

FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: This AD applies to any aircraft with the equipment installed as identified in paragraph (a) of this AD, regardless of whether the aircraft has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4134; facsimile: (316) 946-4407, e-mail: roger.souter@faa.gov.

(g) *What if I need to fly the aircraft to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your aircraft to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from GARMIN International, 1200 East 151st Street, Olathe, Kansas 66062. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 23, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 35, and 37

[Docket No. RM01-8-000]

Revised Public Utility Filing Requirements

July 26, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission)

recognizes that the filing of individual service agreements and paper copies of quarterly market-based sales of electric energy is no longer the most effective means of meeting the requirements of the Federal Power Act (FPA). Instead, this data must be collected and made publicly available in a manner which is both easily accessible and useful to the public. To this end, the Commission proposes that each public utility under the FPA (public utility) would no longer file: short-term or long-term service agreements for market-based sales of electric energy; service agreements for those generally applicable services, such as point-to-point transmission service, for which the public utility has a standard form of agreement under its tariff; and Quarterly Transaction Reports summarizing its short-term sales and purchases of power at market-based rates. In lieu of the above listed filings, each public utility would file electronically with the Commission and post on its website an Index of Customers that contains a summary of the contractual terms and conditions in its service agreements for all jurisdictional services (market-based power sales, cost-based power sales, and transmission service); and transaction information for its short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter. Under the proposals in this NOPR, to the extent a public utility wishes to avoid filing service agreements for generally applicable services such as cost-based power sales or interconnection agreements, it would revise its tariff to include standard forms of service agreements for those services. The NOPR also proposes to delete 18 CFR 2.8, concerning the simplification of public utility rate schedule filings, as no longer necessary.

These actions will provide the Commission with adequate information to fulfill the FPA section 205 requirement that rates for service are on file and available for public inspection, ensure that such rates are available in a standardized, user friendly format, and meet the Commission's electronic filing option obligation. These actions also will allow the public to better participate in and obtain the full benefits of wholesale electric power markets while minimizing the reporting burden on public utilities. By freeing the Commission and its staff from the administrative burden of processing the numerous, routine public utility service agreements currently filed with the Commission (when these agreements conform to standard forms of service

agreements), the Commission will be able to devote greater resources to the complex and important issues that arise in competitive markets.

While the actions proposed in this NOPR would improve the quality of information reported to the Commission by prescribing that public utilities report information in a consistent, accessible format, the NOPR is not intended as a comprehensive review of the Commission's market monitoring efforts. We intend to address those concerns in a separate proceeding.

DATES: Comments are due on or before October 5, 2001.

ADDRESSES: File written comments on the proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Comments should reference Docket No. RM01-8-000. Comments may be filed electronically or by paper (an original and 16 copies, with an accompanying computer diskette in the prescribed format requested).

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Curt Hébert, Jr., Chairman; William L. Massey, Linda Breathitt, Pat Wood, III and Nora Mead Brownell.

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I. Introduction

Despite dramatic changes that have occurred in the electric power industry since 1995, and a resulting increase in the number of rate filings made to the Commission, the Commission has not revised its long-standing filing requirements for public utilities to keep pace with these industry changes. Public utilities generally continue to satisfy the requirement to file with the Commission all contracts that affect their rates, as required by section 205 of the Federal Power Act, 16 U.S.C. 824d (FPA), by filing individual, bilateral, or multilateral agreements with the Commission prior to the commencement of service. Although many of these filings are routine, it has been necessary for the Commission to process each of these filings on an individual basis, due to the variation that exists from agreement to agreement.

In this notice of proposed rulemaking (NOPR), the Commission proposes revisions to its filing requirements under 18 CFR part 35 to keep pace with the significant changes that are occurring in the electric industry. The NOPR's aim is to ensure that adequate information about public utility service agreements and rates being charged are on file and publicly available while allowing public utilities to better respond to a rapidly changing marketplace in a timely manner and provide customers in a dynamic marketplace with needed services. The proposals in this NOPR would free the Commission and its staff from the administrative burden of processing the numerous, routine public utility service agreements currently filed with the Commission (when these agreements conform to standard forms of service agreements), thus allowing the Commission and its staff to devote greater resources to the complex and important issues that arise in competitive markets.

The filing of individual service agreements and paper copies of

quarterly market-based sales of electric energy is no longer the most effective means of meeting the Commission's statutory responsibilities under section 205 of the FPA. Moreover, the present filing system can be improved to better respond to the current and evolving electric marketplace. To meet these goals, data about public utility service agreements and power sales must be collected and made publicly available in a manner that ensures that the data are pertinent, useful to market participants, and easily accessible by the public. To this end, we propose that each public utility, as defined in section 201(e) of the FPA (public utility), would:

- No longer file short-term or long-term service agreements for market-based power sales;
- No longer file service agreements for those generally applicable services, such as point-to-point transmission service, for which the public utility has a standard form of service agreement under its tariff;
- No longer file Quarterly Transaction Reports summarizing its short-term sales and purchases of power at market-based rates;¹
- File electronically with the Commission and post on a website² an Index of Customers that contains a summary of the contractual terms and conditions in its service agreements along with transaction information for its open access transmission services, short-term and long-term market-based power sales, and cost-based power sales during the most recent calendar quarter.³

To the extent a public utility wishes to no longer file service agreements for generally applicable services such as cost-based power sales or interconnection agreements, it should revise its tariff to include standard forms of service agreements for those services. The NOPR also proposes to delete as no longer necessary 18 CFR 2.8 concerning the simplification of public utility rate schedule filings.

Although the actions proposed in this NOPR would improve the quality of

¹ In *Citizens Energy Corporation*, 35 FERC ¶ 61,198 at 61,453 (1986) (Citizens), we held that the sale for resale activities of wholesale power marketers makes them public utilities under the FPA.

² In the case of a public utility with an OASIS website, the Index of Customers should be posted in the portion of its OASIS site that can be accessed by the public without registration or fee.

³ As discussed later in this NOPR, the software for making Index of Customers filings and a data requirement manual (instruction manual) that will define the content and data elements to be included in Index of Customers filings will be separately developed and issued later in this rulemaking process.

information public utilities report to the Commission and the public by clarifying the information that needs to be provided and making that information available electronically in a uniform, accessible format, we caution that the NOPR is not intended as a comprehensive review of the Commission's market monitoring efforts. While we plan to engage in a comprehensive assessment of the Commission's market monitoring efforts in the near future, such an assessment is beyond the scope of the present proceeding.

II. Background

1. Recent Changes in Electric Markets

In recent years, wholesale electricity markets have become much more dynamic. The Commission has moved to foster competition by requiring open access transmission, by requiring comparability between the treatment transmission providers extend to customers and their own use of their transmission systems, by requiring traditional, vertically integrated public utilities (*i.e.*, public utilities that own both generation and transmission) to functionally separate their wholesale power marketing functions from their transmission system operating functions, and by requiring each public utility's wholesale merchant function to acquire transmission service on a comparable basis with other customers.⁴ The Commission has strongly encouraged the structural separation of the generation and transmission functions through the creation of regional transmission organizations, or RTOs.⁵ Other market changes have included the growth and establishment of power marketers and merchant generators that the Commission has

⁴ See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, *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, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998); *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (April 24, 1996), *order on reh'g*, Order No. 889-A, 62 FR 12484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (March 4, 1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997), *order on reh'g*, Order No. 889-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Study Group, et al. v. Federal Energy Regulatory Commission*, No. 97-1715 (D.C. Cir. June 30, 2000).

⁵ *Regional Transmission Organizations*, Order No. 2000, *final rule*, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 FR 12088 (March 8, 2000), FERC Stats. & Regs. 31,092 (2000).

authorized to make wholesale power sales at market-based rates, provided they demonstrate that they lack market power. Virtually all traditional public utilities and their affiliates have also been authorized to sell power at market-based rates, provided that they lack market power or have taken adequate steps to mitigate that market power. In short, the Commission's actions have promoted the development of more competitive commodity markets for electric power by restructuring the functional ties between the sale of energy commodities and the provision of transmission and distribution. This separation of functions was accompanied by the unbundling of services that previously were offered on a consolidated basis.

