

**SUPPORTING STATEMENT FOR**  
**FERC-592, Marketing Affiliates of Interstate Pipelines, Standards of Conduct for**  
**Transmission Providers and**  
**FERC-717, Standards for Business Practices and Communication Protocols**  
**for Public Utilities**, as proposed in Docket No. RM07-1-000  
**Regarding Standards of Conduct for Transmission Providers**  
(Final Rule issued October 16, 2008)

The Federal Energy Regulatory Commission (Commission) requests the Office of Management and Budget (OMB) to review and approve **FERC-592, Marketing Affiliates of Interstate Pipelines, Standards of Conduct for Transmission Providers (FERC-592)** and **FERC-717, Standards for Business Practices and Communication Protocols for Public Utilities** both are existing information collections, regarding revisions to requirements contained in Part 358 of the Commission's regulations. FERC-592 (**OMB Control NO. 1902-0157**) is approved through December 31, 2009. FERC-717 (**OMB Control No. 1902-0173**) is currently approved through October 31, 2011.

The subject data collections will be affected because the Commission proposes in a Final Rule, RM07-1-000 "**Standards of Conduct for Transmission Providers**", to revise its Standards of Conduct for transmission providers to make them clearer and to refocus the rules on the areas where there is the greatest potential for affiliate abuse. By doing so, FERC will make compliance less elusive and facilitate Commission enforcement. Specifically, the Final Rule (i) eliminates the concept of energy affiliates and (ii) eliminates the corporate separation approach in favor of the employee functional approach used in Order Nos. 497 and 889. In addition, the reforms adopted in the Final Rule conform the Standards to the decision of the U.S. Court of Appeals for the D.C. Circuit in National Fuel Gas Supply Corporation v. FERC, 468 F.3d 831 (D.C. Cir. 2006). At a minimum, these reforms, by making the Standards clearer and by refocusing them on the areas where there is the greatest potential for affiliate abuse, will make compliance less elusive and subjective for regulated entities, and will facilitate enforcement of the Standards by the Commission.

We estimate that the changes proposed in the Final Rule are minimal and will result in off-setting changes to the annual reporting burden. Therefore, the burden estimates for the information collections as related to this Final Rule will remain the same as currently reported on OMB's inventory. It is for this reason we are maintaining the current expiration dates. (For further discussion see item 12 of this submission.)

## **Background**

FERC first adopted Standards of Conduct in 1987, in Order No. 497. These initial Standards prohibited interstate natural gas pipelines from giving their marketing affiliates or wholesale merchant functions undue preference over non-affiliated customers. Citing demonstrated record abuses, the U.S. Court of Appeals for the D.C. Circuit upheld these Standards in 1992.<sup>1</sup> The Commission adopted similar Standards for the electric industry in 1996, in Order No. 889, prohibiting public utilities from giving undue preference to their marketing affiliates or wholesale merchant functions. Both the electric and gas Standards sought to deter undue preference by:

- (i) separating a transmission provider's employees engaged in transmission services from those engaged in its marketing services, and
- (ii) requiring that all transmission customers, affiliated and non-affiliated, be treated on a non-discriminatory basis.

Changes in both the electric and gas industries, in particular the unbundling of sales from transportation in the gas industry and the increase in the number of power marketers in the electric industry, led the Commission in 2003 to issue Order No. 2004, which broadened the Standards to include a new category of affiliate, the Energy Affiliate.<sup>2</sup> The new Standards were made applicable to both the electric and gas industries, and provided that the transmission employees of a transmission provider<sup>3</sup> must function independently not only from the company's marketing affiliates but from its Energy Affiliates as well, and that transmission providers may not treat either their Energy Affiliates or their marketing affiliates on a preferential basis. Order No. 2004 also imposed requirements to publicly post information concerning a transmission provider's Energy Affiliates.

On appeal by members of the natural gas industry, the U.S. Court of Appeals for the D.C. Circuit overturned the Standards as applicable to gas transmission providers, on the grounds that the evidence of abuse by Energy Affiliates cited by the Commission was not in the record.<sup>4</sup> The court noted that the dissenting Commissioners in Order No. 2004

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1 Tenneco Gas v. FERC, 969 F.2d 1187 (D.C. Cir. 1992) (Tenneco).

2 The new Standards defined an Energy Affiliate as an affiliate of a Transmission Provider that (1) engages in or is involved in transmission transactions in U.S. energy or transmission markets; or (2) manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or (3) buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets. 18 CFR 358.3(d). Certain categories of entities were excluded from this definition in following subsections of the regulations.

3 A Transmission Provider was defined as (1) any public utility that owns, operates or controls facilities used for transmission of electric energy in interstate commerce; or (2) any interstate natural gas pipeline that transports gas for others pursuant to subpart A or part 157 or subparts B or G of part 284 of the same chapter of the regulations. 18 CFR 358.3(a).

4 National Fuel at 841.

had expressed the concern that the Order would diminish industry efficiencies without advancing the FERC policy of preventing unduly discriminatory behavior.<sup>5</sup>

The Commission issued an Interim Rule on January 9, 2007,<sup>6</sup> and set about developing new Standards that would cure the defects identified by the D.C. Circuit in National Fuel. On January 18, 2007, the Commission issued its initial NOPR,<sup>7</sup> requesting comment on whether the concept of Energy Affiliates should be retained for the electric industry, proposing the creation of two new categories of employees denominated as Competitive Solicitation Employees and Planning Employees, carrying over the Interim Rule's new definition of marketing to cover asset managers, and making numerous other proposals. The Commission received thousands of pages of both initial and reply comments from some 95 individuals, companies, and organizations.

### **FERC-592**

In 1987 when the gas pipeline standards of conduct were issued in Order No. 497, the natural gas industry had witnessed a rapid growth of marketing affiliates and the Commission was concerned that pipelines were giving their marketing affiliates preferential treatment. As a result, the Commission issued certain rules intended for marketing or brokering affiliates. The Standards of Conduct provide, in general, that pipelines and their marketing affiliates must function independently of each other. The Commission reserved the right to impose structural remedies, such as divorcement or divestiture, in specific cases where the circumstances demonstrate they are required.

In Order No. 637, the Commission expanded its affiliate regulations to provide more information to permit monitoring and self-policing of affiliate transactions. The Commission required those pipelines with marketing affiliates post certain information to prevent interstate natural gas pipelines from providing preferential treatment concerning their affiliates on their Internet web sites.<sup>8</sup> Posting of this information serves to deter undue discrimination and preference. These requirements apply only to pipelines that conduct transportation transactions with their marketing or brokering affiliates.

