

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. IC22-19-000]

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

(June 17, 2022)

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, (Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities), and FERC-919A, (Data Collection for Analytics and Surveillance and Market-Based Rate Purposes).

DATES: Comments on the collection of information are due **[INSERT DATE 60 days after date of publication in the Federal Register]**.

ADDRESSES: You may submit your comments (identified by Docket No. IC22-19-000) by one of the following methods:

Electronic filing through <http://www.ferc.gov>, is preferred.

- Electronic Filing: Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
 - o Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC 20426.
 - o Hand (including courier) delivery: Deliver to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov>. For user assistance, contact FERC Online Support by e-mail at ferconlinesupport@ferc.gov, or by phone at (866) 208-3676 (toll-free).

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>.

FOR FURTHER INFORMATION: Ellen Brown may be reached by e-mail at DataClearance@FERC.gov, telephone at (202) 502-8663.

SUPPLEMENTARY INFORMATION:

Title: FERC-919, (Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities), and FERC-919A, (Data Collection for Analytics and Surveillance and Market-Based Rate Purposes).

OMB Control No.: FERC-919 (1902-0234), FERC-919A (1902-0317)

Type of Request: Three-year extension of these information collection requirements for all collections described below with no changes to the current reporting requirements. Please note: FERC-919A is a temporary collection number and will be combined into FERC-919.

Abstract: The FERC–919 collection 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. FERC-919, as stated in 18 Code of Federal Regulations (CFR) Part 35, Subpart H,¹ 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 (descriptions below). Market power analyses must address both horizontal and vertical market power.

Horizontal Market Power Analysis

This demonstrates a lack of horizontal market power, the Commission requires two indicative market power screens: the uncommitted pivotal supplier screen (which is

¹ *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), 119 FERC ¶ 61,295 (2007).

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 seller must submit the horizontal market power analysis into a relational database for it to be retrievable in conformance with the instructions posted on the Commission's website.² A seller must also include all supporting materials referenced in the indicative screens.

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 Tariff³
- Submit a description of its ownership or control of, or affiliation with an entity that owns or controls:

² See *Data Collection for Analytics and Surveillance and Mkt.-Based Rate Purposes*, Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh'g*, Order No. 860-A, 170 FERC ¶ 61,129 (2020).

³ A part of the associated burden is reported separately in information collections FERC–516 (OMB Control Number: 1902–0096)

- Intrastate natural gas transportation, intrastate natural gas storage or distribution facilities
 - Physical coal supply sources and ownership or control over who may access transportation of coal supplies
- Make an affirmative statement that it and its affiliates have 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 in the relational database with its initial application for market-based rate authorization or updated market power analysis, and all relevant changes in status filings. The asset appendix must:

- 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.

- List all long-term power purchases and sales agreements attributed to a seller and its affiliates by the corporate family by balancing authority area, and by geographic region, and provide the start date and end date.

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

Relational Database Updates

A Seller must report on a monthly basis changes to its previously-submitted relational database information, excluding updates to the horizontal market power screens. These submissions must be made by the 15th day of the month following the change. These submissions include the asset appendix information described above, as

well as other market-based information concerning seller category, operating reserves authorization, identification of its ultimate upstream affiliate(s), mitigation, and other limitations.

Exemptions from Submitting Updated Market Power Analyses

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 megawatts 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:*⁴ The Commission estimates the total annual burden and cost⁵ for this information collection as follows.

⁴ “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 CFR 1320.3.

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FERC-919, Refinements to Policies and Procedures for Market Based Rates for Wholesale Sales of Electric Energy						
Requirement	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3) (3)	Average Burden & Cost Per Response (4)	Total Annual Burden Hours & Cost⁶ (3)*(4)=(5)	Annual Cost per Respondent (\$) (5)÷(1)
Market Power Analysis in New Applications for Market-based rates	144	1	144	135 hrs.; \$13,095	19,440 hrs.; \$1,885,680	\$13,095
Triennial market power analysis	65	1	65	133.23 hrs.; \$12,923.31	8,659.95 hrs.; \$840,015.15	\$12,923.31
Asset appendix addition to change in status reports	149	1	149	49 hrs.; \$4,753	7,301 hrs.; \$708,197	\$4,753
FERC-919A Burden carried over from Order 860-A Category 1-(Ongoing)	1,000	.333	333	2.44 hrs ⁷ ; \$237.11	814 hrs.; \$78,958	\$237.11
FERC-919A Burden carried over from Order 860-A Category 2-(Ongoing)	1,500	1	1,500	4.10 hrs ⁸ ; \$397.96	6,154 hrs.; \$596,938	\$397.96

⁶⁵ The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2021 posted by the Bureau of Labor Statistics for the Utilities sector (available at 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 2021 (available at https://www.bls.gov/oes/current/naics2_22.htm). The hourly estimates for salary plus benefits are:

Economist (Occupation Code: 19-3011), \$75.75

Electrical Engineer (Occupation Code: 17-2071), \$72.15

Legal (Occupation Code: 23-0000), \$142.25

The average hourly cost (salary plus benefits), weighting all of these skill sets evenly, is \$96.72. The Commission rounds it to \$97/hour.

⁷The number used to calculate the costs is 2.4444 and was rounded for the table.

⁸ The number used to calculate the costs is 4.1026 and was rounded for the table.

FERC-919A Burden Carried over from Order 860-A Upstream Affiliates	440	1	440	46 hrs.; \$4,462	20,240 hrs.; \$1,963,280	\$4,462
Total	3,298		2,631		62,608.95 hrs.; \$6,073,068.15	

Row 1 (Market Power Analysis in New Applications for Market-based rates) will have 144 filings. Row 2 (Triennial market power analysis) will have 65 filings. Row 3 (Asset appendix addition to change in status reports) will have 149 filings. There are a total of 358 filings in Rows 1 through 3.

Currently, there are 2,729 sellers that would submit information into the relational database. At the time of implementation of Order No. 860, there were 2,647 sellers that would submit information into the relational database in the first year of implementation. Six institutional investors had FPA section 203(a)(2) blanket authorizations, which collectively owned approximately 110 upstream affiliates that themselves owned sellers. In the March Notice,⁹ the Commission estimated an average of four sellers affected for every upstream affiliate, equaling 440 total sellers.

FERC-919A Burden carryover explanation:

- M16-17-000 Final Rule (Order No. 860) (Category 1, 2nd Year and Ongoing), as modified by Order of August 2021—to 814 hrs.)

⁹ *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes*, 86 FR 17823 (Apr. 6, 2021), 174 FERC ¶ 61,214 (2021) (March Notice).

- RM16-17-000 Final Rule (Order No. 860) (Category 2, 2nd Year and Ongoing) as modified by Order of August 29, 2021—to 6,154 hrs.)

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.