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no non-labor PRA-related costs. All costs are related to burden hours and are addressed in Questions #12 and #15.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The Commission estimates the total annual federal burden and cost for this IC in the following table:

	Number of Employees (Full-Time Equivalents)	Estimated Annual Federal Cost
Analysis and Processing of Filings ⁹	3.3	\$568,685.70
PRA ¹⁰ Administrative Cost		\$5,723
Total Federal Cost		\$574,408.70

FERC 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 submitted in response to the information collection.

The “PRA Administrative Cost” is associated with preparing, issuing, and submitting materials necessary to comply with the Paperwork Reduction Act 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 orders, other changes to the collection, and publication of related notices in the Federal Register.

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

Each RTO and ISO will now be required to revise its tariff to establish a participation model

⁹ Based upon 2020 FTE average annual salary plus benefits (\$172,329).

¹⁰ “PRA” refers to the Paperwork Reduction Act of 1.

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consisting of market rules that facilitates the participation of DER aggregations in the RTO/ISO markets. In addition, software updating may be necessary.

The total burdens and costs shown in Item # 12, above, are program changes to FERC-516H.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

There are no tabulating, statistical or tabulating analysis or publication plans for the collection of information. The data are used for regulatory purposes only

17. DISPLAY OF EXPIRATION DATE

The expiration date is displayed at <https://cms.ferc.gov/enforcement-legal/legal/information-collections>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.