

Supporting Statement
FERC- 919, Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities
as modified in the Final Rule in Docket No. RM14-14-000

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review the information collection requirements in the **FERC-919, Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities**, as modified in the Final Rule in Docket No. RM14-14-000. FERC-919 (OMB Control No. 1902-0234) is a Commission data collection, as contained within 18 Code of Federal Regulations (CFR), Part 40.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Compliance with Federal Power Act (FPA) Sections 205¹ and 206² make collection of this information necessary. Specifically, Section 205 of the FPA requires just and reasonable rates and charges. Section 206 allows the Commission to revoke a seller's market-based rate authorization if it determines that the seller may have gained market power since its original authorization to charge market-based rates.

The information collection requirements for FERC-919 are contained within the following categories:

- Initial market power analyses to qualify for authority to charge market-based rates;
- Triennial market power analysis in Category 2 seller updates³,
- Quarterly land acquisition reports⁴,
- Change in status reports⁵.

¹ 16 USC 824(d)

² 16 USC 824(e)

³ 18 CFR 35.37(a)

⁴ 18 CFR 35.42(d)

⁵ 18 CFR 35.42(a)

Pursuant to sections 205 and 206 of the FPA, the Commission is amending its regulations to revise Subpart H to Part 35 of Title 18 of the Code of Federal Regulations (CFR), which governs market-based rate authorizations for wholesale sales of electric energy, capacity, and ancillary services by public utilities. The final rule in RM14-14 revises the information collection requirements, including:

- (1) creating a 100 MW threshold for reporting new affiliations;
- (2) discontinuing quarterly land acquisition reporting;
- (3) requiring organization charts;
- (4) refining some entries in Appendix A, Standard Screen Formats, and Submittal 2 (Table 2) to provide more detail, including the requirement that the data be submitted in a workable electronic spreadsheet format; and
- (5) adding additional reporting requirements to Appendix B, Asset Appendix, including a requirement that the data be submitted in a workable electronic spreadsheet format.

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

Existing Regulations. The Commission will use information collected under FERC-919 to ensure that market-based rates charged by public utilities are just and reasonable, as Congress has mandated it to do.

18 CFR 35 contains the regulations necessary to require sellers to submit market power analyses and related reports.

Because public utilities are natural monopolies, the market power analyses FERC requires must address both horizontal and vertical market power. To demonstrate a lack of horizontal market power, the Commission requires two screens: a pivotal supplier screen, based on the annual peak demand of the relevant market, and a market share screen, based on seasonal demand. Together, these screens examine a seller's ability to exercise horizontal market power. A seller that fails either screen may submit a delivered price test analysis 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. For a seller that has already been granted market-based rate authority, market-based rate authority is not revoked and cost-based rates are not imposed until the Commission issues an order making a definitive finding that the seller has market power or, where the seller accepts a presumption of market power, an order is

issued addressing whether default cost-based rates or case-specific cost-based rates are to be applied. Once an order is issued, the Commission revokes the market-based rate authority in all geographic markets where a seller is found to have market power.

Sellers that own, control, or are affiliated with more than 500 megawatts of generation; own, operate, control, or are affiliated with transmission facilities in a given geographic region; and/or are affiliated with a franchised public utility in a given geographic region, are required to file updated market power analyses every three years. The updated market power analyses must demonstrate that the seller does not possess horizontal market power. A pivotal supplier screen and a market share screen must be submitted and if the seller fails either screen, a delivered price test analysis may be submitted as well. When submitting horizontal market power analyses, a seller must use the form provided in 18 CFR 35 Subpart H, Appendix A and include all materials referenced there.

To demonstrate a lack of vertical market power, a seller that owns, operates, or controls transmission facilities must have on file with the Commission an Open Access Transmission Tariff [burden contained separately within information collection FERC-516 (OMB Control Number 1902-0096)] or qualify for a waiver of the requirement to have an Open Access Transmission Tariff on file. To demonstrate a lack of vertical market power in wholesale energy markets through the affiliation, ownership, or control of inputs to electric power production, such as the transportation or distribution of the inputs to electric power production, a seller must 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; sites for generation capacity development; and physical coal supply sources and ownership or control over who may access transportation of coal supplies. In addition, a seller is required to make an affirmative statement that it and its affiliates have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market. Lastly, the seller must include an appendix of assets with each change of status filing by using the format in 18 CFR 35 Subpart H, Appendix B.