As we stated in our report, *State of the Markets 2000; Measuring Performance In Energy Market Regulation (Markets 2000 Report)*,⁶ the Commission's shift away from the cost of service regulatory structure for power sales has resulted in many more choices for traditional wholesale requirements customers. Under the cost-of-service regulatory structure, a vertically integrated public utility was required to provide service to municipal utilities and other captive customers located within the public utility's exclusive service franchise territory. These wholesale requirements customers received service under terms and conditions that did not contemplate that they be afforded access to their supplier's transmission grid so that they could purchase power from alternative suppliers. This all changed when the electric power industry underwent functional unbundling as a result of the Commission's open access initiatives. Formerly captive wholesale customers now have additional supply options through open access to the transmission grid, based on the principle of comparable transmission access. If an independent generator or another franchise public utility has generating capability available, or a power marketer has contractual power available, wholesale customers can now negotiate power supply contracts that bypass the local public utility even though the local public utility's

transmission grid and low voltage facilities are needed to deliver the power to the customer.⁷

2. The Commission's Current Filing Requirements for Public Utilities

With respect to the rates, terms and conditions of sales for resale of electric energy in interstate commerce, the Commission's regulations at 18 CFR § 35.1 require public utilities to file:

all contracts that in any manner affect or relate to such rates, charges, classifications, services, rules, regulations or practices, as required by section 205(c) of the Federal Power Act.

Public utilities generally satisfy this requirement for cost-based power sales, transmission and other services by filing individual, bilateral or multilateral agreements with the Commission prior to the commencement of service,⁸ or, in the case in which a public utility has an approved tariff agreement and associated standard forms of agreement on file with the Commission, it may file the individual service agreement within thirty days after service to that customer commences.⁹

For short-term power sales transactions (of one year or less) that are made pursuant to Commission approved market-based rate tariffs, we have routinely required non-marketer public utilities¹⁰ to submit an umbrella service agreement for each customer and quarterly reports summarizing numerous transactions under those agreements (*i.e.*, the Quarterly Transaction Reports) in lieu of requiring the filing of individual service agreements for each transaction.¹¹

⁷ *Markets 2000 Report* at 10.

⁸ See *Central Hudson Gas & Electric Corporation, et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁹ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993) (*Prior Notice Order*).

¹⁰ For purposes of this NOPR, a "non-marketer public utility" means a public utility that owns, operates, or controls generation or transmission facilities. This includes traditional public utilities that own both generation and transmission, as well as non-traditional public utilities that own or control only generation facilities (*e.g.* merchant generators) or only transmission facilities. The term excludes power marketers who engage in sales for resale of electric energy but do not own any physical generation or transmission facilities.

¹¹ For long-term transactions (*i.e.*, those lasting more than one year) that are made pursuant to previously approved market-based rate tariffs,

Although affiliated and unaffiliated power marketers fall within the definition of "public utility" by virtue of their wholesale sales activities,¹² the Commission currently has one set of requirements applicable to the filing of service agreements concerning sales at market-based rates by non-marketer public utilities, and another set of rules applicable to filings required by power marketers.¹³ Rather than filing any service agreements (short or long-term), power marketers file only Quarterly Transaction Reports that cover both their short-term and long-term sales at market-based rates.

There is no similar reporting requirement for power sales transactions under cost-based power sales tariffs, even though many of those tariffs have ceiling rates and transactions take place at rates at or below those ceiling rates. Service agreements associated with tariffs other than those for market-based sales (*e.g.* cost-based power sales, transmission and ancillary services) are currently treated as part of the tariff, and public utilities must file properly designated contracts in hard copy with the Commission pursuant to § 35.12 (if filed for the first time), § 35.13 (if subject to a rate change proposal), or § 35.15 (if proposing a rate cancellation). The same filing requirements are applicable to the filing of new service agreements and amendments thereto, agreements establishing business rules, or underlying contracts offered to justify initial rates or changes in rate levels. The public utility offering a generally applicable service under one of its tariffs currently is required to file with the Commission a service agreement for each new customer.

Table 1 below summarizes the Commission's current filing requirements:

however, public utilities must file the individual executed service agreements they enter under such tariffs within 30 days after commencement of service. See *Prior Notice Order*, 65 FERC at 61,984. Short-term transactions are treated differently because they frequently are not the subject of separate written agreements and may be negotiated orally and documented only by log entries. See *Southern Company Services, Inc., et al.*, 87 FERC ¶ 61,214 at 61,847 (1999) (*Southern, et al.*).

¹² See *Citizens*, 35 FERC at 61,452.

¹³ For purposes of this NOPR, "power marketers" means public utilities who do not own generation or transmission facilities, *i.e.*, independent power marketers and affiliated power marketers.

⁶ This report is available for review or download on the Commission's Internet webpage at www.ferc.gov.

TABLE 1.—SUMMARY OF CURRENT FILING REQUIREMENTS UNDER OPEN ACCESS AND COST BASED TARIFFS, AND UNDER MARKET-BASED RATE AUTHORITY

Type of tariff or rate schedule	Filing party	Long-term service agreements	Short-term service agreements	Quarterly transaction reports
Open Access Transmission Tariff	Non-marketer Public Utility	X	X	.....
Cost-Based Power Sales Tariff	Non-marketer Public Utility	X	X	.....
Market-Based Power Sales Tariff	Non-marketer Public Utility	X	X	X
Market-Based Power Sales Tariff or Rate Schedule.	Affiliated or Unaffiliated Power Marketer	0 ¹⁴	.....	X

Legend: “x” means agreement or report is required to be filed, “o” means requirement to file is in abeyance.

Section 2.8 of the Commission’s regulations encourages, but does not require, any public utility filing a rate change pursuant to § 35.13 to refile its service agreements using a simplified model. In practice, however, few public utilities have chosen to do so. As the requirements of § 2.8 have, to some extent, become outmoded, as a result of the Commission’s revisions in Order No. 614¹⁵ to our regulations at § 35.9 (regarding the designation of tariffs and rate schedules), and as the proposals in this NOPR will result in non-standard service agreements being phased out as they expire and being replaced by the use of standard forms of service agreements and the filing of the Index of Customers, we propose to delete § 2.8 of our regulations.

3. The Commission’s Experience With Revised Filing Requirements for Interstate Natural Gas Pipelines

In evaluating appropriate future filing requirements for public utilities, the Commission has taken into account not only changes in the electric industry in recent years, but also our experience with different filing requirements in the natural gas industry. While the two industries differ, they have similar statutory filing requirements as well as similar informational needs given the competitive nature of the markets in each industry.

Prior to the issuance of Order No. 436,¹⁶ the Commission’s requirements

for filings by interstate natural gas pipelines and public utilities were essentially the same. Each contract relating to rates and services had to be filed in complete hard copy tariff format, even if the contract followed the contract form on file with the Commission as part of a generally applicable Rate Schedule. In Order No. 516,¹⁷ however, the Commission eliminated the requirement for interstate natural gas pipelines to file actual service agreements¹⁸ in instances when the contract conformed to the standard form of agreement in the interstate natural gas pipeline’s tariff, because we found that, through tariff filings or other periodic filings, the pipelines already submitted to the Commission and the public all of the information required by section 4 of the NGA. Thus, service agreements that did not conform with the standard forms of service agreements had to be filed with the Commission under § 154.1(d), while service agreements that did conform with the standard forms of service agreements that are part of an interstate natural gas pipeline’s tariff under § 154.110 did not need to be filed. The Commission deemed such filings unnecessary in light of the fact that the agreements conformed with Commission-approved standard agreements and the after-the-fact filings under Part 284. Order No. 516 provided that the after-the-fact reports under Part 284 must contain an index of firm customers identifying the services contracted, the applicable rate under

1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,761 at 30,775–76 & n.2 (1987).

¹⁷ Final Regulations Clarifying the Filing Obligations for Part 284 Transportation and Sale of Natural Gas, Order No. 516, 54 FR 47758 (November 17, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,864 (1989).

¹⁸ Order No. 516 only modified § 154.1 of the Commission’s regulations. While contracts that conformed with the standard forms of service agreements did not have to be filed, Order No. 516 maintained the requirement that pipelines had to file with the Commission contracts for open access service and special services contracts that did not conform with the standard forms of service agreements.

each agreement (by reference to a rate summary sheet), contract dates and terms, and contract quantities.