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<sup>5</sup> Id. at 838.

<sup>6</sup> Standards of Conduct for Transmission Providers, Order No. 690, 72 FR 2427 (Jan. 19, 2007); FERC Stats. & Regs. ¶ 31,237 (Jan. 9, 2007) (Interim Rule); clarified by, Standards of Conduct for Transmission Providers, Order No. 690-A, 72 FR 14235 (Mar. 27, 2007); FERC Stats. & Regs. ¶ 31,243 (2007) (Order on Clarification and Rehearing).

<sup>7</sup> Standards of Conduct for Transmission Providers, 72 FR 3958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007) (initial NOPR).

<sup>8</sup>The information to be posted includes a list of names of operating personnel and facilities shared by the interstate pipeline and its marketing affiliate, organizational charts showing the organizational structure of parent corporation, business units, job descriptions and organizational chain of command.

Currently, the gas standards of conduct exempt producers that sell from their own production, gatherers that sell from their own gathering facilities and local distribution companies (LDCs) that make on-system sales.

### **FERC-717**

By its Final Rule issued April 24, 1996, in Docket No. RM95-9-000, the Commission proposed to adopt certain standards/information requirements for Open Access Same-Time Information System (OASIS) to be maintained by Public Utilities. More specifically, the Commission proposed to add Part 37 of Title 18, Code of Federal regulations (CFR). The Standards of Conduct were designed to prevent employees of a public utility (or any of its affiliates) engaged in marketing functions from preferential access to OASIS-related information or from engaging in unduly discriminatory business practices. Companies were required to separate their transmission operations/reliability functions from their marketing/merchant functions and prevent system operators from providing merchant employees and employees of affiliates with transmission-related information not available to all customers at the same time through public posting on the OASIS.

In Order No. 676, RM05-5-000 "**Standards of Business Practices and Communication Protocols for Public Utilities**", issued April 25, 2006, the Commission incorporated by reference and placed into operation, standards developed by the North American Energy Standards Board's (NAESB's) Wholesale Electric Quadrant (WEQ). These standards cover Open Access Same-Time Information Systems (OASIS) business practice standards, including the posting requirements for Order No. 2003 generator interconnection agreements and procedures; OASIS Standards and Communication Protocols and Data Dictionary; and business practice standards for Coordinate Interchange, Area Control Error (ACE) Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback.

The incorporation of these standards by reference into the Commission's regulations is intended to benefit wholesale electric customers by streamlining utility business practices and transactional processes and OASIS procedures and by adopting a formal ongoing process for reviewing and upgrading the Commission's OASIS standards and other electric business industry business practices. These practices and procedures would benefit from the implementation of generic industry standards. In order to incorporate the electric business practices and generic industry standards, the Commission changed the name of FERC-717 from the requirements that pertained to Open Access Same-Time Information Systems and standards of conduct to Standards of Business Practices and Communication Protocols for Public Utilities.

**RM01-10 Final Rule (November 25, 2003) (Order No. 2004)**

On November 25, 2003, the Commission issued a Final Rule where it replaced its existing rules under Parts 37 and 161 with comparable rules at Part 358. Under the requirements at Parts 37 and 161, Transmission Providers must post specific information about their marketing affiliates or wholesale merchant functions on their respective OASIS nodes or Internet websites. The Final Rule required Transmission Providers to also post the same information on their OASIS or Internet websites with respect to their Energy Affiliates.

Transmission Providers continue to have economic incentives to show undue preferences toward their Energy Affiliates. The Commission adopted these new rules to close loopholes in existing rules and to give Transmission Providers specific guidance on how to eliminate undue discrimination and undue preferences in the provision of interstate transmission services, consistent with the directions of the NGA and the FPA. The Commission believed the revised standards of conduct would ensure that Transmission Providers apply the standards of conduct to require a separation of the transmission function from all sales functions, including bundled retail sales and a restriction on preferential access to transmission information for the bundled sales function. Specifically the final rule implemented the following:

- used the same standards of conduct requirements for the interstate natural gas pipelines and public utility transmission providers;
- adopted the “no conduit” rule for implementing information disclosure prohibitions (as used by public utility transmission providers), which was more flexible than the “automatic imputation rule” (used by interstate natural gas pipeline transmission providers);
- prohibited Transmission Providers from sharing employees and information with its Energy Affiliates, including affiliated asset managers, and trading and financial affiliates;
- prohibited the sharing of employees and information across industries (e.g. between a natural gas pipeline and an affiliate generator); and
- required mandatory training for employees and the designation of a Chief Compliance Officer.

The Final Rule retained the existing exemption from Order No. 497 for affiliated local distribution companies and the existing exemption from Order No. 889 for the bundled retail sales function. However, the Final Rule eliminated the existing exemption in Order No. 497 for affiliated producers, gatherers, processors, intrastate pipelines and Hinshaw pipelines.

**RM07-1-000 NOPR (March 21, 2008)**

On March 21, 2008 the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket No. RM07-1-000. The NOPR proposed to simplify and clarify the Standards, and in particular to: (i) eliminate the concept of energy affiliates, and (ii) eliminate the corporate separation approach to separating a transmission provider's transmission function employees from its marketing function employees, instead returning to the employee functional approach utilized in Order Nos. 497 and 889. The NOPR pointed out that the corporate separation approach had proven difficult to implement, as evidenced by the scores of waiver requests submitted to the Commission, and impeded legitimate integrated resource planning and competitive solicitations, as reflected in the concerns raised by the electric industry in particular and also by state commissions. The Commission also found that the existing Standards were too complex to facilitate compliance or support enforcement efforts, and have had the unintended effect of making it more difficult for transmission providers to reasonably manage their businesses.

The Commission also proposed to reform its regulations to comply with the U.S. Court of Appeals for the D.C. Circuit decision in National Fuel Gas Supply Corp. v. FERC, 468 F.3d 831 (D.C. Cir. 2006).

As noted above, the Commission issued a NOPR on January 18, 2007 (initial NOPR) to modify the Standards. The primary purpose of the initial NOPR was to remedy the defects identified by the D.C. Circuit in National Fuel, particularly the court's rejection of the Standards' treatment of Energy Affiliates of natural gas pipelines. The Commission also sought to remedy other specific flaws in the Standards, such as by removing impediments to integrated resource planning. In proposing these reforms FERC did not, however, undertake a broader review of the Standards to determine whether they were continuing to prevent affiliate abuse in the manner most likely to foster compliance and enhance enforcement. After further review, FERC found that such a broader review is necessary. The Commission therefore proposed further reforms in this the subsequent NOPR and sought comment on them from all interested persons.

