

46	Subtract line 45 from line 44. This is the combined assets of the association and Bank.....	46	\$ <u>2,279,200</u>
47	Enter the Adjusted association liabilities from line 16.....	47	\$ <u>999,900</u>
48	Enter the Adjusted Bank liabilities from line 41	48	\$ <u>1,999,000</u>
49	Add line 47 and line 48.....	49	\$ <u>2,998,900</u>
50	Enter ADB of inter-company eliminations (e.g. direct loan).....	50	\$ <u>1,000,000</u>
51	Subtract line 50 from line 49. This is the combined liabilities of the association and Bank.....	51	\$ <u>1,998,900</u>
52	Subtract line 51 from line 46. This is the combined Total Capital of the association and Bank.....	52	\$ <u>280,300</u>
53	Multiply the combined assets on line 46 by 6% (.06).....	53	\$ <u>136,752</u>
54	Subtract line 53 from line 52. This is the combined Final Exit Fee for the association and Bank.....	54	\$ <u>143,548</u>
55	Enter the Final Exit Fee of the association from line 19	55	\$ <u>108,360</u>
56	Subtract Line 55 from line 54. This is the Final Exit Fee of the Bank	56	\$ <u>35,188</u>

Notes to the Worksheet

All the references are to paragraphs of proposed § 611.1255.

Line 1. Paragraphs (a)(1), (a)(2), and (a)(3). Assume for this calculation that you have not paid or accrued the amounts described in lines 4–7.

Line 2. Paragraph (a)(4)(i). This item includes only the expenses incurred in the 12 months before termination.

Line 3. Paragraph (a)(4)(i).

Line 4. Paragraph (a)(4)(ii)(A).

Line 5. Paragraph (a)(4)(ii)(B).

Lines 6 and 7. Paragraph (a)(4)(ii)(C).

Lines 8 and 9. Paragraph (a)(4)(ii).

Lines 10 and 11. Paragraph (a)(4)(iv). This is an adjustment to assets we may require. In this example, we are requiring the terminating association to add back to its assets the termination expenses it paid or accrued more than 12 months before termination.

Line 12. Paragraphs (a)(1) and (a)(3). Assume for this calculation that you have not paid or accrued the amounts described in lines 4–7.

Lines 13 and 14. Paragraph (a)(4)(iii).

Lines 15 and 16. Paragraph (a)(4)(iv). This is an adjustment to liabilities we may require. In this example, we are not requiring the terminating association to make adjustments to its liabilities.

Line 17. Paragraph (a)(5).

Lines 18 and 19. Paragraph (a)(6)—association terminating alone, or (b)(1)—association terminating with its affiliated bank. The exit fee calculation ends here for an association terminating without its affiliated bank.

Line 20. Paragraphs (b)(2), (b)(3), and (b)(4). Assume for this calculation that you have not paid or accrued the amounts described in lines 27–30. We note that proposed paragraph (b)(4) incorrectly refers to “assets and total capital.” It should say “assets and liabilities.”

Line 21. Paragraph (b)(5)(i)(A).

Line 22. paragraph (b)(5)(i)(B).

Lines 23 and 24. Paragraph (b)(5)(i).

Line 25. Paragraph (b)(5)(ii).

Line 26. Paragraph (b)(5)(iii)(A).

Line 27. Paragraph (b)(5)(iii)(B).

Line 28. Paragraph (b)(5)(iii)(C).

Lines 29 and 30. Paragraph (b)(5)(iii)(D). In this example, we assume there are no dissenting stockholders.

Lines 31 and 32. Paragraph (b)(5)(iii).

Lines 33 and 34. Paragraph (b)(5)(v). This is an adjustment to assets we may require. In this example, we are requiring the terminating bank to add back to its assets the termination expenses it paid or accrued more than 12 months before termination.

Line 35. Paragraphs (b)(2), (b)(3), and (b)(4). We note that proposed paragraph (b)(4) incorrectly refers to “assets and total capital.” It should say “assets and liabilities.”

Line 36. Paragraph (b)(5)(ii).

Line 37. Paragraph (b)(5)(iv).

Lines 38 and 39. Paragraphs (b)(5)(ii) and (b)(5)(iv).