Sellers unaffiliated with franchised public utilities or transmission owners and that do not, together with all of their affiliates, own or control more than 500 MW of generation in the relevant region, are not required to submit updated market power analyses. The Commission determines which utilities are in this category through information filed by the utility either when market-based rates are sought or through a separate filing made to request such a determination.

In early 2005, the Commission clarified and standardized market-based rate sellers'

reporting requirements for any change in status that departed from the characteristics the Commission relied on in initially authorizing sales at market-based rates. In Order No. 652, the Commission required, as a condition of obtaining and retaining market-base rate authority, that sellers file notices of such changes no later than 30 days after the change in status occurs. Order No. 697 added regulatory text to clarify distinctions between generation facilities and transmission facilities, and to incorporate minor revisions. The order is the source for codification of the requirement that each seller include an appendix identifying specified assets with each pertinent change in status notification filed. The standard format for sellers' use is in 18 CFR 35 Subpart H, Appendix B.

In order for a seller to demonstrate that it satisfies the Commission's vertical market power concerns, it must demonstrate that neither it nor its affiliates can erect barriers to entry into the relevant market (i.e., barriers other than transmission). Therefore in Order No. 697-C, the Commission began requiring all utilities with market-based rate authorization to report quarterly the sites where the utility has acquired control that would be suitable for new generation capacity equal to or greater than 100 megawatts. Information required in the land acquisition reports includes the number of sites acquired, their relevant geographic market, and the maximum number of megawatts that are reasonably commercially feasible on the sites.

Refinements in RM14-14. After more than six years of experience with the implementation of Order No. 697, RM14-14 enacts certain changes and clarifications in order to streamline and simplify certain aspects of the market-based rate program, and to enhance and improve the program's processes and procedures. Based on experience, FERC has found that the burdens associated with some requirements may outweigh the benefits in certain circumstances. For these reasons, FERC enacted a number of changes to its market-based rate program that will, in some cases, reduce the burden on industry and the Commission, while continuing to ensure that the standards for market-based rate sales of electric energy, capacity and ancillary services result in sales that are just and reasonable. RM14-14 also includes proposed minor increases in burden that will add clarity to, and improve transparency in, the market-based rate program. (The responses to Questions 1, 5 and 15 provide additional details.)

Overall Program. 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 tariffs are just and reasonable. Failing to meet this responsibility would result in public utilities charging rates that are not just and reasonable.

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

There is an ongoing effort to determine the potential and value of improved information technology to reduce the burden. However, the FERC-919 filings are and will continue to be filed in varying forms of media from paper documents to XML data transfers. The latter is resulting from Order No. 714 wherein 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 rate tariffs do so by embedding the electronic tariff and filing information within the XML schema of FERC's eTariff system. Providing FERC-919 filers this IT system to submit information has eliminated the need for copying and courier services as they relate to applications for market-based rates. The other FERC-919 filings, however, arrive and will continue to arrive either in hard copy or transmitted via email and then submitted in software applications accepted by FERC's eFiling system. As the Commission makes IT resources more available and formulates plans/policies for further automation, burden reduction via technological improvement will improve. Accordingly, RM14-14 requires market-based rate sellers to submit pivotal supplier and market share screens in Appendix A in electronic spreadsheet formats. Submitting electronic spreadsheets will allow the Commission to reduce mathematical errors and further reduce burden on industry and the Commission by minimizing phone calls and amendments for corrections to the pivotal supplier and market share screens.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2.

The Commission periodically reviews filing requirements as OMB review dates arise or as the Commission may deem necessary in carrying out its regulatory responsibilities. To date, the Commission has found no duplication of application data elsewhere. Moreover, the Commission can neither compile nor obtain the data and analyses from any other source but the filer. The information is specific to each filing applicant.

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

The Commission periodically reviews filing requirements concurrent with OMB review or as the Commission deems necessary to eliminate duplicative filing and to minimize the filing burden.