In Order No. 581, the Commission expanded the Index of Customers to include all firm services, not just firm open access services. In Order No. 581, the Commission emphasized the need to acquire key contract information in an electronic format. The order also gave pipelines the option of placing key contract information on their websites, combined with an electronic filing of the same information with the Commission, in lieu of individually filing contracts (in traditional hard copy) with the Commission.¹⁹ As a measure of how well the proposal was received by the industry, all the major pipelines have opted to file electronically.²⁰

More recently, in Order No. 637,²¹ the Commission modified the specific service agreement reporting requirements for interstate natural gas pipelines. Information about interruptible contracts and actual discounted rates must now be made public on the same basis as it is for contracts for firm service, and Order No. 637 has expanded the requirement to post information to include points of receipt and delivery and other information.²²

¹⁹ Revision to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 FR 53019 (October 11, 1995), FERC Stats. & Regs., Regulation Preambles 1991–1996 ¶ 31,026 at 31,505–512 (1995). The electronic information is available to the public on the Commission’s website at www.ferc.gov/documents/forms/forms.htm#GAS.

²⁰ We note, however, that some small pipelines have obtained waivers of the requirement to file this information.

²¹ Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (February 25, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,091, *order on reh’g*, Order No. 637–A, 65 FR 35705 (June 5, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,099, *reh’g denied*, Order No. 637–B, 92 FERC ¶ 1,062 (2000).

²² Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,319–20; and the Commission’s regulations at 18 CFR 284.13(b).

¹⁴ *Southern, et al.*, 87 FERC at 61,849, rescinded on a prospective basis previously-granted waivers of the requirement for power marketers to file long-term service agreements, effective thirty days after the issuance of a final order in that proceeding. Thus, at this time, this filing requirement is not in effect.

¹⁵ Designation of Electric Rate Schedule Sheets, Order No. 614, final rule, 65 FR 18221 (April 7, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,096 (2000).

¹⁶ Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (October 18, 1985), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,665 (1985). Order No. 436 was modified and revised in a series of orders not at issue here. See Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 500, 52 FR 30334 (August 14,

For the gas industry, the transition from service agreement filings to index of customers filings has both drastically reduced the industry's filing burden (approximately 6,000 service agreement filings per year were eliminated) while providing industry participants with greater access to transaction data. The electric industry is now also at the point where information currently provided through service agreements can be made more useful to the public through periodic Index of Customers filings.

4. Changing Electric Markets Have Resulted in an Increase in Electric Rate Filings and Demonstrate the Need for More Efficient Filing Regulations

Section 205(c) of the FPA requires that every public utility have all of its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to the Commission and the public of any changes to its jurisdictional rates and tariffs, file such changes with the Commission, and make them available for public inspection, in such manner as directed by the Commission.²³

Prior to the Commission's open access initiatives in Order Nos. 888 and 889,²⁴ public utilities made numerous rate filings covering individual power supply and/or transmission contracts tailored to meet the needs of individual customers. Although the filings were numerous, the number of regulated public utilities making these filings tended to be relatively stable, and the Commission managed to analyze and process these filings and address the substantive issues presented therein.

However, since the issuance of Order Nos. 888 and 889, the number of regulated entities and the services they provide have increased significantly. Electric power markets have increasingly become more competitive and dynamic and the Commission has been confronted by a marked increase in the number and types of transactions being conducted in response to customer needs. As a result, an increasing number of public utility power supply and transmission service

arrangements in the form of universal tariffs of general applicability (umbrella agreements) were filed with the Commission,²⁵ with standardized forms of service agreements for customers to execute as they sign up for tariff services. Largely as a result of the review of service agreement filings associated with tariffs previously approved by the Commission, service agreement filings now constitute approximately 2,500 docketed work load filings a year, a 2½-fold increase over past peak levels of all FPA section 205 filings.

Under the Commission's current filing requirements in 18 CFR Part 35, individual service agreement filings associated with approved tariffs require a significant amount of time, effort, and expense on the part of public utilities to prepare and serve on their customers and the Commission. These individual filings also require a significant amount of Commission staff time and effort associated with docketing, noticing, loading the information onto RIMS, and other processing tasks. Further, the information contained in such filings that is most relevant to customers and the Commission could be provided in an alternative, streamlined form, thus continuing to satisfy the requirements of FPA section 205(c), but in a more efficient manner. Accordingly, we propose to replace the filing of individual service agreements and Quarterly Transaction Reports with the filing of an electronic Index of Customers. This format will greatly increase the accessibility and usefulness of the relevant data, which will confer greater benefits to the public.

We expect that the filing of the Index of Customers in place of the filing of individual service agreements related to approved tariffs and the filing of Quarterly Transaction Reports will result in a net decrease in the filing burden on public utilities while allowing the Commission to better use its limited resources, and at the same time provide the public and the Commission with better information pursuant to FPA section 205(c).

III. Discussion

A. Overview

Through these proposed regulations, the Commission intends to improve public access to pertinent information on public utility rates and services, streamline and simplify the manner in which public utilities must comply with the filing requirements of the FPA, reduce the regulatory and

administrative burden associated with processing public utilities' service agreement filings, and keep pace with changing market conditions. The NOPR proposes to accomplish these goals by no longer requiring public utilities with market-based rate authority to file either long-term or short-term service agreements, consistent with what has generally been the case for power marketers.

Instead, all public utilities, both marketers and non-marketers, that charge market-based rates will meet the FPA section 205(c) requirements through the filing of an Index of Customers. In so doing, we will require that transaction data not only be filed electronically with the Commission, but also posted and archived on each public utility's web site. This will greatly improve public access to the data, which will no longer be scattered over numerous service agreement filings, but instead will be centrally stored in a single database for each seller. We find it appropriate to transition from the market-based service agreements to an Index of Customers in part because market-based authority for power sales extends to both rates and to terms and conditions. Therefore, there is no need for the filing of a standard form of service agreement under market-based sales tariffs or rate schedules. Moreover, to the extent that transactional data required by the Index of Customers subsumes the relevant information contained in the umbrella short-term agreements, long-term agreements, and the currently filed quarterly reports, there is no need for filing both the service agreements and the Index of Customers. In short, we find that there is no need to continue to differentiate between long and short-term power sales agreements so long as the relevant data are collected through the Index of Customers to meet the section 205(c) requirements.

While we find no need to require standard forms of service agreements to be filed for market-based rates, we encourage public utilities to develop standard forms of service agreements for inclusion in tariffs other than those for market-based sales (e.g. tariffs for cost-based power sales and network transmission and ancillary services), similar to what is already in place for point-to-point open access transmission service. These standard forms of service agreements are necessary for a public utility to no longer file conforming service agreements since the terms and conditions of cost-based services are not negotiated and, therefore, must be on file to meet the requirements of FPA section 205(c).

²³ See Southern Company Energy Marketing, L.P., *et al.*, 84 FERC ¶ 61,199, *order on reh'g*, 86 FERC ¶ 61,131 (1999), *affd. sub nom.*, The Power Company of America, L.P. v. FERC, 245 F.3d 839 (D.C. Cir. 2001) (*PCA*). In *PCA*, the court found, 245 F.3d at 846, that the Commission may alter its view of what information is required to be on file under section 205(c) of the FPA and § 35.15 of the Commission's regulations.

²⁴ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,586.

²⁵ See *Prior Notice Order*, 64 FERC at 61,982-84.

In total, the use of standard forms of service agreements, in conjunction with the Index of Customers filings and the filing of service agreements that do not conform with the standard forms of service agreements in the public utility's non-market-based rate tariffs, will provide the public and the Commission with sufficient information with respect to non-market-based rates and, therefore, will meet the section 205(c) requirements.

We note that we are including cost-based sales in the Index of Customers' reporting requirements regarding transactional data to better meet the section 205(c) requirements. The majority of the cost-based tariffs contain ceiling rates and, due to ever increasing competition, the actual rate charged for a particular sale is less than the tariff rate. Including the reporting of cost-based power sales under the Index of Customers will ensure that the public utility has on file the actual price charged for the transaction, as required by FPA section 205(c). As noted above, once the public utility files a standard form of service agreement, it would no longer have to file conforming individual service agreements under that tariff.

B. Why the Proposals Advanced in This NOPR Are Needed

1. Changes in the Market

Notwithstanding the dramatic changes that have occurred in electric power markets, the Commission has not changed the manner in which it receives and makes available information through public utility service agreements, rate filings, and the Quarterly Transaction Reports imposed as a condition in market-based rate cases. The profound changes that have occurred in wholesale electric markets have prompted the Commission to consider whether the information currently being filed by public utilities continues to meet the evolving needs of the public, the electric power industry, and the Commission. We conclude that it does not and that we need to improve the format in which we currently receive information because some entities are filing the data in different formats, and in different levels of detail, and some entities (non-marketer public utilities) are filing service agreements, while others (power marketers) are not. Moreover, these data are not available in an electronic format, making it difficult for the public to obtain and analyze. Accordingly, in this NOPR, we propose to revise our filing requirements to make the information standard, complete, and easy to access.