**RM07-1-000 Final Rule (October 16, 2008)**

On October 16, 2008 in Docket No. RM07-1-000, the Commission issued a Final Rule that adopts the overall approach set forth in the NOPR, but modifies the regulatory text to better achieve the goals of clarity and enforceability. It also provides clarifications in several areas in order to aid regulated entities in applying the Standards. The Final Rule is designed to (1) foster compliance, (2) facilitate Commission enforcement, and (3) conform the Standards of Conduct to the decision of the U.S. Court of Appeals for the D.C. Circuit in National Fuel Gas Supply

Corporation v. FERC, 468 F. 3d 831 (D.C. Cir. 2006). Specifically, the Final Rule eliminates the concept of energy affiliates and eliminates the corporate separation approach in favor of the employee functional approach used in Order Nos. 497 and 889.

**A. JUSTIFICATION**

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

**FERC-592**

The Commission has the regulatory responsibility under Section 4 of the Natural Gas Act to ensure that pipeline rates are just and reasonable and not unduly discriminatory. Just and reasonable rates and services need to achieve two principal objectives. They should promote competitive and efficient markets, while mitigating market power and preventing undue discrimination, especially for the Commission's "prime constituency, captive customers vulnerable to pipelines' market power."<sup>9</sup> In short, the Commission's regulatory policy must seek to reconcile the objectives of fostering an efficient market that provide good alternatives to as many shippers as possible while at the same time creating a regulatory framework that is fair and protects captive customers without good alternatives.

The reporting and recordkeeping requirements apply only to those interstate natural gas pipelines involved in transactions with affiliated marketing or brokering companies (expanded in the Final Rule to include energy affiliates). The filing of the pipelines' procedures, as required in Section 250.16(b), enables the Commission to ensure compliance with the nondiscriminatory requirement of Order No. 636. Blanket certificates for transportation, natural gas sales, and storage service issued under Section 7(c) of the NGA also prohibit undue discrimination.

The FERC-592 data on transactions involving interstate pipelines and their affiliates are required to carry out the Commission's policies in accordance with the general authority in Sections 4, 5, 7, 8, 10, 14, 16, and 20 of the Natural Gas Act (NGA) (15 U.S.C. 717-717w)

**FERC-717** In its Final Rule Order No. 888: "Promoting Wholesale

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<sup>9</sup> United Distribution Companies v. FERC, 88 F.3d 1105, 1123 (D.C. Cir. 1996).

Competition through Open Access Nondiscriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities" issued on April 24, 1996, (Docket No. RM95-8/RM94-7), the Commission required that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file open access nondiscriminatory transmission tariffs that contain minimum terms and conditions of nondiscriminatory service.

In addition, the Commission required public utilities to establish OASIS sites to provide transmission customers with equal and timely access to information about transmission and ancillary services provided in the tariffs. The Commission does not believe that open-access nondiscriminatory transmission services can be completely realized until it removes real-world obstacles that prevent transmission customers from competing effectively with the Transmission Provider. One of the obstacles is unequal access to transmission information. The Commission believes that transmission customers must have simultaneous access to the same information available to the Transmission Provider if truly nondiscriminatory transmission services are to be a reality.

The FERC-717 data and communications standards on OASIS are required to carry out the Commission's policies in accordance with the general authority in Sections 309 and 311, of the Federal Power Act of 1935 (FPA) (16 U.S.C. 825h) (Attachment E) and 16 U.S.C. 825j) (Attachment F).

The reforms adopted in the Final Rule are designed to eliminate the elements that have rendered the Standards difficult to enforce and apply. They combine as noted above, the best elements of Order No. 2004 (especially the integration of gas and electric Standards, an element not contested in National Fuel), with those of the Standards originally adopted for the gas industry in Order No. 497<sup>10</sup> and for the electric industry in Order No. 889.<sup>11</sup> Specifically, the Final Rule (i) eliminates the concept of energy affiliates and (ii) eliminates the corporate separation approach in favor of the employee functional approach used in Order Nos. 497 and 889. In addition, the reforms adopted in the Final Rule conforms the Standards to the National Fuel opinion. As noted, these

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10 Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (1988), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,820 (1988); Order No. 497-A, order on reh'g, 54 FR 52781 (1989), FERC Stats & Regs., Regulations Preambles 1986-1990 ¶ 30,868 (1989); Order No. 497-B, order extending sunset date, 55 FR 53291 (1990), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,908 (1990); Order No. 497-C, order extending sunset date, 57 FR 9 (1992), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,934 (1991), reh'g denied, 57 FR 5815 (1992), 58 FERC ¶ 61,139 (1992); aff'd in part and remanded in part sub nom. Tenneco Gas v. FERC, 969 F.2d 1187 (D.C. Cir. 1992) (collectively, Order No. 497) (Tenneco).

11 Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991- June 1996 ¶ 31,035 (1996); Order No. 889-A, order on reh'g, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles July 1996 - December 2000 ¶ 31,049 (1997); Order No. 889-B, reh'g denied, 62 FR 64715 (Dec. 9, 1997), 81 FERC ¶ 61,253 (1997) (collectively, Order No. 889).

reforms, by making the Standards clearer and by refocusing them on the areas where there is the greatest potential for affiliate abuse, will make compliance less elusive and subjective for regulated entities, and will facilitate enforcement of the Standards by the Commission.

The National Fuel court rejected the first reform as applied to the natural gas industry and, by doing so undercut the need for the second reform. The court did not upset the third reason for reform and the Commission continues to believe there is no reason why separate standards should apply to each industry, although the Commission's proposed regulations do take into account differences between the industries in discrete areas.

Nevertheless, the Commission believes this single set of standards should more closely resemble the functional approach that was adopted in Order Nos. 497 and 889. FERC's experience with implementing and enforcing the Standards, as well as the record of this proceeding, demonstrates that this approach is the one most likely to foster compliance and strengthen enforcement of the Standards. The "corporate separation" adopted by Order No. 2004 has not proven workable and was adopted to facilitate the regulation of Energy Affiliates,<sup>12</sup> a step that is no longer appropriate given the decision in National Fuel.