Lines 40 and 41. Paragraph (b)(5)(v). This is an adjustment to liabilities we may require. In this example, we are not requiring the terminating bank to make adjustments to its liabilities.

Lines 42–51. Paragraph (b)(6). These lines show how to combine the balance sheets of the terminating bank and terminating association.

Line 52. Paragraph (b)(7).

Lines 53–55. Paragraph (b)(8).

Line 56. Paragraph (b)(9).

Dated: January 27, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–2333 Filed 2–2–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 382

[Docket No. RM00–7–000]

Revision of Annual Charges Assessed to Public Utilities

January 28, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to establish a new methodology for the assessment of annual charges to public utilities. The Commission proposes that annual charges would be assessed to public utilities based on the volume of electricity transmitted by the public utilities.

DATES: Comments on the proposed rulemaking are due on or before April 3, 2000..

ADDRESSES: File comments on the notice of proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM00–7–000

FOR FURTHER INFORMATION CONTACT:

Herman Dalgetty (Technical Information), Chief, Accounts Receivable and Assessment Branch, Office of Finance, Accounting and Operations, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2918

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SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://ferc.fed.us>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

- CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.
- CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on IPS in ASCII and WordPerfect 8.0 format for viewing, printing and/or downloading.
- RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS and the Website during normal business hours from our Help Line at (202) 208-2222 (E-mail to WebMaster@ferc.fed.us) or the Public Reference Room at (202) 208-1371 (E-mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS and the FERC Website are available. User assistance is also available.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to establish a new methodology for the assessment of annual charges to public utilities. The Commission proposes that annual charges would be assessed to public

utilities based on the volume of electricity transmitted by the public utilities.¹

II. Background

A. Commission Authority

The Commission is required by section 3401 of the Omnibus Budget Reconciliation Act of 1986 (Budget Act)² to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred * * * in that fiscal year."³ The annual charges must be computed based on methods which the Commission determines to be "fair and equitable."⁴ The Conference Report accompanying the Budget Act provides the Commission with the following guidance as to this phrase's meaning:

[A]nnual charges assessed during a fiscal year on any person may be reasonably based on the following factors: (1) The type of Commission regulation which applies to such person such as a gas pipeline or electric utility regulation; (2) the total direct and indirect costs of that type of Commission regulation incurred during such year;⁵ (3) the amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and (4) the total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.⁶

The Commission may assess these charges by making estimates based upon data available to it at the time of the assessment.⁷

The annual charges do not enable the Commission to collect amounts in excess of its expenses, but merely serve as a vehicle to reimburse the United

¹ On August 12, 1998, the Commission received a petition for rulemaking from Automated Power Exchange, Citizens Power, Coral Power, L.L.C., Electric Clearinghouse, Inc., Enron Power Marketing, Inc., Koch Energy Trading, Inc., NP Energy Inc., Sonat Power Marketing, L.P., and Williams Energy Services in Docket No. RM98-14-000. The parties petitioned the Commission to initiate a rulemaking to modify its methodology for assessing annual charges. The Commission notes that the instant rulemaking on annual charges moots the petition. Therefore, the Commission plans to terminate Docket No. RM98-14-000 in the final rule. Petitioners are free to file timely comments in response to the instant rulemaking and we will address them in the final rule.

² 42 U.S.C. 7178.

³ This authority is in addition to that granted to the Commission in sections 10(e) and 30(e) of the Federal Power Act (FPA). 16 U.S.C. 803(e), 823a(e).

⁴ 42 U.S.C. 7178(b).

⁵ The Commission is required to collect not only all its direct costs but also all its indirect expenses such as hearing costs and indirect personnel costs. See H.R. Conf. Rep. No. 99-1012 at 238 (1986), reprinted in 1986 U.S.C.C.A.N. 3868, 3883 (Conference Report); see also, S. Rep. No. 99-348 at 56, 66 and 68 (1986).

⁶ See Conference Report at 238.

⁷ 42 U.S.C. 7178(c).