2. Improving the Current System

This NOPR proposes to replace the current information reporting and processing system with a new electronic approach that gives accurate, pertinent, and accessible data to the public and the Commission. Our experience with the regulation of interstate natural gas pipelines leads us to expect that these proposed revisions are feasible and that they will reduce the public utilities' reporting burden and the Commission's administrative burden in processing filings, while at the same time providing better and more accessible information to the public and the Commission.

3. Changing Administrative Requirements

The proposed regulations are part of a change the Commission is undertaking with regard to its requirements for filing tariff sheets. In Order No. 614, the Commission stated that it was initiating a process "necessary to accommodate the movement toward an integrated energy industry and to facilitate the development of common standards for the electronic filing of all electric, gas, and oil rate schedule sheets."²⁶ Order No. 614 required public utilities to take responsibility for the designation of their tariffs, rate schedules and service agreements, and pagination of their tariff sheets along the lines of the natural gas pipeline program. Order No. 614 also stated that the Commission intended move to a common standard for the filing of all electric, gas, and oil rate schedule sheets.

The Commission has since issued a *Notice of Inquiry* to consider establishing an electronic format for all tariffs filed with the Commission.²⁷ A number of the changes proposed in this NOPR are part of that process. The proposed regulations will standardize the requirements for filing service agreements by interstate natural gas pipelines and public utilities. Further, by eliminating the need to file certain types of service agreements, the proposed regulations will reduce the number of tariff sheets public utilities will be required to file. This minimizes the materials that must be converted from hard copy to the new electronic tariff filing requirements, if and when they are adopted by the Commission.

In order to increase the efficiency with which it carries out its program responsibilities, the Commission has been implementing measures to use

information technology to reduce the amount of paperwork required in its proceedings.²⁸ The proposed regulations meet that goal by replacing the paper format with an electronic format. The Commission believes that this will be the most efficient, cost effective, and accurate means to obtain the data required for the use of the public and the Commission, while minimizing the reporting burden on public utilities.

Both the legislative and executive branches of the Federal government have set as goals the substitution of electronic means of communication and information storage for paper means. For example, the Government Paperwork Elimination Act directs agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic record-keeping, where practical.²⁹ Similarly, the Office of Management and Budget (OMB) Circular A-130 requires agencies to use electronic information collection techniques by October 2003, where such means will reduce the burden on the public, increase efficiency, reduce costs, and help provide better service.³⁰ This requirement applies to all filings, including service agreement filings. The proposals in this NOPR are intended to satisfy this requirement for the Commission's electric program by replacing the paper filing of service agreements and the filing of Quarterly Transaction Reports with electronic filings.

C. Proposed Revisions to 18 CFR Part 35

The proposals in this NOPR would be applicable to every public utility that provides transmission, ancillary services, wholesale power sales, or other jurisdictional services in accordance with Part 35 of the Commission's regulations. The NOPR proposes to revise the Commission's current filing requirements under 18 CFR Part 35 to encourage each public utility to develop, for inclusion in its non-market-based power sales tariffs, a standard form of service agreement for each generally applicable service it offers under its tariffs. In addition, every calendar quarter, each public utility that provides transmission, ancillary services, wholesale power sales, or other jurisdictional services under Part 35 must file an updated Index of Customers. This would include a current list of customers, contracts and

²⁶ Order No. 614, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,096 at 31,501.

²⁷ *Notice of Inquiry and Informational Conference*, Electronic Tariff Filings, Docket No. RM01-5-000, 94 FERC ¶ 61,270 (2001).

²⁸ See *Electronic Filing of Documents*, Order No. 619, 65 FR 57088 (September 21, 2000), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,107 (2000).

²⁹ Pub. L. 105-277, Sections 1702-1704.

³⁰ Circular A-130, Para. 8.a.1(k).

contract terms, and a report of transactional data summarizing power sale transactions that occurred during the past calendar quarter. In addition,

- Once a service agreement that conforms to the standard form of service agreement is on file and approved by the Commission, the public utility will no longer file conforming individual customer agreements with the Commission.
- In circumstances where there is customer disagreement (e.g. the customer has exercised its right pursuant to section 15.3 of the *pro forma* tariff to have the transmission provider file an unexecuted service

agreement with the Commission) the service agreement must be filed.

- Any service agreement that contains services, rates, or charges that are not spelled out in the applicable standard form of agreement will be considered a non-conforming service agreement and still must be timely filed with the Commission (e.g., most interconnection agreements and distribution charges).³¹ Public utilities will continue to be required to assign rate designations to their filed service agreements pursuant to § 35.9 of the Commission’s regulations for nonconforming service agreements.

—Non-marketer public utilities and power marketers will both submit quarterly Index of Customers reports describing their currently effective service agreements and actual power sales transactions (both cost-based and market-based) that occurred during the previous quarter. This would replace the Quarterly Transaction Reports they currently file regarding their market-based rate transactions.

Table 2 below summarizes the filing requirements that are proposed by the Commission in this NOPR:

TABLE 2.—SUMMARY OF PUBLIC UTILITY FILING REQUIREMENTS PROPOSED IN THIS NOPR

Type of tariff or rate schedule	Filing party	Conforming service agreements	Nonconforming service agreements	Index of customers
Open Access Transmission Tariff	Non-marketer Public Utility .....	.....	X	C
Cost-Based Power Sales Tariff	Non-marketer Public Utility .....	.....	X	C, T
Other Generally Applicable Services	Non-marketer Public Utility .....	.....	X	C
Market-Based Power Sales Tariff	Non-marketer Public Utility .....	.....	.....	C, T
Market-Based Power Sales Tariff or Rate Schedule.	Affiliated or Unaffiliated Power Marketer .....	.....	.....	C, T

Legend: “X” means file complete service agreement, “C” means file contract data, “T” means file transaction data.

We now discuss our proposed revisions on a section by section basis. In § 35.10, we propose that each public utility must file an updated Index of Customers with the Commission each calendar quarter and post that same information on its website. A public utility with an OASIS website would post the information in that portion of its OASIS website that is accessible to the public without registration or fee. A public utility not required to have an OASIS website would post its Index of Customers on a website that, likewise, would be accessible to the public without registration or fee.

In this NOPR, the Commission proposes to create two new sections: § 35.10a covering forms of service agreements and § 35.10b covering Index of Customers filings. The form of service agreements are also cross-referenced in

§ 35.1(g). Thus, we propose to revise the title of Part 35 to reflect its expanded subject matter and propose revising the caption to § 35.1 to clarify that this section addresses both rate schedules³² and tariffs.³³

In § 35.10a, we propose guidelines for the inclusion of a standard form of service agreement in a public utility’s tariff. We propose that the standard agreement format for each service must describe the service to be rendered and must provide spaces for the insertion of the customer’s name, effective date, expiration date, and term. Depending on the type of agreement, spaces for the insertion of other information may also be included, as appropriate. For example, spaces may be provided for the insertion of receipt and delivery points, contract quantity, and other specifics of each transaction. The

standard agreement formats, other than those already prescribed by Order No. 888, may be developed by each public utility in a separately filed section 205 filing and will be reviewed by the Commission for consistency with the underlying rate schedule(s) or service(s). In § 35.10b, we propose that each public utility shall file, in an electronic format, an updated Index of Customers with the Commission on a quarterly basis. Later in this rulemaking process, we plan to conduct further proceedings to develop the instruction manual to be used to make Index of Customers filings, which will define the data elements to be included in Index of Customers filings.³⁴

The Commission proposes to develop an electronic format for the Index of Customers filings that will facilitate filing and allow staff and the public one-stop access to the data. The

³¹ The Commission will address interconnection agreements in the near future.

³² Section 35.2 defines Rate Schedule as “a statement of (1) electric service as defined in paragraph (a) of this section, (2) rates and charges for or in connection with that service, and (3) all classifications, practices, rules, regulations or contracts which in any manner affect or relate to the aforementioned service, rates, and charges. This statement shall be in writing and may take the physical form of a contractual document, purchase or sale agreement, lease of facilities, tariff or other writing. Any oral agreement or understanding forming a part of such statement shall be reduced to writing and made a part thereof.” Rate schedules

and service agreements are both contractual documents. However, as used in the Commission’s regulations, “rate schedule services,” essentially, are services whose terms are individually negotiated between the public utility and the customer(s) and are not generally or universally available to other customers.