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

**FERC-592** The information maintained and provided by the respondents is used by the Commission to monitor the pipeline's transportation, sales, and storage activities for its marketing affiliate to deter undue discrimination by pipeline companies in favor of their marketing affiliates. The information is also used by non-affiliated shippers or others (such as state commissions) to determine whether they have been harmed by affiliate preference and, in some cases, to prepare evidence for proceedings following the filing of a complaint.

**FERC-717** These requirements apply to all Public Utilities owning and/or controlling facilities used for the transmission of electricity in interstate commerce. These procedures enable the Commission to ensure compliance with the functional unbundling established in the Commission's Open Access rulemaking.

The Commission uses the information to monitor the networks to ensure that potential purchasers of transmission services obtain the services on a non-discriminatory

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<sup>12</sup> Order No. 2004 at P 92.

basis. The collection of this information is necessary to meet the legal requirements, namely the statutory obligations under section 205 and 206 of the FPA, to prevent unduly discriminatory practices in transmission access. Failure to issue these requirements would mean the Commission is not meeting its statutory obligations and permitting discrimination in interstate transmission services provided by the public utilities.

The purpose of this Final Rule is to strengthen the Standards by making the Commission's rules clearer and refocusing them on the areas where there is the greatest potential for affiliate abuse. In so doing, the Commission will facilitate compliance by regulated entities and enhance Commission enforcement. FERC is accomplishing this objective by as noted above, combining the best elements of Order Nos. 497 and 889, on the one hand, and Order No. 2004, on the other. In particular, FERC is returning to the approach of separating, by function, the transmission personnel from the marketing personnel that was adopted in Order Nos. 497 and 889 and worked well for many years, while also retaining a single set of standards for both natural gas and electric industries, as envisioned by Order No. 2004. The Commission also further clarifies and streamlines the Standards to enhance compliance and enforcement of its rules, and to increase transparency in the area of transmission/affiliate interactions to aid in the detection of any undue discrimination.

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

In both FERC-592 and FERC-717, the Commission has shown a commitment to the use of information technology. For FERC-592 requirements, the Commission in Order No. 637 as noted above, requires pipelines to post certain affiliate information on the Internet and widely available to the public. In FERC-717 the Commission's requirement for the use of OASIS to provide transmission service information to the public, demonstrates the use of information technology to reduce the burden. With a single Internet connection, transmission customers are able to access information from any utility as well as be able to display information.

As noted in other Commission submissions, on November 15, 2007, the Commission issued a Final Rule, RM07-16-000, Order No. 703, "Filing via the Internet" 73 Fed. Reg. 65659 (November 23, 2007) revising its regulations for implementing the next version of its system for filing documents via the Internet, eFiling 7.0. Order No. 703 allows the option of filing all documents in Commission proceedings through the eFiling interface except for specified exceptions, and of utilizing online forms to allow "document less" interventions in all filings and quick comments in P (Hydropower Project), PF (Pre-Filing NEPA activities for proposed gas pipelines), and CP (Certificates for Interstate Natural Gas Pipelines) proceedings.

Order No. 703 amended the Commission's regulations<sup>13</sup> to provide that all documents filed with the Commission may be submitted through the eFiling interface except for documents specified by the Secretary. The changes implemented in that Final Rule means that categories such as oversized documents and most confidential documents will be accepted via eFiling. However, at this time, there are principal exceptions, and they are tariffs, tariff revisions and rate change applications; some forms;<sup>14</sup> and documents that are subject to protective orders.

Order No. 703 became effective on December 24, 2007 and the implementation of eFiling 7.0 occurred on March 3, 2008. In addition, the Secretary of the Commission will make announcements of the implementation of the upgrade and will also inform the public of post filing instructions.

In addition, the Commission has issued instructions specifying acceptable file formats for filings submitted on CD-ROM, DVD and other electronic media. These can be found at <http://www.ferc.gov/help/submission-guide/electronic-media.asp>. In addition, in some cases Commission staff has issued instructions applying to specific types of filings. Where there are no specifications for a particular type of filing, users must follow the Secretary's instructions. At this time, the eFiling system will accept documents in their native formats. This will include both text or word processing documents, and other more specialized documents such as spreadsheets and maps. It will also accept text documents in searchable formats, including scanned documents that have been saved in searchable form. This same list will serve as the list of acceptable formats for eFiling 7.0. Submitters will be able to choose a suitable format from that list unless they are instructed otherwise in specific instances by regulation or by direction from Commission staff. Audio and video files will be accepted only in waveform audio format (.wav) for audio content and either audio-video interleave (.avi) or quicktime (.mov) files for video content, except where submitters are specifically instructed otherwise.

The Commission intends, as far as practicable, to continue decreasing its reliance on paper documents and to continue to upgrade eFiling capabilities in furtherance of the Commission's responsibilities under the Government Paperwork Elimination Act.<sup>15</sup> At this time, however, the Commission will not accept tariff filings through the eFiling system.

#### **4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATON AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY**

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13 Rule 2003(c) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2003(c).

14 The following continue to be submitted through eForms: FERC Form No.1, FERC Form No. 2, FERC Form No. 2-A, FERC Form No. 3-Q, FERC Form No. 6, FERC Form No. 6-Q, Form 60, Form 714, and Electric Quarterly Reports. FERC Form 1-F is currently not included in eForms, so it may be efiled. Open Access Transmission Tariff (OATT) filings may also be efiled.

15 Pub. L. No. 105-277, § 1704, 112 Stat. 2681, 2681-750 (1998).

**AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR  
THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2.**

Commission filings 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 any duplication. Electric transmission information is not available from other sources and therefore, no use or other modification of the information can be made to perform oversight and review responsibilities under applicable legislation (e.g., Federal Power Act (FPA), Energy Policy Act of 1992 (EPAAct)).

One of the objectives of this Final Rule is to consolidate the Commission's regulations with regard to standards of conduct. Both gas and electric standards of conduct rely on similar principles to prevent market power. The Commission proposes to consolidate the standards of conduct and apply them uniformly to all transmission providers and therefore reduce any overlap.

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

No small businesses are impacted under FERC-592 reporting data requirements. The proposed additions and revisions to the Commission's regulations will impact the day-to-day operations of natural gas pipeline companies whose operational status would exceed the SIC standards for a "small business concern" as implemented under the Regulatory Fairness Act (RFA). Likewise for FERC-717, the Commission has reviewed the provisions of the RFA and found they would not be applicable to the public utilities that will be subject to the requirements of this Final Rule.