States Treasury for the Commission's expenses.⁸

B. Current Annual Charge Billing Procedure

As required by the Budget Act, the Commission's regulations provide for the payment of annual charges by public utilities.⁹ The Commission intends that these electric annual charges in any fiscal year will recover the Commission's estimated electric regulatory program costs (other than the costs of regulating Federal Power Marketing Agencies and electric regulatory program costs recovered through electric filing fees) for that fiscal year. In the next fiscal year, the Commission adjusts its annual charges up or down, as appropriate, both to eliminate any over-or under-recovery of the Commission's actual costs and to eliminate any over-or under-charging of any particular person.¹⁰

In calculating annual charges, the Commission first determines the total costs of its electric regulatory program and subtracts all Federal Power Marketing Agency-related and electric filing fee collections to determine total collectible electric regulatory program costs. It then uses the data submitted under FERC Reporting Requirement No. 582 (FERC-582) to determine the total volumes of long-term firm sales and transmission, and short-term sales and transmission and exchanges for all assessable public utilities. The Commission divides those transaction volumes into its collectible electric regulatory program costs to determine the unit charge per megawatt-hour for each category of long-term and short-term transactions. Finally, the

⁸ *Id.* at 7178(f). Congress approves the Commission's budget through annual and supplemental appropriations.

⁹ 18 CFR Part 382; see Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, Order No. 472, 52 FR 21263 and 24153 (June 5 and 29, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,746 (1987), *clarified*, Order No. 472-A, 52 FR 23650 (June 24, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,750, *order on reh'g*, Order No. 472-B, 52 FR 36013 (Sept. 25, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,767 (1987), *order on reh'g*, Order No. 472-C, 53 FR 1728 (Jan. 22, 1988), 42 FERC ¶ 61,013 (1988).

¹⁰ 18 CFR 382.201; see Order No. 472, 52 FR 21263 and 24153, FERC Stats. & Regs., Regulations Preambles 1986-1990 at 30,612-18; *accord* Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, Order No. 507, 53 FR 46445 (Nov. 17, 1985), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,839 at 31,263-64 (1988); Texas Utilities Electric Company, 45 FERC ¶ 61,007 at 61,027 (1988) (*Texas Utilities*).

Commission multiplies the transaction volume in each category for each public utility by the relevant unit charge per megawatt-hour to determine the annual charges for all assessable public utilities.¹¹

Public utilities subject to these annual charges must submit FERC-582 to the Office of the Secretary by April 30 of each year.¹² The Commission issues bills for annual charges, and public utilities then must pay the charges within 45 days of the date on which the Commission issues the bills.¹³

C. Reasons for This Rule

Since the issuance of Order No. 472, the industry has undergone sweeping changes, including: The Commission's establishment of open access transmission as a foundation for competitive wholesale power markets;¹⁴ a movement by many states to develop retail competition; the growing divestiture of generation assets by traditional public utilities; the entry of new market participants in the industry in the form of independent and affiliated power marketers and stand-alone merchant plant generators; and the establishment of Independent System Operators (ISOs), the expected establishment of transmission companies (transcos), and the establishment of power exchanges as managers of transmission systems and power markets, respectively.

As the landscape of the industry has changed and continues to change, the nature of the work of the Commission likewise has changed. The purpose of this rule is to change the way in which the Commission assesses annual charges to recover its electric regulatory program costs to reflect these changes, by assessing annual charges to public utilities based on the volumes of electric energy transmitted.

III. Discussion

In Order No. 472, to implement the Budget Act, the Commission formulated an annual charge billing procedure. To

¹¹ 18 CFR 382.201; see Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Phibro Inc.), 81 FERC ¶ 61,308 at 62,424-25 (1997).

¹² 18 CFR 382.201(b)(4).

¹³ See *Texas Utilities*, 45 FERC at 61,026.

¹⁴ See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. § 31,036 (1996) (Order No. 888), *order on reh'g*, Order No. 888-A, 62 FR 12274 (March 14, 1997), FERC Stats. & Regs. § 31,048 (1997), *order on reh'g*, Order No. 888-B, 62 FR 64688 (March 14, 1997), 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *appeal docketed*, Transmission Access Policy Study Group, *et al. v. FERC*, No. 97-1715 *et al.* (D.C. Cir.).

do this, the Commission had to determine: (1) The types of companies which the Commission should bill; (2) how to estimate and then allocate the Commission's costs among its different regulatory programs; and (3) how to allocate each program's costs among the companies under each program. After the annual charge billing procedure was formulated, the Commission then had to determine (1) how to adjust the annual charges at the end of a fiscal year "to eliminate any over-recovery or under-recovery of [the Commission's] total costs, and any overcharging or undercharging of any person" pursuant to section 3401(e) of the Budget Act; and (2) the standards for waiving all or part of an annual charge pursuant to section 3401(g) of the Budget Act.