³³ Section 35.2 of the Commission’s regulations defines “tariff” as “a compilation, in book form, of rate schedules of a particular public utility, effective under the Federal Power Act, and a copy of each form of service agreement. In connection herewith, attention is invited to Part 154 of this chapter, i.e., the Commission’s regulations under the Natural Gas Act, as a guide to the form and

composition of a tariff.” Examples of a “tariff” are public utilities’ OATTs, which have “services” (the equivalent of rate schedules as used in Part 154) with forms of service agreements and umbrella agreements. Public utilities taking full advantage of this NOPR would develop forms of service agreement to be inserted in public utility tariffs for all generally applicable services offered by the public utility (other than market-based power sales) similar to what is already in place for point-to-point service in the *pro forma* tariff.

³⁴ We may enlist the assistance of technical industry working groups in this effort.

Commission intends to develop (and distribute to public utilities for their use at no cost) software to be downloaded at the users' sites that will allow public utilities to enter data manually (for small data sets and to edit corrections) and/or to download spreadsheet data, or other properly formatted system output, directly into the application. The software will perform edit checks at the utility site to ensure a complete filing and a successful upload at the Commission. (The software will be similar in concept to that currently being used by public utilities filing FERC Form 423.)

In § 35.10b(a), we propose that the Index of Customers filings must be filed to conform with the data elements specified in the data requirements manual, which will be comparable to the one already in use for interstate natural gas pipelines.³⁵

In § 35.10b(b), we propose that each public utility with an OASIS website post the Index of Customers in the portion of its OASIS website that is accessible to the public without registration or fee. We propose that each public utility that does not have an OASIS website shall post its Index of Customers on a website that also is accessible to the public without registration or fee. In the alternative, we are also considering allowing the use of a joint website so that data about numerous public utilities could be found at one common site.³⁶

In § 35.10b(c), we propose that each filed Index of Customers shall display the website address where that public utility's past and current Index of Customers are posted and, in § 35.10b(d), we propose that Index of Customers postings shall remain posted for three years.

In § 35.1(g), we propose that all contracts that deviate in a material respect from a standard form of service agreement that is part of the public utility's tariff must be filed. We believe that, because the Commission will review the reasonableness of the terms and conditions of the standard agreements, the requirement for public utilities to file individual service agreements with the Commission can be eliminated so long as those agreements are consistent with the standard form of service agreement. We do not believe that this proposal, if adopted, would in any way compromise the Commission's

ability to review substantive issues. We believe that replacing the filing of individual service agreements with the filing of the Index of Customers, combined with the use of standardized agreements, will ease the regulatory burden on filing public utilities and the administrative burden on the Commission of processing these filings. We do not view this proposal as adversely affecting the public interest or the Commission's regulatory oversight of public utilities. Rather, the Index of Customers suggested by this NOPR will increase access to the information that is currently filed by making it available in an electronic and downloadable format. This will enable interested parties to quickly and easily download and analyze relevant data such as prices and quantities of power sales either from the Commission's or the seller's web site. Additionally, public utilities would still be required to maintain copies of their executed service agreements and make them available for public inspection in appropriate proceedings and available to the Commission or any other entity upon request, consistent with Part 35 of the regulations.

Upon implementation of the proposed Index of Customers requirements, public utilities will no longer file market-based power sales service agreements. Additionally, as unfiled service agreements expire in accordance with their own terms, public utilities will not have to file tariff sheets canceling them (because they will not be included in the public utilities' tariffs). Rather, they simply will remove these contracts from their Index of Customers. If parties to an unfiled service agreement believe there is an FPA-related dispute concerning such an agreement, their ability to have the Commission resolve the dispute will not be compromised by not having a hard copy of the agreement on file as part of the public utility's tariff. Utilities with nonconforming, filed service agreements must continue to file tariff sheets to cancel them at the time of expiration (because these agreements will be included in the public utilities' tariffs).

Consistent with our proposal in § 35.10(b)(c), we propose to revise § 37.6 to add paragraph (h) that would require OASIS sites to include Index of Customers postings that would be available to the public without registration or fee. The information would be required to be available for online review, copying or download. Index of Customers filings would remain posted at the same location for three years after they are filed.

We also propose to delete our regulation at 18 CFR 2.8 because that regulation is now superceded by the regulations promulgated by Order No. 614.

D. Information To Be Included in Index of Customers Reports

The proposed Index of Customers will be required for all jurisdictional services and will contain three types of information: (1) Identification requirements for the electronic filing; (2) contractual information; and (3) transaction specific information. For market-based and cost-based power sales, all three types of information will have to be filed. However, for transmission service and other services under an open access tariff, only the identification requirements and the contractual information will have to be filed. This is the case since all rate discounts must be posted on transmission providers' OASIS sites and offered to all customers. The following Index of Customers data requirements will enable the Commission to have the same information on file that is currently received for market-based power sales service through the filing of long-term service agreements and quarterly transaction reports.

1. Identification Requirements for the Electronic Filing

The electronic file will be required to contain a data set that identifies the entity submitting the file, file-related information, and date information. At a minimum, the Commission would expect the file identification requirements to include the following data sets:

- Respondent*: Public utilities often use agents to handle their regulatory affairs. Thus, the respondent filing the report would be identified, as well as the public utility on whose behalf it is filed (*e.g.*: Southern Company Services Inc. files on behalf of five affiliated public utilities).
- Contact*: The file should contain information on the company official to be contacted concerning questions related to the filing.
- Report Information*: The file should contain data that identifies the date it was prepared, the reporting quarter, and the revision of the report in the event the report is corrected and refilled.
- Website Address*: The website address where the public utility posts its past and current Index of Customers filings.

2. Contractual Information

The Index of Customers will become the Commission's primary means to ensure that the FPA's section 205(c) requirement that rates available for public inspection is met. The Index of

³⁵ The interstate natural gas pipeline manual can be viewed and downloaded at: http://www.ferc.gov/documents/forms/electronic_filing_requirements/index_new.pdf.

³⁶ Commenters are invited to comment on whether such a joint site would be desirable and feasible.

Customers will provide all the pertinent contractual information contained in service agreements currently filed with the Commission. Similarly, all contractual information currently made available for public inspection will continue to be made available, albeit in a different format. Once a service agreement has become effective, that contract must remain listed on the Index of Customers for each subsequent calendar quarter until the contract terminates under its own terms or as the result of a Commission order. The Commission will require the following information for each executed service agreement:

—*Seller's Name*: The seller's name should be the public utility providing the jurisdictional service. This is the same as the definition in the S&CP Document.³⁷

—*Seller's DUNS Number*: Companies often have a name similar to another company's name; the DUNS number avoids any confusion between companies with similar names. This is the same as the definition in the S&CP Document.

—*Affiliate Flag*: Indicate whether the buyer and seller are "affiliates" as defined in 18 CFR § 37.3 (f). To be answered with yes or no answer. This is the same as the definition in the S&CP Document.³⁸

—*Buyer's Name*: The buyer's name should be the customer purchasing the jurisdictional service. This is the same as the definition in the S&CP Document.

—*Buyer's DUNS Number*: As with sellers, buyers often have similar names. This is the same as the definition in the S&CP Document.

—*Product Designation*: This identifies the product(s) covered by the service agreement. The Commission would expect a separate record for each service provided under a contract. This is the same as the definition in the S&CP Document. We note that the S&CP Document allows more than transmission services to be included in the definition set. For example, the S&CP Document provides codes for the six ancillary services prescribed in Order No. 888: 1. SC—scheduling, system control and dispatch; 2. RV—reactive supply and voltage control; 3. RF—regulation and frequency response; 4. EI—energy imbalance; 5. SP—spinning reserve; and 6. SU—supplemental reserve. All applicable services are reported, including power sales.

—*Type of Rate*: The Commission permits various types of rates (e.g., cost based rates, discounted rates, and market-based rates). This data field would identify the type of rate charged under the executed contract (i.e., the maximum cost based rate, a rate discounted from the maximum cost based rate, or a market-based rate).

³⁷ I.e., the OASIS Standards & Communications Protocol Document, Version 1.4.

³⁸ See "Affiliate Flag" S&CP Document's Data Element Dictionary, Order No. 638, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,093 at 31,469. Throughout this NOPR, we use the term "affiliate" as defined in 18 CFR 37.3(f).