Because most transmission providers do not fall within the definition of "small entity,"<sup>16</sup> Furthermore, small entities may seek a waiver of these requirements, and those small entities that have already received a waiver of the Standards would be unaffected by the requirements of the Final Rule.

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

It is not possible to collect the data less frequently. Only transmission providers owning, operating, and/or controlling facilities used for the transmission of electricity or the transportation of natural gas in interstate commerce are required to comply with the proposed Commission's requirements. The required information will impose the least

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<sup>16</sup> See 5 U.S.C. 601(3) and (6) (2000 and Supp. V 2005).

possible burden for companies while collecting the information used in monitoring transmission service. In addition, the information will be available to others (including small distribution utilities, independent power producers, marketers, local distribution companies, shippers and state commissions).

If the data were not updated regularly, the Commission and Industry would be placed at a disadvantage by not having the most current data for competitive and regulatory purposes available. The Commission needs access to up-to-date information to monitor self-implementing activities of the transmission providers to ensure that transmission services are being provided in a nondiscriminatory manner.

#### **7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION**

All of the standards of conduct related data are to be displayed on OASIS or Internet web sites and be available for downloading. With the exception of the written information describing how the standards are being implemented, the remainder of the information will be posted.

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

Commission procedures require that rulemaking notices be published in the Federal Register, thereby allowing all electric utilities, natural gas pipeline companies, state commissions, Federal agencies, and other interested parties an opportunity to submit views, comments or suggestions concerning the proposal. These rulemaking procedures allow for public conferences to be held as required. Comments were due 45 days from publication in the **Federal Register**.

Comments were received from 62 companies and organizations, which are listed in Appendix A of the Final Rule.<sup>17</sup> The vast majority of the comments were supportive both of the Commission's efforts to simplify and clarify the Standards, and of the general approaches taken by the Commission to achieve that goal.

Notwithstanding general agreement with the Commission's overall approach, many commenters submitted requests for clarification and modifications. In most instances, the modifications proposed were advanced with the stated goal either to make the Standards even clearer, or to address matters which some entities believed had fallen between the cracks in the transition from the existing Standards to a more streamlined approach. The Commission has

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<sup>17</sup> The acronyms used throughout are defined in Appendix A.

carefully considered these comments and agrees that in several areas, modifications to the regulatory text are needed.

No commenters proposed that the corporate separation approach be continued, and no commenters requested continuation of the energy affiliate concept. The FTC, however, contended that behavioral rules, including the employee functional approach, cannot fully achieve independent functioning because such an approach remains vulnerable to subtle events of discrimination and preference that may be difficult to detect and document.<sup>18</sup> The FTC and ITC recommend instead that the Commission require vertically integrated firms to structurally unbundle transmission and place operation of the transmission function in the hands of the relevant Regional Transmission Organization (RTO) or Independent System Operator (ISO).<sup>19</sup>

### **Commission's Response**

The overwhelming support from commenters on the NOPR's overall approach confirms the Commission's conviction that simplifying and clarifying the Standards in the manner proposed will best achieve the twin goals of compliance and enforcement. The Commission therefore adopts the employee functional approach, as set forth in the Final Rule's regulatory text, and eliminates the concept of energy affiliates. With respect to the comments of the FTC and ITC, there has been no demonstration that the proposed rules are inadequate to address the potential for undue preferences. Nor does the Commission believe this Final Rule is the proper forum to address issues as complex and far-reaching as those raised by the FTC and ITC.

### **Jurisdiction and Applicability of the Standards**

#### **Applicability to Pipelines Operating Under Part 157**

In the NOPR, the Commission carried forward from the existing Standards the essence of the language in section 358.1 governing the applicability of the Standards to interstate natural gas pipelines. The proposed text reads in pertinent part: "This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter and conducts transmission transactions with an affiliate that engages in marketing functions." Likewise, the definition of transmission provider in proposed section 358.3(k), insofar as it pertains to the gas industry, reads as follows: "Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter."

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18 FTC at 6-7.

19 FTC at 9-10; ITC Reply at 4-5.

Hampshire Gas and Northwest Natural objected to the texts of proposed sections 358.1(a) and 358.3(k) that would bring within the ambit of the Standards certain gas pipelines that did not fall within the Standards as issued under Order No. 497.<sup>20</sup> They contend that the NOPR's use of the word "or" instead of "and" in proposed section 358.1(a) expands the ambit of the regulations to any pipeline that transports gas either under subpart A of part 157 or under subpart B or G of part 284. Both commenters noted that a pipeline operating only under part 157 does not have the authority to provide open access transportation, as it may only transport for specific authorized shippers, and thus it is not possible for a part 157 pipeline to engage in discrimination in favor of an affiliate. Hampshire and Northwest Natural urged the Commission to change the Standards' applicability to cover only those pipelines that operate under both parts 157 and 284.<sup>21</sup>

### **Commission's Response**

The current Standards, as well as the proposed Standards, contain the word "or" instead of "and" in sections 358.1(a) and 358.3(k)(2). The fact that the Commission is returning to the employee functional approach used in Order No. 497 does not automatically mean, however, that it must resurrect all other aspects of Order No. 497. Each provision must be considered on a case-by-case basis. The Commission has evaluated the comments contending that part 157 pipelines should not be included in the ambit of section 358.1(a), and determines that their position is well-taken. Pipelines operating only under part 157 cannot discriminate in favor of an affiliate, because such pipelines can only transport for specific shippers authorized by their certificates. Put another way, in the Final Rule, the Commission is concerned about the relationship between pipelines and their shippers where the pipelines are providing transportation service pursuant to part 284 blanket certificate authorization and open access rules, which give the pipelines the flexibility to discriminate in favor of their affiliates because they may commence and terminate service without ex ante review by market participants or the Commission. By contrast, the very few pipelines that are not part 284 open-access transporters must receive shipper-specific certificate authorization from the Commission, which must find the service is required by the public convenience and necessity under Section 7 of the Natural Gas Act. Accordingly, part 157 transporters do not have the flexibility that could lead to discriminating unduly in favor of their affiliates. The Commission will therefore eliminate the reference to part 157, leaving only interstate pipelines that transport gas for others pursuant to subparts B or G of part 284 subject to the Standards and within the scope of the definition of transmission provider. Accordingly, the Standards now apply to those pipelines subject to the Commission's open access rules under part 284.

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<sup>20</sup> Hampshire Gas at 6-9; Northwest Natural at 3-7.