We note at the outset that this proposed rule is only for the determination of annual charges to recover the costs of the Commission's electric regulatory program.

Therefore, how to apportion the costs among the Commission's different regulatory programs is not before the Commission.

Below, we will discuss the types of companies to be billed, the proposed apportionment of our electric regulatory program costs among such companies, and other matters related to the proposed changes to the Commission's regulation on annual charges.

A. The Types of Companies To Be Billed

The Commission's electric regulatory program includes administering the provisions of Parts II and III of the Federal Power Act (FPA)¹⁵ as they apply to the activities of public utilities (traditionally, principally investor-owned utilities);¹⁶ discharging its responsibilities under various statutes involving the Federal Power Marketing Agencies (PMAs); and implementing various provisions of the Public Utility Regulatory Policies Act of 1987 (PURPA)¹⁷ involving qualifying cogenerators and small power producers (QFs).

1. Public Utilities

Pursuant to section 205 of the FPA,¹⁸ the Commission regulates the rates, terms and conditions of service of public utilities making sales for resale or transmitting electric energy in interstate commerce. All jurisdictional rates,

¹⁵ 16 U.S.C. 824-825r.

¹⁶ Under sections 211, 212 and 213 of the FPA, 16 U.S.C. 824j-l, the Commission also has authority over transmitting utilities that are not public utilities. Compare 16 U.S.C. 796(23) with 16 U.S.C. 824(b), (e).

¹⁷ 16 U.S.C. 2601-2645.

¹⁸ 16 U.S.C. 824d(a).

terms and conditions must be on file with the Commission, and may be approved by the Commission only if they are just and reasonable and not unduly discriminatory or preferential. Under section 206 of the FPA,¹⁹ the Commission may change any rates, terms or conditions that it finds to be unjust, unreasonable, or unduly discriminatory or preferential.

The Commission also regulates certain accounting and corporate activities of public utilities pursuant to the FPA. Examples include the following: Under section 203,²⁰ the Commission reviews applications filed by public utilities seeking to merge or to dispose of jurisdictional facilities. Pursuant to section 204,²¹ the Commission reviews the proposed securities issuances of public utilities whose securities issuances are not regulated by a state commission within the meaning of section 204(f). Under sections 301 and 302,²² the Commission has authority over a public utility's accounting and its depreciation.

2. PMA's

The Commission reviews the rates established by the Department of Energy for the federally-owned PMAs (Bonneville Power Administration (BPA), Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Power Administration). While regulation of public utility rates is guided by the FPA, regulation of the PMAs' rates is subject to the standards enumerated in a number of other statutes.²³ Essentially, the statutes require that the rates established by the PMAs must be devised with regard for the recovery of the cost of generation and transmission of electric energy, the encouragement of the most widespread use of the power, the provision of the lowest possible rates to customers consistent with sound business principles, and the protection of the interests of the United States in amortizing its investment in the projects within a reasonable period of time. The Commission is also authorized,

¹⁹ 16 U.S.C. 824e.

²⁰ 16 U.S.C. 824b.

²¹ 16 U.S.C. 824c.

²² 16 U.S.C. 825, 825a.

²³ Flood Control Act of 1944, 16 U.S.C. 825s; Federal Columbia River Transmission System Act, 16 U.S.C. 838g; Pacific Northwest Power Preference Act, 16 U.S.C. 837; Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839; the Bonneville Project Act, 16 U.S.C. 832f (Northwest Power Act); and the Reclamation Act of 1939, 43 U.S.C. 485h; the Department of Energy Organization Act, 42 U.S.C. 7101; see also DOE Delegation Order No. 0204-108, 48 FR 55664 (Dec. 14, 1983); 18 CFR Parts 300 and 301.

pursuant to the Northwest Power Act, to review the Average System Cost methodology used to determine rates for exchange sales by utilities to BPA.