—*Service Agreement Designation*: Under the current Commission filing requirements, public utilities are required to file most service agreements with the Commission and supply a designation. Market-based service agreements and individual executed service agreements that conform to a public utility's standard form of agreement will no longer be filed with the Commission. If a customer requests that the utility proceed with an unexecuted but otherwise conforming service agreement so that service can begin while any remaining disputes are resolved, the unexecuted agreement must be filed with the Commission. In addition, all individual contracts need some identifier that distinguishes them from other contracts. While the Commission does not propose a separate mandatory designation system for the Index of Customers, the public utility must maintain its service agreements with a tracking system that will enable the Commission and the public to reference whatever system a public utility adopts and uses for the purpose of filing this report. Also, some standard contracts, such as those in the OATs, provide the ability to contract for multiple services in a single contract. The Commission would expect a separate record for each service provided under a contract. However, how multiple services under a single contract should be reported to the Commission (including the related contract and transaction information) is an item that should be discussed by any Technical Working Groups that are created to work on these matters.

—*Contract Effective Date*: All service agreements (market-based, conforming, and non-conforming) under which service has commenced during a particular quarter must be reported to the Commission within 30 days of the end of that quarter. The agreement would not have to be filed if it conforms with a public utility's applicable approved standard form of agreement. The date service commences would be the equivalent of the first date to occur under the "service start date and time" data field for the contract in the S&CP Document.

—*Contract Termination Date*: This is the date the contract will terminate under its own terms. This date should be the primary term of the contract. If the contract has roll-over or evergreen provisions, that information should be recorded in a separate field.

—*Rate*: Rates for services under both market-based and cost-based tariffs must be reported.

—*Contract Quantity*: The maximum contract quantity of service, to the extent a maximum quantity is specified in the contract.

—*Rate Unit*: The units (MWH, MW, etc.) applicable to the rate, contract quantity and transactional data.

—*Point of Receipt*: This is the same as the definition in the S&CP Document.

—*Point of Delivery*: This is the same as the definition in the S&CP Document.

The contractual information that is proposed to be provided in the Index of Customers is identical to what public

utilities are currently required to file pursuant to Part 35 of the Regulations. In this regard, we note that this NOPR does not propose to revise the filing requirements in § 35.12, regarding information to be included in initial rate schedule filings. Nor does the NOPR propose to revise the Commission's current rules concerning the information to be included in service agreements, rate schedules, and accompanying transmittal letters. Simply put, it provides that the data currently filed in service agreements are to be filed through the Index of Customers.

3. Transaction-Specific Information

Currently all entities selling power at market-based rates are required to file Quarterly Transaction Reports each calendar quarter that describe their purchase and sales transactions for generation and transmission.

In *Citizens Power & Light Corporation*, 48 FERC ¶ 61,120 (1989) (*Citizens Power*), the Commission stated that Citizens—a power marketer—should provide the following information:

the buyer's and seller's name, a brief description of the service, including the degree of firmness; the delivery points for each service; the price of each service; the quantities to be served or purchased; the contract duration * * *

Subsequently, Enron Power Marketing, Inc. (Enron) requested that: (1) The Commission waive the requirement that a power marketer file informational reports detailing purchase and sale transactions undertaken in the prior quarter; and (2) it be permitted to report the data on an aggregated basis (i.e., without identifying the other parties or the terms of the individual transactions) or on a confidential basis. The Commission denied Enron's request and stated:

Enron misreads the Commission's purpose in requiring quarterly reporting of marketer's transactions * * *. The Commission has indicated that information filings are necessary so that the marketer's rates will be on file as required by section 205(c) of the FPA, * * *³⁹

We also denied Enron's request for confidential treatment,⁴⁰ citing our order in *National Electric Association Limited Partnership*, 50 FERC ¶ 61,378 (1990) and section 205(c) of the FPA, which requires all public utilities, including power marketers, to file with the Commission for public inspection all rates, charges, classifications and practices as well as any contracts that

³⁹ Enron Power Marketing, Inc., 65 FERC ¶ 61,305 at 62,406 (1993).

⁴⁰ *Id.*

affect or relate to such charges, classification and practices.

In *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 (1994), the Commission held Heartland (an affiliated power marketer of Wisconsin Power and Light Company) to the reporting standards in *Enron*.⁴¹

The Commission established the filing requirements for short and long-term transaction agreements for non-marketer public utilities in *Southern Company Services, Inc.*, 75 FERC ¶ 61,130 (1996) (*Southern*). There, Southern—a traditional vertically integrated public utility—proposed to file umbrella service agreements for short-term transactions (in lieu of filing each individual service agreement) and semi-annual summaries that would list the purchaser, the transaction period, the rate, the amount of the electricity sold and the total charge to the purchaser. The Commission modified Southern's proposal to require that the summaries be filed on a quarterly basis. The Commission stated that the transaction summaries should be filed separately within 30 days after service commences. Further, the Commission extended this filing option (filing umbrella service agreements and transaction summaries in lieu of filing a service agreement for each transaction) to all public utilities making sales at market-based rates. However, *Southern* established different reporting requirements for non-marketer public utilities and power marketers.

Under *Southern*, non-marketer public utilities are required to file individual service agreements for long-term sales at market-based rates, while power marketers are only required to file transaction summaries of long-term sales. Both methods allowed the seller to meet the section 205(c) requirements. Not requiring power marketers to file service agreements reflected the fact that, at the time, the Commission sought to encourage the emergence of power marketers and did not want to stifle that process with the application of our traditional rate filing requirements. Now that power marketers are well established, however, it is appropriate to level the playing field for other public utilities. Since the section 205(c) requirements can be met through the Index of Customers, it is appropriate to remove the service agreement filing burden from all public utilities. As a result, this NOPR proposes that all entities with market-based rate authority can meet the section 205(c) requirements for both long-term and

short-term power sales through the proposed Index of Customers rather than filing service agreements.

Our proposal remains consistent with our prior precedent and meets the FPA requirement that all rates and charges be on file for public inspection by obtaining the necessary information (consistent with our precedent in *Citizens, Enron*, and *Heartland*) in a manner that reduces the reporting burden on public utilities. In addition, we also propose to gather information equivalent to that reported by public utilities with market-based rates for transactions under cost-based rate power sales tariffs. As noted before, the reason for this is that the majority of the cost-based rates are in fact ceiling rates, but the rates charged under those tariffs are often discounted below the maximum rate. Accordingly, under the current regulations, we do not have available for public inspection the actual price charged for the power, as required by FPA section 205(c).⁴²

Regrettably, in some instances the information previously reported by public utilities in their Quarterly Transaction Reports for market-based rates has been presented in varying formats with varying levels of specificity. For example, some reports contain unit prices, others average price data, and still others have only total prices. One of the goals of this NOPR is to rectify this problem.

We propose that public utilities' Index of Customers contain the following transaction data for all power sales made pursuant to a market-based or cost-based tariff:⁴³

Sales Transaction. All public utilities will be required to report all sales transactions that occurred pursuant to either a cost-based or market-based rate tariff, including book outs and net outs.

Buyer's Name/Seller's Name. For sales transactions, the buyer's name should be the customer purchasing the jurisdictional service and the seller's name should be the public utility that provided the jurisdictional service. This information is currently being provided in the Quarterly Transaction Reports.

Buyer's/Seller's DUNS Number. Same as explanation in Contractual Information section.

⁴² For interstate natural gas pipelines, § 284.13 requires the posting of discounts on electronic bulletin boards for 90 days. Under Order No. 637, discounts are also reported in the gas programs' Index of Customers, similar to what we propose in this NOPR.

⁴³ By separately describing proposed transaction data and contractual data requirements, it appears that some data may be reported twice. However, when the actual format for Index of Customers is finalized, such occurrences should be eliminated.

Affiliate Flag. (Yes/No) Currently, information as to whether the buyer or seller is an affiliate is provided in the transmittal letters that accompany the public utility's service agreement filings. This information will now be provided in the quarterly reports.

Product(s) Offered. *Citizens* and *Southern* both require the public utility to describe the services offered. The descriptions that are currently being given in the quarterly reports vary substantially. For consistency, the Commission will now require public utilities to state whether the product offered provides:

- (1) Capacity, energy, ancillary services and/or reassignment of transmission rights (or some combination of this);
- (2) an hourly, daily, weekly monthly or long-term service;
- (3) peak or off-peak service; and
- (4) firm or nonfirm (see *Citizens*).