<sup>21</sup> Id.

**Applicability to Pipelines with No Marketing Affiliate Transactions**

The NOPR requested comment as to whether the statement of the Standards' applicability to interstate pipelines in section 358.1(a) should parallel the statement of the Standards' applicability to the electric industry set forth in section 358.1(b).<sup>22</sup> The language in question reads: "and conducts transmission transactions with an affiliate that engages in marketing functions."

INGAA asserted that the cited language is essential, because it exempts those pipelines with affiliates that have marketing function employees, but with which the pipeline conducts only non-transmission transactions. INGAA argued that these non-transmission transactions do not pose the potential for the types of abuse the rules seek to prevent. According to INGAA, the cited language also ensures that the proposed Standards operate within the boundaries set forth in National Fuel, by not extending coverage to relationships and transactions for which the Commission has no record evidence of undue discrimination or preference.<sup>23</sup>

NGSA argued that the limitation in the current language implies an exemption from the Standards for sales of gas in which the gas is not shipped using capacity held or controlled by the seller's affiliated transmission provider. NGSA urged the Commission to either: (i) clarify that the No Conduit Rule (and the Standards generally) would nonetheless apply to such gas sellers when they share the same facilities or trading floor with marketing function employees who are not exempt from the Standards, or (ii) require entities that house exempt marketing function employees in the same facility as non-exempt marketing function employees to provide some physical separation between the two groups, to prevent uncontrolled flow of restricted information.<sup>24</sup>

While agreeing with INGAA, other commenters would apply the conditional language in section 358.1(a) to public utilities as well as pipelines, thereby limiting the Standards' application to both public utilities and interstate natural gas pipelines that conduct transportation transactions with marketing affiliates.<sup>25</sup>

**Commission's Response**

The Commission agrees with INGAA that there is no evidence in the record to suggest that pipelines that do not conduct transmission transactions with an affiliate engaged in marketing functions are in a position to engage in the type of affiliate abuse to

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22 NOPR at P 58.

23 INGAA at 9-12.

24 NGSA Reply Comments at 12-14.

25 Nisource at 25-28; DCP Midstream at 2; Southwest Gas at 18-20.

which the Standards are directed. Therefore, the Commission will retain the language in section 358.1(a) that sets forth this limitation.

The Commission disagrees with NGSAs' contention that certain sales of gas have, by implication, been made exempt. The Commission is not exempting any sales of gas; the Standards apply to conduct, not to products. Section 358.1 addresses which pipelines and which electric utilities fall within the ambit of the Standards. A pipeline may have some marketing affiliates with which it conducts transmission transactions, and some with which it does not. A pipeline that conducts transmission transactions with a marketing affiliate must comply with the Standards, including the No Conduit Rule.

If a pipeline has affiliates of both types (some with which it conducts transmission transactions and some with which it does not), the pipeline must ensure that there is no prohibited communication with marketing function employees, in accordance with the requirements of the No Conduit Rule. The pipeline can determine how best to ensure compliance with the regulation, and the Commission declines to order physical separation of employees on a generic basis. The Commission might consider it on a case-specific basis, however, in the event the Commission found a violation.<sup>26</sup>

The Commission agrees with those commenters that suggest parallelism between the electric and gas industries could be achieved by also applying to public utilities the limitation applicable to pipelines. Because the core abuse to which the Standards are directed is that of undue preference in favor of an affiliate (defined to include divisions of the transmission provider as well as separate corporate entities), a public utility that does not engage in any transmission transactions with a marketing affiliate should be excluded from the Standards' coverage, just as should a pipeline. Therefore, the Commission is modifying the language of section 358.1(b) accordingly.

### **Training Requirements**

The NOPR proposed modifications to the training requirements for the Standards, requiring annual training for transmission function employees, marketing function employees, officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information; and requiring training on the Standards to new employees within the first 30 days of their employment. (See proposed section 358.8(c)(1)).

Commenters raised various concerns about the scope of the proposed training requirements. Destin believes that the requirements are overly broad and unduly burdensome; arguing that a transmission provider cannot engage in affiliate abuse with

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<sup>26</sup> C.f., e.g., *Southern Co. Serv. Inc.*, 117 FERC ¶ 61,021 (2006).

employees that do not use its transmission services.<sup>27</sup> Ameren stated that the Commission's training requirement should apply only to employees who engage in transmission or marketing functions, as well as officers, directors and support or other employees who can be expected to have access to non-public transmission information. Ameren also states that a transmission provider should provide focused levels of training to certain specific classes of employees.<sup>28</sup>

Commenters sought clarification as to which employees must be trained, and some suggested modifications to the proposed regulatory text. MidAmerican and National Grid sought confirmation that the rule excludes supervisors of departments that have nothing to do with transmission.<sup>29</sup> To clarify the regulatory text, National Grid proposed setting out that the training requirement applies to (i) transmission function employees; (ii) marketing functioning employees; and (iii) officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information.<sup>30</sup>

Some commenters requested clarification as to which types of employees are captured by the "likely to become privy to transmission function information" language in sections 358.8(b)(2) and 358.8(c)(1).<sup>31</sup> Xcel urged the Commission to modify proposed section 358.8(b)(2) by requiring a transmission provider to distribute materials only to those employees likely to become privy to non-public transmission information, instead of to any and all transmission function information.<sup>32</sup>

Commenters urged the Commission to modify the proposed regulation so as to eliminate the requirement to train marketing function employees. INGAA requested that marketing function employees should be excluded, arguing such training is infeasible and unnecessary in certain corporate structures.<sup>33</sup> In addition, Williston questioned the need to conduct annual training for employees who do not have access to non-public or privileged information and/or marketing function employees. If a transmission provider is required to train marketing function employees of its affiliates, Williston asserted this is an expansion of the current rules. If not, Williston questioned whether a transmission provider would have employees that fit under the definition of marketing function employees that would need to be restricted from having access to company information.<sup>34</sup>

Commenters raise concerns over whether field and maintenance employees fall into the training requirements and requested that the Commission exclude these employees.

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27 Destin at 8.