3. QF's

Section 210 of PURPA²⁴ requires the Commission to prescribe rules to encourage cogeneration and small power production of electricity. In particular, the section directs the Commission to adopt rules requiring utilities to purchase power from and sell power to qualifying cogeneration and small power production facilities. The Commission reviews applications filed by cogenerators and small power producers requesting QF certification, and either grants or rejects such applications based on criteria set forth in the Commission's regulations.²⁵

4. Discussion

The Commission proposes to assess annual charges to public utilities involved in the transmission of electric energy in interstate commerce. The Commission will continue unchanged its existing policy with regard to its assessment of annual charges to PMAs.²⁶

The Commission also will continue to excuse qualifying cogenerators and small power producers from annual charges. For the most part, these entities do not provide interstate transmission of electric energy. The Commission believes that any amounts which might be assessed as annual charges to the few entities that may provide such transmission do not justify the risk of discouraging the fullest development of cogeneration and small power production by such entities. Therefore, the Commission will continue to not assess annual charges to these entities.²⁷

The Commission proposes to continue its existing policy that municipals and rural electric cooperative utility systems that are financed by the Rural Utilities Service will not be required to pay annual charges. While these entities may be transmitting utilities subject to our authority under sections 211, 212 and 213 of the FPA, they are not public utilities under the FPA.²⁸

The Commission proposes to continue its practice of not assessing annual charges to utilities operating in Alaska or Hawaii because they are not public utilities under the FPA, because they do not make wholesale sales or transmit electric energy in interstate commerce.

Lastly, the Commission proposes to not assess annual charges to foreign electric utilities to the extent that their transactions are in foreign commerce or wholly within another country.²⁹

B. Proposed Apportionment

The Commission is proposing to change the way in which it apportions annual charges among the entities it regulates. As previously stated, the Commission first determines the total costs of its electric regulatory program and subtracts all Federal Power Marketing Agency-related costs and electric filing fee collections to determine the total collectible electric regulatory program costs. It then uses the data submitted under FERC-582 to determine the total volumes of long-term firm sales and transmission, and short-term sales and transmission³⁰ and exchanges for all assessable public utilities. The Commission divides those transaction volumes into its collectible electric regulatory program costs to determine the unit charge per megawatt-hour for each category of transactions. Finally, the Commission multiplies the transaction volume in each category for each public utility by the relevant unit charge per megawatt-hour to determine the annual charges for each assessable public utility.³¹

The Commission established two separate categories because:

Rates for long-term coordination and transmission sales usually require greater use of Commission resources than those for sales which have a duration of less than five years. Long-term sales contracts tend to be based upon fully distributed costs and require cost projections (test year data) which must be reasonable. Rates for short-term coordination or transmission sales, on the other hand, are not necessarily exclusively cost-based, but may be made for many non-cost reasons as well.³²

This methodology for assessing annual charges worked well for the

industry structure that existed at the time the rule was issued. However, because there has been such dramatic changes in the industry, this classification no longer serves its purpose.

With open-access transmission, functional unbundling and the rapid movement to market-based power sales rates brought about by, *inter alia*, Commission Order No. 888,³³ state retail unbundling efforts, and the recently issued Order No. 2000,³⁴ the time and effort of our electric regulatory program is now increasingly devoted to assuring open and equal access to public utilities' transmission systems. In contrast, the time and effort of our electric regulatory program that had been devoted to reviewing cost-based power sales rates has been decreasing, and with open access transmission, power sales rates are now increasingly being disciplined by competitive market forces and less by the Commission directly. As a consequence, we believe it appropriate to assess our electric regulatory program costs solely on the MWh of electric energy transmitted in interstate commerce by public utilities,³⁵ rather than, as in the past, on both jurisdictional power sales and transmission volumes. We further note that, as described below, sellers of electric energy typically must use public utility transmission systems to transmit their electric energy and therefore will, in fact, pay annual charges, albeit indirectly.

The Commission believes that this approach of directly charging only those public utilities that provide interstate transmission service is both fair and equitable because, in turn, all parties involved in the generation and sale of electric energy rely on the transmission system to move their product. Thus, the Commission believes that power sellers will, in fact, be contributing to the Commission's recovery of its electric regulatory program costs in that they will be using the transmission system and, in the cost-based rates that they will pay for transmission service, will pay, albeit indirectly, a fair and equitable share of the Commission's costs.

C. Conclusion

Specifically, therefore, the Commission is proposing to assess annual charges to public utilities based on their transmission of electric energy

²⁴ 16 U.S.C. 824a-3(a).