This information will allow us to differentiate among products.

Transaction Execution Date. Public utilities must provide the date that the transaction was agreed to. This will link prices to the time the agreement was executed as opposed to when it was delivered.

Duration. Both *Citizens* and *Southern* require the public utility to state the length of the transaction. Here, as in other aspects of the quarterly reports, the types of data that are being provided vary from very specific to general. Therefore, in order to ensure consistency, public utilities must state, for each transaction, the time and date the transaction began and the time and date it ended or will end.

Price. The FPA requires all public utilities to file all rates and charges with the Commission for public inspection. In *Citizens* and *Southern*, the Commission stated that public utilities selling power at market-based rates should state the price of each transaction in the quarterly reports. In *Northeast Utilities Companies*, 87 FERC ¶61,063 (1999), the Commission determined that public utilities that owned, controlled or operated transmission facilities used for transmission of electric services must separately state in the quarterly reports the prices for generation, transmission and ancillary services. Even with these directives, prices have been reported in the quarterly reports in a number of ways—price/MWH or MW, average prices, maximum prices and minimum prices. These variations have made it very difficult for the Commission to carry out its responsibilities under the FPA. Accordingly, we propose that the following information be provided:

⁴¹ See also LG&E Power Marketing, Inc., 68 FERC ¶ 61,247 (1994) and Detroit Edison Company, et al., 80 FERC ¶ 61,348 (1997).

(1) The price per MW (for capacity sales) or per MWh (for energy sales) for each sale for resale, including transactions that were netted;

(2) in instances where the price includes transmission and/or ancillary services, entities that own transmission must separately state the prices for these services on a dollar/MW or MWh basis;⁴⁴

(3) for exchanges, the utility should state the basis for the exchange.

The above information should be reported for all transactions that were provided pursuant to either a cost-based or market-based rate tariff.

Type of Rate. Public utilities should state whether the prices for the services described above are cost-based or market-based.

Quantity Sold or Purchased. Transactions involving capacity must be stated in megawatts (MW) and those involving energy must be stated in megawatt hours (MWh). This is consistent with the units of measure used in the Contractual Information fields.

Points of Receipt and Delivery. *Citizens* requires public utilities to provide this information. The data that have been provided in this section of the quarterly report also vary. For consistency, we will require all public utilities to identify the control area and points of delivery and receipt as defined in the OASIS.

We note that the NOPR will not require the filing of any transactional information for transmission and ancillary services in addition to what is already collected for point-to-point services. Rates for these agreements are either the maximum tariff rates or, to the extent the rates are discounted, they must be posted on the transmission provider's OASIS with the discount made generally available to other customers.

E. Implementation Procedures

If the proposals in this NOPR are adopted, public utilities would have to take the following steps to achieve compliance: (1) Establish a website location for their Index of Customers filings (public utilities with an OASIS site would use their OASIS sites); and (2) file their Index of Customers with the Commission and post them on their websites.

We plan to complete work on developing software and an instruction manual for completing Index of Customers filings by the time we issue a final rule in this proceeding. Thus, we plan to direct the filing of the initial Index of Customer filings in conformance with the instruction manual in the final rule and using the software developed for this purpose by the Commission. In addition, the

requirement to file Quarterly Transaction Reports will continue until we issue a final rule. Thereafter, these filings will be superseded by the Index of Customer filings. We also propose that websites be available for Index of Customers postings by that same date. Commenters may suggest an alternative startup date for these requirements, along with any reasons why the alternative is preferable, in their comments.

Non-marketer public utilities may submit any necessary standard forms of agreement and revised tariffs for tariffs other than market-based sales at any time in a separately filed section 205 proceeding. We note that public utilities will remain obligated to file individual service agreements for these services unless those agreements conform with standard forms of agreement in their tariffs. The Commission does not propose to establish *pro forma* tariff language or a standard format for any new standard agreements, as was done in Order No. 888. Rather, public utilities should file their own proposals for Commission approval.

From time to time, public utilities may propose new generally applicable services. At such time, the public utility is encouraged to include in its proposal a standard form of agreement for the service. Further, this NOPR encourages public utilities to convert existing rate schedules into tariffs by filing a standard form of agreement. Upon acceptance of the standard form of agreement for new or converted services, public utilities would not be required to file service agreements for these services with the Commission.

At the time public utilities make their initial Index of Customers filings under the Final Rule, they will also be required to identify the service agreements in their tariffs currently on file with the Commission that conform with the standard forms of service agreements. When the public utility files its first Index of Customers, the Commission will remove, as redundant, those service agreements from the relevant, Commission-maintained tariff. Removal of these agreements from the Commission-maintained version of the public utility's tariff is simply an administrative function. It does not terminate, cancel or in any way change the terms, conditions, rates or effectiveness of these agreements. Service agreements that remain in a public utility's tariff will continue to be subject to the filing, format, and designation requirements of Part 35.

The Commission intends to develop an instruction manual outlining pertinent data requirements for Index of

Customers filings and software to be used in making these filings. We plan to conduct further proceedings and enlist industry support to develop the manual and enlist input to ensure that the software operates successfully. Once the instruction manual and software are completed, we intend to require that public utilities use the software and the manual to prepare their Index of Customer filings.

IV. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA)⁴⁵ requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule would be applicable to all public utilities. While we do not foresee that, if promulgated, the proposed rule would have a significant economic impact on a substantial number of small entities, as most entities subject to the rule would not be small entities within the meaning of the RFA, we will consider granting waivers in appropriate circumstances. In fact, by eliminating the requirement to file most service agreements, this NOPR should reduce the economic impact on most entities.

We hereby certify, under section 605(b) of RFA, that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of the RFA.

V. Environmental Impact Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.⁴⁶ However, in 18 CFR § 380.4(a)(5), we categorically excluded information gathering such as that contemplated in this NOPR from the requirement to prepare an environmental impact statement. Thus, we find that this NOPR does not propose any action that might have a significant effect on the human environment and find that no environmental impact statement concerning this proposal is required.

⁴⁵ 5 U.S.C. 601-612.

⁴⁶ Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs., Regulations Preambles 1986-90 ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR Part 380).

⁴⁴ Entities that do not own transmission must state whether their price includes transmission and ancillary services by each public utility providing these services.

VI. Statement of Information Collection and Public Reporting Burden

In this NOPR, we propose that public utilities would:

- No longer file short-term or long-term service agreements for market-based power sales;
- No longer file service agreements for those generally applicable services, such as point-to-point transmission service, for which the public utility has a standard form of service agreement under its tariff;
- No longer file Quarterly Transaction Reports summarizing its short-term sales and purchases of power at market-based rates; and

• File electronically with the Commission and post on a website an Index of Customers that contains a summary of the contractual terms and conditions in its service agreements along with transaction information for its open access transmission services, short-term and long-term market-based power sales, and cost-based power sales during the most recent calendar quarter.

The NOPR also proposes to delete as no longer necessary 18 CFR 2.8 concerning the simplification of public utility rate schedule filings. Based on these proposals, we offer the following information collection statement and burden estimate:

Information Collection Statement:
Title: Electric Service Agreement Filing Requirement.
Action: Proposed Collection.
OMB Control No: 1902-0096.
Respondents: public utilities.
Frequency of Responses: Quarterly.
Necessity of the information: The Notice of Proposed Rulemaking solicits public comments on proposed revisions to the procedures by which public utility service agreement information is filed with the Commission and presented to the public.
Burden Statement: Public reporting burden for this collection is estimated as:

BURDEN ESTIMATE OF THE PROPOSED RULE

Line No.		Companies	Quarterly reports	Hours per filing	Service agreements	Hours per filing	Total hours	Net difference
Current								
1	Utilities	210	840	6	2000	3	11040	
2	Marketers	648	2592	6	500	3	17052	
3							28092	
4	Average Annual Personnel Cost					\$117,041		
5	Total Annual Personnel Cost						\$1,580,729	
6								
7								
8								
9								
Proposed								
10								
11								
12	Utilities	210	840	3	0		2520	- 8520
13	Marketers	648	2592	3	0		7776	- 9276
14							10296	- 17796
15	Average Annual Personnel Cost					\$117,041		
16	Total Annual Personnel Cost						\$579,353	(\$1,001,376)

The estimated annual total savings to respondents is approximately \$1,000,000 on a recurring basis. The Commission also estimates that there will be approximately \$300,000 in one-time start up costs related to the establishment of websites by those entities that do not have one already, and for modifying existing websites for the posting and archiving of the Index of Customers. The collection of information contained in this NOPR has been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). For copies of the OMB submission, contact Michael Miller at 202-208-1415.