28 Ameren at 31-32.

29 MidAmerican at 20-21; NationalGrid at 22.

30 NationalGrid at 22.

31 MidAmerican at 20-21; Williston at 17-18.

32 Xcel at 22.

33 INGAA at 49-50.

34 Williston at 17-18.

INGAA noted that field and maintenance employees may pick up transmission information in the nature of irrelevant raw data from time to time, and could therefore fall within the training requirement as set forth in the proposed provision.<sup>35</sup> INGAA argued that these employees do not have access to information of a commercial value and including them within the training requirement would be an unwarranted burden. INGAA requested that the proposed provision be amended to exclude these employees.<sup>36</sup>

Commenters also requested clarification on the application of these training requirements to agents, contractors, and consultants.<sup>37</sup> TDU Systems recommended that agents, contractors, and consultants be trained only once per year, even if engaged by more than one transmission provider during that time, provided that they receive a copy of the current written compliance procedures for each of the relevant transmission providers.<sup>38</sup> INGAA requested that the Commission clarify that contractor training may be limited to those specific contractors who may be considered transmission function employees if they worked directly for the pipeline.<sup>39</sup>

Commenters requested additional guidance on the timing of the required training. National Grid requested confirmation that companies may satisfy the annual training requirement by providing training once a year for all employees, rather than providing training on a rolling basis, to ensure that each relevant employee attends training at least once within each 365-day cycle.<sup>40</sup> Ameren requested that the Commission clarify that employees trained within 12 months of the Final Rule's issuance do not need to be trained again until a year passes from the date of their most recent training.<sup>41</sup>

E.ON urged the Commission to clarify that annual Standards training should be mandatory only for transmission and marketing function employees, and that employees who do not engage in transmission and marketing functions should be allowed to be trained on a less frequent basis.<sup>42</sup> NiSource requested that the requirement in section 358.8(c) that new employees be trained within 30 days of hire be modified to require training within 60 days of hire, arguing that the 30 day limitation is overly burdensome.<sup>43</sup>

The PUC of Ohio proposed that the Standards include a requirement that transmission providers post on their Internet websites a general overview of their unique training programs and schedules and the name of the designated chief compliance officer.<sup>44</sup>

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35 INGAA at 47.

36 *Id.* at 47; *see also* Vectren at 9-10.

37 INGAA at 48; TDU Systems at 16-17.

38 TDU Systems at 16-17.

39 INGAA at 48.

40 National Grid at 25-26.

41 Ameren at 35.

42 E.ON at 25.

43 NiSource at 28.

44 PUC of Ohio at 3.

### **Commission's Response**

The Commission endeavored in the NOPR to limit training to those employees who would be most likely to be exposed to transmission function information, or those to whom the disclosure of such information is strictly prohibited. Obviously, transmission function employees and marketing function employees are the two core categories of employees that should be most cognizant of the rules. Although the Commission has deleted the prohibition against marketing function employees receiving transmission function information, due to the possibility such receipt could be inadvertent, it is expected that if someone attempted to pass such information to a marketing function employee, the marketing function employee would not only refuse it but would report the individual to the company's chief compliance officer or other appropriate individual.

Officers, directors, and supervisory employees also have a clear need for an understanding of the Standards, as it is likely they will either be in a position to interact with both transmission function employees and marketing function employees, or be responsible for responding to any questions or concerns about the Standards from the employees who report to them. Other employees likely to become privy to transmission function information will vary from company to company; likely categories would include rate and regulatory personnel, lawyers, accountants, risk management personnel, and the like. This list is by no means exhaustive, but rather is included for illustrative purposes.

Either a transmission provider or its affiliate should provide training to marketing function personnel employed by the affiliate; failure to do so would leave a major class of employees without the requisite training. As to whether field and maintenance workers should receive training, that would depend on the circumstances of the particular transmission provider. As noted above, field and maintenance personnel are not considered transmission function employees if they are functioning in their stated capacity and do not engage in the day-to-day operation of the transmission system. However, if it is likely they may become privy to transmission function information, and then training on the Standards would be appropriate and called for under section 358.8(c)(1).

Commenters sought clarification regarding the training of agents, contractors and consultants. If such individuals are acting within one of the categories specified for the provision of training to employees, then such individuals should receive the training as if they were permanent hires. If the consultants are hired on a short-term basis and provide proof that they have received the appropriate training from another transmission provider within the requisite period, then further training would not be necessary until the

following year, although they should receive the specific written compliance materials applicable to each transmission provider. Furthermore, it is not necessary for the transmission provider to track annual dates for each employee; if the transmission provider prefers, it may train all its employees, or all its employees in a given category, at a certain time each year. New employees, after their initial training, can be fit within this schedule. However, the employee should not go longer than a year without participating in training.

The Commission declines to lengthen the period for initial training from 30 days to 60 days, as requested by one commenter. It is especially important for new hires to receive the training, as they may not have been exposed to it before, as would be the case with existing employees. The Commission also notes that it is unnecessary to add a requirement to post training programs on the transmission provider's Internet website. Training is for the benefit of the transmission provider's employees, not the public at large. And as proposed section 358.8(c)(2) already requires posting the name of the transmission provider's chief compliance officer, it is unnecessary to add a further requirement in this regard.

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

There are no payments or gifts to respondents under any circumstance.

#### **9. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS**

All data filed is public information and, therefore, are not confidential. However, a company may request confidential treatment of some or all parts of the FERC-717 information requirement under the FOIA and FERC regulations at 18 CFR 388.112.

Each request for confidential treatment will be reviewed by the Commission on a case-by-case basis.

Section 358.7(a)(1) requires that if non-public transmission function information is disclosed to a marketing function employee, the transmission provider must post the information on its website. Some commenters objected to the posting requirement where non-public information is disclosed by the transmission provider, arguing that such posting will provide an advantage to a competitor. The Commission disagrees. Such posting, by making the information public, will place the competitor and the transmission provider's affiliated marketer on an even footing. Therefore, this provision will be retained.

Western Utilities and INGAA raised concerns over the posting provision in instances where a marketing affiliate receives non-public transmission function information from a third party. Since the Commission is eliminating that particular prohibition of the No Conduit Rule, no change to the posting provision is necessary. However, the Commission notes that if a transmission provider uses anyone as a conduit for improper disclosures, such an event would be considered an improper disclosure and should be posted.

The Commission proposed in section 358.7(a)(2) that only a notice is posted in the event non-public transmission customer information is improperly disclosed, rather than requiring posting of the disclosure itself, to prevent a further breach of confidentiality. The Commission extended this distinction between posting of a notice and posting the disclosure itself to include CEII,<sup>45</sup> as well as any other information that the Commission by law has determined is to be subject to limited dissemination. However, the Commission declines to extend it to cover information where disclosure may be deemed to breach some other public policy goal, as requested by National Grid. This standard is too imprecise to have practical application. If a transmission provider is concerned about disclosure in any given instance, it may seek guidance from the Commission.