²⁵ 18 CFR Part 292.

²⁶ See 18 CFR 382.201(c).

²⁷ 18 CFR 382.102(b); see Order No. 472, FERC Stats. & Regs., Regulations Preambles 1986-1990 at 30,637.

²⁸ 18 CFR 382.102(b); see 16 U.S.C. 284; South Carolina Public Service Authority, 75 FERC 61,209 at 61,696 (1996); Dairyland Power Corporation, 37 FPC 12, 15 (1967); *accord*, Salt River Project Agricultural Improvement and Power District v. FPC, 391 F.2d 470, 474 (D.C. Cir.), *cert. denied*, 393 U.S. 857 (1968).

²⁹ *E.g.*, British Columbia Power Exchange Corporation, 80 FERC 61,343 at 62,137, 62,141 (1997) (sales in foreign commerce or within another country are excluded from annual charges calculations).

³⁰ Long-term firm sales and transmission activities and short-term sales and transmission activities are defined in 18 CFR 382.102.

³¹ The Commission also carries over any over-or under-charge from the prior year as a credit or debit on the current year's annual charge bill.

³² Order 472-B at 30,830.

³³ See *supra* note 14.

³⁴ Regional Transmission Organizations, Order No. 2000, 65 FR 810 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999).

³⁵ This approach is essentially the same as how annual charges are assessed against gas pipelines.

in interstate commerce, as measured by: (1) unbundled wholesale transmission, (2) unbundled retail transmission,³⁶ and (3) bundled wholesale power sales which, by definition, include a transmission component, where the transmission component is not separately reported as unbundled transmission.³⁷

As to ISOs, and potential Regional Transmission Organizations (RTOs), that have members that retain ownership of transmission facilities, the Commission is concerned that the assessment of annual charges to them could result in a "double counting" of transactions "by counting a single transaction both to the transmission-owning public utility and to the ISO or RTO public utility. We believe that there are at least two ways to address this issue, and are inviting comments on these and any other solutions to this problem. One way would be not to charge the ISO or RTO itself, but instead charge each transmission-owning public utility based on the MWh of transmission service provided on their lines. The transmission-owning public utility would include the annual charges, as a cost element, in its revenue requirement, which, in turn, is recovered by the ISO or RTO through the ISO's or RTO's open access transmission tariff rates. Another way would be to allow the ISO or RTO to act as an agent for all of the individual transmission owners and have the ISO or RTO pay the annual charges rather than the individual transmission owners. Either of these approaches may be acceptable. The Commission is soliciting comments on these approaches, as well as any other approach that will allow the Commission to collect annual charges on these MWh of transmission service, in the most administratively efficient manner.

³⁶ The Commission is proposing that annual charges will be assessed based on all interstate transmission by public utilities, with no distinction made between so-called unbundled retail and unbundled wholesale transmission. This transmission would include MWh received in wheeling transactions and the MWh delivered in exchange transactions.

³⁷ If the bundled wholesale power sale involves only the use of non-affiliated, third-party transmission systems, the transmission component would be picked up through the non-affiliated, third-party transmission providers' reporting of the MWhs of transmission service they provided. Similarly, if the bundled wholesale power sale involves the use of the power seller's or its affiliate's transmission system, the transmission component may be separately reported as unbundled transmission. If, however, neither of these were the case, the MWhs would need to be reported as a bundled wholesale power sale.

D. Other Matters

1. Reporting Requirements

The Commission is proposing a change in its reporting requirements for annual charges. Currently, a public utility has to submit the total long-term firm sales for resale and transmission megawatt-hours and the total short-term sales, transmission, and exchange megawatt-hours. With the elimination of the distinction between long-term and short-term transactions, such distinctions in the reporting requirement are likewise no longer needed. The Commission proposes, therefore, that public utilities will report only total volumes of electric energy transmitted in interstate commerce (as defined above to include all unbundled transmission and all bundled wholesale power sales), in MWh, by April 30th of each year.

Finally, we note that any corrections to FERC-582 will need to be made by the end of the calendar year in which the FERC-582 was filed.

2. Standards for Waiving All or Part of an Annual Charge

The Commission is not proposing to change the standards applicable for waiving all or part of an annual charge. Thus, the Commission is proposing to continue to apply to annual charges the stringent standards for waiver currently applicable to filing fees, with a filing period for waiver petitions of 15 days after the issuance of the annual charges bill.

