

Supporting Statement for
**FERC-919, Refinements to Policies and Procedures for Market Based Rates (MBR)
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). This renewal is for a request for a 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 proposed to be combined into FERC-919.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Federal Power Act (FPA) sections 205¹ 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 sell at market-based rates.

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 35² of the

¹ 16 U.S.C. 824d(a).

² 18 CFR pt. 35.

Commission's regulations contains the regulations that require sellers to submit market power analyses and related reports.

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.

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,³ 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

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

³ *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.⁴ 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 Tariff⁵
- 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
 - 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 information into the relational database in order to generate an asset appendix. A seller must then reference this asset appendix via serial number with its initial application for market-based rate authorization or updated market power analysis, and all relevant change in status filings. The asset appendix must:

- List, among other things, all affiliates that have market-based rate authority

⁴ 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).

⁵ A part of the associated burden is reported separately in information collections FERC–516 (OMB Control Number: 1902–0096)

- 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 if electric transmissions and natural gas interstate pipelines and/or gas storage facilities are owned or controlled by the corporate family and the balancing authority areas 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 changes to its previously submitted relational database information, excluding updates to the horizontal market power screens monthly. 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.

3. DESCRIBE ANY CONSIDERATION FOR 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. 714,⁶ 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 published a 60-day notice in the Federal Register⁷ 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 EPAAct 2005 mandates.

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

⁶ *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008), *order on reh'g*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).

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.

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 June 24, 2022. 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 September 8, 2022 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.⁸

⁸ 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 section 35.15 of the Commission's regulations.

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 burden⁹ and cost is:

⁹ 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.

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)	Average Burden & Cost Per Response (4)	Total Annual Burden Hours & Cost¹⁰ (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

¹⁰ 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.

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 ¹¹ ; \$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 ¹² .; \$397.96	6,154 hrs.; \$596,938	\$397.96
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.

¹¹The number used to calculate the costs is 2.4444 and was rounded for the table.

¹² The number used to calculate the costs is 4.1026 and was rounded for the table.

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,¹³ the Commission estimated an average of four sellers affected for every upstream affiliate, equaling 440 total sellers during the first three years of implementation of Order No. 860.

FERC-919A Burden carryover explanation:

- RM16-17-000 Final Rule (Order No. 860) (Category 1, 2nd Year and Ongoing), as modified by Order of August 2021—to 814 hrs.)
- RM16-17-000 Final Rule (Order No. 860) (Category 2, 2nd Year and Ongoing) as modified by Order of August 2021—to 6,154 hrs.)

13. ESTIMATE OF THE TOTAL COST BURDEN TO RESPONDENTS

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.

¹³ *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes*, 86 FR 17823 (Apr. 6, 2021), 174 FERC ¶ 61,214 (2021) (March Notice).

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 ¹⁴	28 ¹⁵	\$5,421,090
PRA Administrative Cost		\$8,279
FERC Total		\$5,429,369

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

There is an adjustment in estimate from 358 responses to 2,631 responses which is an increase in 2,273 responses/respondents. The burden for FERC-919 also increases from 35,401 burden hours, to 62,609 burden hours. These increases are due to a more accurate estimate on the number of responses and burden hours and carryover of burden from FERC-919A.

The large increase is due to the addition of the burden that was previously recorded in 919A (1902-0317) and is being moved into the FERC 919 collection. The estimates from the category 1 and category 2 ongoing estimates (explained in question 12) did not change from the estimates in Order 860 (RM16-17-000). The carryover for category 1 and 2 total 1,833 responses and 6,968 hours, which makes up for most of the increase in responses. Additionally, since the issuance of 860, the Commission has identified 440 responses from upstream affiliates, which adds 440 responses and 20,240 hours, which makes up most of the increase in burden hours. This carryover burden will temporarily overlap with the burden in 919A until OMB issues a decision on FERC 919. At that

¹⁴ This is based upon FERC's FY (Fiscal Year) 2021 average annual salary plus benefits per FTE (full-time equivalent) of \$180,703.

¹⁵ 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).

time, staff anticipates discontinuance of the 919A collection, which will eliminate the burden recorded in the temporary collection.

FERC-919	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	2,631	358	+2,273	0
Annual Time Burden (Hr)	62,609	35,401	+27,208	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 <https://www.ferc.gov/information-collections>.

18. EXCEPTION TO THE CERTIFICATION STATEMENT

There are no exceptions.