The Commission declines to adopt ATC's proposal that with respect to non-public transmission information that was improperly disclosed, the transmission provider must post it immediately "upon discovery of disclosure," rather than upon the actual disclosure. The provision by its terms imposes the posting requirement on a transmission provider that wrongfully discloses such information, and it would be anomalous to assume the transmission provider was not aware of its own actions. A corporation can only act through its agents and employees, and those actions are taken on behalf of the corporation. Therefore, knowledge of the disclosure is imputed to the transmission provider, which is responsible both for the disclosure and for the posting.

#### **11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE**

There are no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs and other matters that are commonly considered private in the reporting and recordkeeping requirements.

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<sup>45</sup> This limitation does not affect the Commission's determinations made elsewhere in the Final Rule regarding the need to disclose information that may contain CEII, or the appropriate methods for entities to access such CEII, nor the Commission's adoption of mandatory reliability standards for CEII. *See, e.g.*, Order 890 at P 403-404; Mandatory Reliability Standards for Critical Infrastructure Protection, Order No. 706, 73 Fed. Reg. 7368 (Feb. 7, 2008), 122 FERC ¶ 61,040, reh'g denied and clarification granted, Order No. 706-A, 123 FERC ¶ 61,174 (2008).

**12. ESTIMATED BURDEN COLLECTION OF INFORMATION**

The revisions to the Standards proposed in the Final Rule are modifications of already approved information collection procedures, and do not impose any significant additional information collection burden on industry participants. Many of the changes consist merely of the rewording of definitions and the reordering of the various information collection requirements. Some information collection requirements have been deleted, such as the posting of organizational charts. A requirement has been added concerning the maintenance of records regarding certain informational exchanges between transmission function employees and marketing function employees, as well as a requirement regarding the posting of contact information regarding the identification of the Chief Compliance Officer. Neither of these should impose a significant burden on the transmission providers. In fact, by proposing that the Standards will no longer govern the relationship between transmission providers and their Energy Affiliates, the overall information collection burden will most likely decrease. The revisions to the Standards proposed in this issuance are modifications of already approved information collection procedures, and do not impose any significant additional information collection burden on industry participants.

The burden estimate includes the time required to implement the standards established in this rule, review the standards, search existing data sources, gather and maintain the data needed, and complete and review the information and file as appropriate with the Commission. Details of the burden estimates are shown in the following table:

**DATA COLLECTION (FERC-592)**

	<b>CUR RENT</b>		<b>IN</b>		<b>NEW</b>
		<b>INVENTORY*</b>	<b>NOPR</b>	<b>OMB INV.</b>	
Estimated Number of Respondents					85
					85
					85

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Estimated number of responses/respondent/yr	1	1	1
Estimated annual number of responses	232	232	232
Estimated hours per information requirement	42.73	42.73	42.73
Total estimated annual burden hours	9,913	9,913	9,913
Estimated annual burden in OMB inventory	9,913		
Increase/decrease in burden hours	- 0 -		

\*As of 11/04/08

**DATA COLLECTION (FERC-717)**

			<b>CUR RENT</b>
	<b>INVENTORY</b>	<b>IN NOPR</b>	<b>PROP OSED NEW</b>
			<b>OMB INV.</b>
Estimated no. of Respondents	220	220	220
Estimated no. of responses/respondent/yr			1
			1
			1
Estimated annual no. of responses			220
			220
			220
Estimated hours per information requirement	980.43	980.43	980.43*
Total estimated annual burden hours			215,695

215,695

215,695

Estimated annual burden in OMB inv. 215,695

Program Changes (Increase/decrease in burden hours) - 0 -  
 \*rounded off.

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

Annualized Capital/Startup Costs

The Commission's estimate for costs to comply with the Final Rule remains unchanged from what the Commission previously submitted to OMB. Any increase in costs would be an adjustment based on inflation and from when Order No. 2004 was issued nearly 5 years ago. The Commission believes as indicated in item 12 above, that the proposed standards will not impose significant information collection burden and may as noted above, result in a decline due to the fact that the proposed Standards will no longer govern the relationship between transmission providers and their Energy Affiliates.

**14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT:**

The estimated annualized cost to the Federal Government for FERC-592 and FERC-717 is as follows:

**Data**

**Analysis**

**Estimated**

**FERC**

**Data**

**Total**

**Cost  
of Data**

**Collection**

**Salary**

<u>Number</u>	<b>Clearance One Year's (FTEs)</b> x <b>Per Year + (FY '08) =</b> <b>Operation</b>
FERC-592	1.0  \$126,384  \$ 6,053
FERC-717	\$132,437 4.0  \$126,384  \$ 6,053  \$511,589
Total Cost	5.0  \$126,384  \$12,106

\$644,026

The average cost per staff year reflects direct human resource's costs. These costs consist of direct labor and fringe benefit costs. The direct labor cost is that portion of staff salary that is charged to a collection of information activity. The fringe benefits cost consists of allowances and services provided to Government employees in addition to employee salaries. It is expressed as a percentage of the salary costs. The costs identified above pertain only to this Final Rule.

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

As reported in item #12, there are minimal changes in the annual reporting burden. It's the Commission's belief that as the amended Standards are implemented and the removal of compliance requirements governing the relationship between transmission providers and their Energy Affiliates, then the Commission projects that the overall information collection burden will likely decrease. The revisions to the Standards proposed in the Final Rule do not impose any significant additional information collection burden on industry participants.

**16. TIME SCHEDULE FOR PUBLICATION OF DATA**

This is not a collection of information for which results are planned to be published.

**17. DISPLAY OF EXPIRATION DATE**

It is not appropriate to display the expiration date for OMB approval of the information collected pursuant to Parts 37 and 358 in the Code of Federal Regulations. The information collected is not collected on a standard, preprinted form which would avail itself of this display. However, the Commission has printed the OMB Control number and a disclaimer that respondents will not be subject to a penalty if a valid OMB control number is not displayed on the Commission's publication OASIS Standards and Communication Protocols. This publication contains the standards of conduct and communication protocols that industry must follow. The reporting requirements under

FERC-592 are not filed on formatted/printed forms but rather based on posting requirements for Internet web sites.

## **18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

The Commission does not use the information collected under FERC-592 or FERC-717 for statistical purposes.

### **B. Collections of Information Employing Statistical Methods**

This is not a collection of information employing statistical methods.