3. Effective Date

We anticipate that we will begin assessing annual charges under this new methodology starting with bills to be paid in calendar year 2002, based on data reported on FERC-582 in calendar year 2002 (for transactions that occurred in calendar year 2001, the first full year after adoption of changes in the regulation).³⁸

Likewise we anticipate that we will make the change discussed above with respect to corrections to FERC-582 effective beginning with the data reported in FERC-582 in calendar year 2002 (for transactions that occurred in calendar year 2001); thus such corrections will need to be submitted on or before December 31, 2002.

IV. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an

³⁸ Our existing regulations will remain effective until these changes become effective.

environmental assessment or an environmental impact statement.³⁹ The promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations amended raises no environmental considerations.⁴⁰ This proposed rule amends Part 382 of the Commission's regulations to establish a new methodology for the assessment of annual charges to public utilities and does not substantially change the effect of the underlying legislation or the regulations being revised. Accordingly, no environmental consideration is necessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elec. Coop. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.* at 342.

Overall, the Commission does not believe that this rule will have a significant direct impact on small entities. Specifically, most, if not all, public utilities that would be assessed annual charges under this rule do not fall within the RFA's definition of a small entity because most public utilities subject to this rule are too large to be considered "small entities."⁴¹ Therefore, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

VI. Public Reporting Burden and Information Collection Statement

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995. FERC identifies the information provided under Part 382 as FERC-582.

Comments are solicited on the Commission's need for this information, whether the information will have

³⁹ 18 CFR 380.4.

⁴⁰ 18 CFR 380.4(a)(2)(iii).

⁴¹ 5 U.S.C. 601(6).

practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and

any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

The burden estimate for complying with this proposed rule is as follows:
Public Reporting Burden: Estimated Annual Burden:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FER-582	242	1	4	968

Total Annual Hours for Collection (reporting + recordkeeping, (if appropriate)) = 968.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be: Annualized Capital/Startup Costs – Annualized Costs (Operations & Maintenance) – \$51,911 (968 hours ÷ 2080 hours per year × \$111,545 = \$51,911). The cost per respondent is equal to \$215.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.⁴² Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC-582, Electric Fees and Annual Charges.

Action: Proposed Data Collection.
OMB Control No.: 1902-0132.

The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: On occasion.

Necessity of Information: The proposed rule revises the requirements contained in 18 CFR Part 382 to revise the method for determining the assessment of annual charges.

The Commission is seeking to make its assessments for annual charges compatible with the current regulatory environment and the creation of competitive wholesale markets. The Commission has the authority under the Omnibus Budget Reconciliation of 1986 (42 U.S.C. 7178) to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred * * * in that fiscal year." The Act gives the Commission the flexibility to arrive at a reasonable approximation of its program costs. The costs are determined by a summation of all electric regulatory program costs and then subtracting all electric regulatory program filing fee collections in order to

determine the total collectible costs for the electric regulatory program. Information submitted under FERC-582 is the basis for the calculation of annual charges, and presently includes total volumes of long-term firm sales and transmission and short-term sales and transmission plus exchanges for all public utilities, including power marketers. The proposed rule changes the basis for the calculation of annual charges to the total volumes of electricity transmitted by public utilities.

Internal Review: The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Finance, Accounting and Operations will use the data submitted under FERC-582 in order to serve as a billing determinant to recover costs for administering its electric regulatory program, including administering the provisions of Parts II and III of the Federal Power Act and the provisions of the Public Utility Regulatory Policies Act of 1987.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Capital Planning and Policy Group, Phone: (202) 208-1415, Fax: (202) 208-2425, E-Mail: mike.miller@ferc.fed.us].

For submitting comments concerning the collection of information(s) and associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, Phone: (202) 395-3087, Fax: (202) 395-7285].

VII. Public Comment Procedures

Prior to taking final action on this proposed rulemaking, we are inviting interested persons to submit written comments on the changes to the regulations proposed in this notice to be

adopted. All comments in response to this notice should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should refer to Docket No. RM00-7-000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before April 3, 2000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments maybe filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM00-7-000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM00-7-000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comments to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at: 202-501-8145, E-Mail address: brooks.carter@ferc.fed.us.