The Commission currently requires the submission of a market power analysis from all entities seeking authority to sell at market-based rates. The requested renewal of the FERC-919 does not alter which entities will be required to file these analyses. The Commission allows an applicant to make simplifying assumptions where appropriate. This allows the applicant to conduct a streamlined analysis for submission. The Commission believes that any burden affecting small entities will be minimal due to permission of these simplifying assumptions. Additionally, the FERC market-based rate regulations require that each corporate family have on file at least one MBR tariff of general applicability with all affiliates with market-based rate authority separately identified in the tariff. Small entities affiliated with a parent utility have the option to concur with its parent utility's tariff by adding its name to the parent utility's tariff or submit their own tariff. Thus, burden on the small entity is decreased.

The refinements to the market-based rate program adopted in RM14-14 will eliminate some requirements, streamline and clarify others, and add a few minimal requirements, resulting in a small net reduction of burden on entities of all sizes (public utilities seeking and currently possessing market-based rate authority). Examples of changes that will be helpful to small entities follow.

- By adopting a reporting threshold of a 100 MW cumulative increase in generation capacity for reporting changes in status regarding new affiliations, the Commission expects a reduction in the frequency of notice of change in status filings, which will necessarily reduce the burden on market-based rate sellers, including small entities.
- By discontinuing the quarterly land acquisition reporting requirement, the Commission is reducing the burden on all market-based rate sellers, including small entities.

- By making minimal changes to Appendices A and B and Submittal 2 (Table 2), the Commission expects an initial minimal increase in burden during initial implementation, but expects a decrease in burden in the future by clarifying data requirements and eliminating mathematical errors

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

Section 205 of the FPA mandates just and reasonable rates. The Commission requires information gleaned via FERC-919 under the specific circumstances discussed previously to meet these continuous statutory requirements. It is not possible to collect this data less frequently. If the Commission conducted the collection less frequently, the Commission would be unable to perform its mandated oversight and review responsibilities with respect to electric market-based rates being just and reasonable.

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 THE AGENCY'S RESPONSE TO THESE COMMENTS

For the FERC-919, both the proposed rule⁶ and final rule⁷ is published in the Federal Register thereby providing public utilities and licensees, state commissions, Federal agencies, and other interested parties an opportunity to submit data, views, comments or suggestions concerning the approved collection of data. The NOPR was published in the Federal Register on July 25, 2015.

The Commission received one comment regarding burden in the NOPR. The commenter noted that the Commission should acknowledge that requiring the use of electronic formats and new details in Appendix A (*i.e.* the pivotal supplier and market shared screens referred to here as indicative screens) will entail some additional burden on sellers filing the information, at least during the initial round of using such formats.

The Commission provided the following response. Commission regulations already require the submission of indicative screens, and the Final Rule adopts the NOPR

⁶ 79 FR 818
⁷ 80FR67056, 10/30/2015

proposal to require these screens in electronic format. The Commission views this as a *de minimis* decrease in burden for several reasons. While the new rows in the indicative screens may appear to require additional information to complete the screens (e.g., rows A1, B1, L1, M, U and V in the market share screen), the information entered in these new rows is simply disaggregated information that was previously required, but often erroneously aggregated into values in other rows. Requiring sellers to explicitly enter this information will reduce computation errors and subsequent phone calls from staff to correct problems in the screens. Also, these new screens are workable electronic spreadsheets with pre-programmed formulas in certain cells that compute intermediate and final cell values. Embedding these pre-programmed formulas into the worksheet will reduce the amount of time that sellers will spend creating and calculating the indicative screens, increase the accuracy of the values entered (e.g., sellers will now enter only positive values and no longer have to enter values surrounded by parentheses to indicate a negative value), and eliminate computation errors that sellers have frequently made in the past. Thus, the Commission considers the electronic format and the additional columns of information in the indicative screens to average out to be a *de minimis* decrease in burden for filers and project that the average burden on filers will not change from current regulations.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents in the FERC-919 requirements.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission does not consider the information collected in FERC-919 filings to be confidential. There is no confidentiality provision associated with the data requirements of FERC-919.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE

The Commission does not consider any of the questions to be sensitive or private.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The Commission estimates the Public Reporting burden (after implementation of the

Final Rule in RM14-14) for the FERC-919 information collection as follows:

FERC-919 (Final Rule in RM14-14-000)						
	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden & Cost Per Response⁸ (4)	Total Annual Burden Hours & Total Annual Cost (3)*(4)=(5)	Cost per Respondent (\$) (5)÷(1)
New Applications for Market-Based Rates (18 CFR 35.37)	213	1	213	250 hrs.; \$21,268	53,250 hrs.; \$4,529,998	\$21,268
Triennial Market Power Analysis in Category 2 Seller Updates (18 CFR 35.37)	83	1	83	250 hrs.; \$21,268	20,750 hrs.; \$1,765,203	\$21,268

⁸ The Commission estimates this figure based on the Bureau of Labor Statistics data (for the Utilities sector, at http://www.bls.gov/oes/current/naics2_22.htm, plus benefits information at <http://www.bls.gov/news.release/ecec.nr0.htm>). The salaries (plus benefits) for the three occupational categories are:

- Economist: \$67.57/hour
- Electric Engineer: \$59.62/hour
- Lawyer: \$128.02/hour

$$(\$67.57 + \$59.62 + \$128.02) \div 3 = \$85.07$$

Quarterly Land Acquisition Reports [18 CFR 35.42(d)] ⁹	0	0	0	0 hrs.; \$0	0 hrs.; \$0	\$0
Change in Status Reports [18 CFR 35.42(a)], With Screens	27	1	27	250 hrs.; \$21,268	6,750 hrs.; \$574,222	\$21,268
Change in Status reports [18 CFR 35.42(a)], No Screens	186	1	186	20 hrs.; \$1,701	3,720 hrs.; \$316,460	\$1,701
TOTAL			509		84,470 hrs.; \$7,185,883	

After implementation of the proposed changes, the total estimated annual cost of burden to respondents is \$7,185,883. The Commission notes that the estimate of 250 hours per application is a conservative estimate and most likely overstates burden.

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no capital or start-up costs associated with this collection. All of the costs are associated with the burden hours and accounted for in Question #12.

14. ESTIMATE OF THE TOTAL ANNUAL COST TO FEDERAL GOVERNMENT

	Number of Employees (FTE)	Estimated Annual Federal Cost
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⁹ Paragraph (d) of 18 CFR 35.42 is being removed from the Commission's regulations per the Final Rule in Docket No. RM14-14-000.

Analysis and Processing of filings ¹⁰	20	\$2,989,780
PRA ¹¹ Administrative Cost		\$5,193
FERC Total		\$2,994,973

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 submitted 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 (not just in Docket No. RM14-14), and other changes to the collection.

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

As described above in #1, 2, and 5, in RM14-14, FERC is eliminating some filings (quarterly land acquisition reports) and requirements, clarifying others, and adding minimal requirements. The total burden estimate for all market-based rate sellers is estimated to be a small net reduction in burden hours from 85,444 to 84,470. This represents a reduction in total annual responses of 826 and in total annual burden for FERC-919 of 974 hours.¹²

A comparison of the current OMB-approved inventory with the changes enacted in RM14-14 follows.

¹⁰ Based upon 2015 FTE average salary plus benefits (\$149,489)

¹¹ Paperwork Reduction Act of 1995 (PRA)

¹² The decrease in responses and hours is due to eliminating the quarterly land acquisition reports which had a high total no. of responses but a burden of only 4 hrs. per response. The burden of that part of the FERC-919 is much smaller per response than the other components of the FERC-919, as seen in the table in Question 12. The burden per response for the other components is either 250 hrs. (rows on new applications, triennial market power analysis, and change in status reports with screens) or 20 hrs. (row on change in status reports without screens). [The last OMB-approved FERC-919 supporting statement (ICR 201312-1902-001) shows the land acquisition reports only comprising 3,208 hrs. out of the total 85,444 hrs. (or 3.75% of the FERC-919 burden hrs.) and 802 out of the total 1,335 responses (or 60.1% of the no. of responses).] In summary, the reporting requirements being removed by the Final Rule in RM14-14 had a high number of responses and very low no. of hours per response (and total hours), out of the overall FERC-919.

FERC-919	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	509	1,335	-826	0
Annual Time Burden (Hr)	84,470	85,444	-974	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 OMB expiration dates are posted on <http://www.ferc.gov/docs-filing/info-collections.asp>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.