Internal Review

The Commission has conducted an internal review of the public reporting burden associated with this collection of information and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information proposed by this NOPR and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.⁴⁷

OMB regulations⁴⁸ require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this NOPR will be submitted to OMB for review. Persons wishing to comment on the collections of information proposed by this NOPR should direct their comments to the Desk Officer for FERC, OMB, Room 10202 NEOB, Washington, DC 20503, phone 202-395-7318, facsimile 202-395-7285. Comments must be filed with OMB within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address:

⁴⁷ See 44 U.S.C. 3506(c).

⁴⁸ 5 CFR 1320.11.

Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, NE., Washington, DC 20426. For further information on the reporting requirements, contact Michael Miller at (202) 208-1415.

VII. Public Comment Procedure

This NOPR gives notice of our intention to revise the filing requirements for public utility service agreements and to require the filing of quarterly reports (i.e., the Index of Customers) summarizing contracts entered and transactions completed during the prior three month period. Prior to taking final action on this proposed rulemaking, we are inviting comments from interested persons on the proposals discussed in this preamble. In addition, the Commission specifically invites comments on the usefulness of the data to be reported. Comments may also address any related matters or alternative proposals that commenters may wish to discuss. Comments are due on or before October 5, 2001.

We encourage commenters to file their comments electronically, in accordance with the Commission's procedures for electronic filing.⁴⁹ Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at www.ferc.gov and click on "e-Filing" and "Help," then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments.

User assistance for electronic filing is available at 202-208-0258 or by E-Mail to efiling@ferc.fed.us. Comments should not be submitted to the E-Mail address. All 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, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202-208-2222, or by E-Mail to rimsmaster@ferc.fed.us. Questions on electronic filing should be directed to

Brooks Carter at 202-501-8145, E-Mail address brooks.carter@ferc.fed.us.

Comments may also be filed by paper copy, in which case an original and sixteen copies must be delivered to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 by 5 p.m. on the due date for comments and should refer to Docket No. RM01-8-000. If comments are filed by paper copy, commenters are encouraged to also submit a copy of the comments on computer diskette in one of the formats specified above. If comments are filed by paper copy with attached diskette, any discrepancies will be resolved by reference to the paper copy.

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Home Page, www.ferc.gov, and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page, www.ferc.gov, and using the CIPS link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202-208-0874 or by e-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information System (RIMS), an electronic storage and retrieval system 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. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or Energy Information Online icon. User assistance is available at 202-208-2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, American Electronic Imaging Company, Inc., located in the Public

Reference Room at 888 First Street, NE., Washington, DC 20426.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 35

Electric power, Electric utilities, Reporting and recordkeeping requirements, Securities.

18 CFR Part 37

Conflicts of interests, Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 2, 35, and 37 in Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority. 5 U.S.C. 601; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 792-825y, 2601-2645; 42 U.S.C. 7101-7352.

§ 2.8 [Removed]

2. Section 2.8 is removed and reserved.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

3. The authority citation for part 35 continues to read as follows:

Authority. 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

4. The heading for part 35 is revised to read as set forth above.

5. In § 35.1, the heading is revised and paragraph (g) is added to read as follows:

§ 35.1 Application; obligation to file rate schedules and tariffs.

* * * * *

(g) For the purposes of paragraph (a) of this section, any contract that conforms to the form of service agreement that is part of the public utility's approved tariff pursuant to § 35.10a of this chapter and any market-based rate contract shall not be filed with the Commission. It must, however, be retained and be made available for public inspection and copying at the public utility's business office during regular business hours and provided to the Commission or members of the

⁴⁹ In Electronic Filing of Documents, 94 FERC ¶ 61,239 (2000), the Commission gave notice that it would accept comments on proposed rulemakings via the Internet in lieu of paper copies. The notice gave instructions for how such documents are to be filed.

public upon request. Any non-market based rate contract or individual executed service agreement that deviates in any material aspect from the applicable form of service agreement contained in the public utility's tariff and all unexecuted agreements under which service will commence at the request of the customer, are subject to the filing requirements of this part.

6. Add § 35.10a to read as follows:

§ 35.10a Forms of service agreements.

(a) To the extent a public utility adopts a standard form of service agreement for tariffs other than those for market-based power sales, the public utility shall amend its tariff to include an unexecuted standard service agreement approved by the Commission for each category of generally applicable service offered by the public utility under its tariffs. The standard format for each generally applicable service must reference the service to be rendered and the applicable service within the tariff. The standard format must provide spaces for insertion of the name of the customer, effective date, expiration date, and term. Spaces may be provided for the insertion of receipt and delivery points, contract quantity, and other specifics of each transaction, as appropriate.

(b) Forms of service agreement submitted under this section shall be in the same format prescribed in § 35.10(b) for the filing of rate schedules.

7. Add § 35.10b to read as follows:

§ 35.10b Index of customers.

(a) Each public utility shall file an updated Index of Customers with the Commission covering all services it provides pursuant to this Part, for each of the four calendar quarters of each year, in accordance with the following schedule: for the period from January 1 through March 31, file by April 30; for the period from April 1 through June 30, file by July 31; for the period July 1 through September 30, file by October 31; and for the period October 1 through December 31, file by January 31. The Index of Customers must be prepared in conformance with the Commission's "Instruction Manual For Electronic Filing of Index of Customers by Public Utilities," which is available for inspection during regular business hours at the Commission's Public Reference Room and Files Maintenance Branch, Room 2A, Federal Energy Regulatory Commission, 888 First Street, N., Washington, DC 20426. The Instruction Manual shall also be made available for inspection on the Commission Issuance Posting System

through FERC's Home Page on the Internet (www.ferc.gov).

(b) Each public utility that maintains an OASIS site must post its Index of Customers on the portion of its OASIS website that is accessible by the public without registration or payment of any fee. A public utility that is not required to maintain an OASIS website must likewise post its Index of Customers at a website that is accessible by the public without registration or payment of any fee and must identify the address for that website in each such filing with the Commission. The Index of Customers must be posted in a manner that easily allows public review, uploading, and downloading of the data contained therein.

(c) Each filed Index of Customers shall display the public utility's website address on the Internet where the public utility's past and current Index of Customers are posted. The past and current Index of Customers shall all be posted at the same world wide web location.

(d) Each Index of Customers filing shall continue to be posted on the public utility's website for a period of three years. Index of Customers filings must be available to the public for review, copying, and download at no cost.

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

8. The authority citation for part 37 continues to read as follows:

Authority. 16 U.S.C. 791–825r; 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

9. Section 37.6 is amended by adding paragraph (h) to read as follows:

§ 37.6 Information to be posted on the OASIS.

* * * * *

(h) A public utility must post its past and current Index of Customers, as provided in § 35.10b, on its OASIS website in a portion of its website that can be accessed by members of the public, without registration or payment of fee. The Index of Customers must be available to the public for review, copying, and download at no cost.

[FR Doc. 01–19397 Filed 8–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AK91

Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects Without Remanding

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs proposes to amend the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board) to permit the Board to obtain evidence, clarify the evidence, cure a procedural defect, or perform any other action essential for a proper appellate decision in any appeal properly before it without having to remand the appeal to the agency of original jurisdiction. We also propose to allow the Board to consider additional evidence without having to refer the evidence to the agency of original jurisdiction for initial consideration and without having to obtain the appellant's waiver. By reducing the number of appeals remanded, VA intends to shorten appeal processing time and to reduce the backlog of claims awaiting decision.

DATES: Comments must be received on or before September 5, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (O2D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Fax comments to: (202) 273–9289. E-mail comments to: OGCRegulations@mail.va.gov.

Comments should indicate that they are submitted in response to "RIN 2900–AK91." All comments received will be available for public inspection in the Office Regulations Management, Room 1158, between 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT:

Steven L. Keller, Acting Vice Chairman, Board of Veterans' Appeals ((202) 565–5978), or Michael J. Timinski, Attorney, Office of General Counsel ((202) 273–6327, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is the component of the Department of Veterans Affairs (VA) in Washington, DC, that decides appeals from denials of claims for veterans' benefits. An agency of original jurisdiction (AOJ), typically one of VA's 58 regional offices, makes