Commenters should take notice that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington, D.C. 20426, during regular business hours.

⁴² 5 CFR 1320.11.

Additionally, comments may be viewed, printed or downloaded remotely via the Internet through FERC's Homepage, using the RIMS or CIPS link. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202-208-2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects in 18 CFR Part 382

Annual charges.

By direction of the Commission, Commissioner Bailey did not participate in this decision.

David P. Boergers,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 382, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below.

PART 382—ANNUAL CHARGES

1. The authority citation for Part 382 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

§ 382.102 [Amended]

2. In section 382.102 paragraphs (h), (i), (j) and (k) are removed and paragraphs (l), (m), (n), (o) and (p) are redesignated as (h), (i), (j), (k) and (l), respectively.

3. Section 382.201 is revised to read as follows:

§ 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.

(a) *Determination of costs to be assessed to public utilities.* The adjusted costs of administration of the electric regulatory program, excluding the costs of regulating the Power Marketing Agencies, will be assessed to public utilities.

(b) *Determination of annual charges to be assessed to public utilities.* The costs determined under paragraph (a) of this section will be assessed as annual charges to each public utility based on the proportion of the megawatt-hours of transmission of electric energy in interstate commerce of each public utility in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the public utility to be charged) to the sum of the megawatt-hours of transmission of electric energy in interstate commerce in the immediately preceding reporting year of all public utilities being assessed annual charges.

(c) *Reporting requirement.* (1) For purposes of computing annual charges,

as of January 1, 2002, a public utility, as defined in § 382.102(b), must submit under oath to the Office of the Secretary by April 30 of each year an original and conformed copies of the following information (designated as FERC Reporting Requirement No. 582 (FERC-582)): the total megawatt-hours of transmission of electric energy in interstate commerce, which for purposes of computing the annual charges and for purposes of this reporting requirement, will be measured by the sum of the megawatt-hours of all unbundled transmission (including MWh received in wheeling transactions and MWh delivered in exchange transactions) and the megawatt-hours of all bundled wholesale power sales (to the extent the megawatt-hours were not separately reported as unbundled transmission). This information should be reported to 3 decimal places; e.g., 3,105 KWh will be reported as 3.105 MWh.

(2) Corrections to the information reported on FERC-582, as of January 1, 2002, must be submitted under oath to the Office of the Secretary on or before the end of each calendar year in which the information was originally reported (i.e., on or before the last day of the year that the Commission is open to accept such filings, e.g., on or before December 31, 2002, etc.)

(d) *Determination of annual charges to be assessed to power marketing agencies.* The adjusted costs of administration of the electric regulatory program as it applies to Power Marketing Agencies will be assessed against each power marketing agency based on the proportion of the megawatt-hours of sales of each power marketing agency in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the power marketing agency to be charged) to the sum of the megawatt-hours of sales in the immediately preceding reporting year of all power marketing agencies being assessed annual charges.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095-AA94

Elimination of Requirement to Rewind Computer Tapes

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA proposes to revise its regulations to eliminate the requirement that Federal agencies rewind under controlled tension all computer tapes containing unscheduled or permanent records every 3½ years. This change would affect Federal agencies that store unscheduled or permanent records on computer open-reel tapes or tape cartridges.

DATES: Comments must be received on or before April 3, 2000.

ADDRESSES: Send comments to Regulation Comment Desk, NPLN, Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740-6001. You may also fax comments to (301) 713-7270.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at (301) 713-7360.

SUPPLEMENTARY INFORMATION: This proposed rule eliminates the requirement for Federal agencies to rewind under controlled tension all tapes containing unscheduled or permanent electronic records every 3½ years which is contained in 36 CFR 1234.30(g)(3). This requirement was imposed to address the maintenance and storage of open-reel computer tapes. After tape cartridges became commonplace, computer centers generally did not periodically rewind cartridges. A study conducted by NIST in 1991 concluded that periodic retensioning of computer tape cartridges is unnecessary. In addition, recent electrical engineering studies have questioned whether open-reel tapes should be periodically rewound. Another 1991 NIST study found that the process of rewinding tapes may actually harm them, and would outweigh the benefits associated with storing tapes rewound under controlled tension.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because it applies to Federal agencies.