

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****18 CFR Parts 2 and 35**

[Docket No. RM01-8-000; Order No. 2001]

**Revised Public Utility Filing Requirements**

Issued April 25, 2002.

**AGENCY:** Federal Energy Regulatory Commission, DOE.**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its filing requirements for public utilities under the Federal Power Act (FPA) to require public utilities to electronically file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and transaction information for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter. Under this rule, public utilities may file standard forms of service agreements for Commission approval for all cost-based transmission and power sales services they offer under 18 CFR part 35 and will file agreements for such services provided under this Part that do not conform to an applicable standard form of service agreement. Executed market-based power sales agreements need not be filed.

The procedures adopted in this rule will replace the current procedure whereby public utilities file short-term and long-term service agreements for market-based sales of electric energy, service agreements for generally applicable services, such as point-to-point transmission service, and Quarterly Transaction Reports summarizing their short-term sales and purchases of power at market-based rates. This rule also further clarifies the book outs that must be reported in Electric Quarterly Reports. Implementation of the reporting requirements will take place in two phases: an interim phase through October 31, 2002, and a final phase thereafter.

This rule will make available for public inspection, in a convenient form and place all relevant information relating to public utility rates, terms, and conditions of service; ensure that information is available in a standardized, user friendly format; and

meet the Commission's electronic filing option obligation.<sup>1</sup> 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.

**EFFECTIVE DATE:** This final rule will become effective on July 8, 2002.

**FOR FURTHER INFORMATION CONTACT:**

H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-0525.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-0321.

Barbara D. Bourque (Information Technology Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-2338.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

1. Introduction
9. Discussion
10. Overview
27. Justification for Actions Taken in this Final Rule
35. Response to Comments
36. Reasons for Data Collection
37. Price Transparency and FPA Section 205 Filing Requirements
47. Information about Cost-based Transactions under Section 205(c) of the FPA.
54. The Transaction Data Will Also Be Useful for Market Monitoring Purposes.
63. The Commission Will Not Defer Action until Completion of a Comprehensive Review of Market Monitoring Functions.
70. Electric Quarterly Reports Will Be Implemented in Two Phases.
77. Confidentiality Issue
80. The Transaction-Specific Information Is Not Commercially Sensitive and Will Not Be Given Confidential Treatment.
99. There is Good Reason to Treat Data in Electric Quarterly Reports Differently than Natural Gas Sales Data.
107. Transparency Regarding the Rates, Terms, and Conditions of Market-based Power Sales.
112. Disclosure Does Not Compromise National Security.
116. Proposals That Would Avoid Disclosure of Transaction-Specific Data Are Inadequate.
130. Power Marketers and Traditional Utilities Are Treated Equally.
136. Burden Issue

<sup>1</sup>Under the Government Paperwork Elimination Act, Pub. L. No. 105-277, sections 1702-1704, the Commission is required to develop electronic filing options by October 2003.

137. The Information Collections Do Not Impose an Unreasonable Burden

162. Consistent with the Paperwork Reduction Act, the Filing Requirements Are the Least Burdensome Possible.

167. The Information Reported Will Be Useful.

172. Uniform Data Sets Are Needed.

177. Reporting the Termination Dates of Agreements, Instead of Filing Notices of Termination, Constitutes a Significant Burden Reduction.

182. Data Will Be Collected Efficiently, Without Duplicate Entries.

187. Filing Procedures and Related Issues

188. All Unexecuted and Nonstandard Non-Market-Based Rate Agreements Are Nonconforming Agreements and must Be Filed with the Commission for Approval.

202. Scope of Standard Service Agreements.

211. Duration of Requirement to Report Data.

218. Consequences of Noncompliance.

224. This Rule Does Not Nullify Existing Tariff Conditions or System Agreements.

231. Timing and Frequency for Filing Electric Quarterly Reports.

238. Use of Utility Web Sites.

245. Procedures for Cancelling Expiring Agreements.

251. Data to Be Filed in Electric Quarterly Reports

253. Transaction Data

254. Public Utilities Will Report Actual Prices for All Transactions, Including Those Lasting Less than One Day.

262. Report Reactive Power as an Ancillary Service

267. Report Transaction Data for Ancillary Services Associated with Power Sales.

273. Book Outs

274. Defining Book Outs.

286. Reporting Book Outs Is Not Unduly Burdensome.

292. Report Book Outs on a Disaggregated Basis.

295. Contract Data Requirement

296. All of the Contract Terms and Conditions to be Reported Are Identified in the Data Elements.

302. Data Elements Issues

303. Consistency with the OASIS Standards and Communications Protocols Document.

309. Deleted Data Elements.

315. Transaction End Date.

320. Cancellation Date.

322. Other Services.

327. Future Revisions to Data Elements.

330. Role of RTOs

338. Section by Section Revisions

339. Deletion of § 2.8

341. Revised Heading for 18 CFR Part 35

343. Revisions to § 35.1—Conforming Service Agreements

345. Revisions to § 35.10a—Forms of Service Agreements

347. Revisions to § 35.10b(a)—Electric Quarterly Reports

349. Revisions to §§ 35.10b(b), (c) and (d)

351. Revisions to § 37.6

353. Revisions to Data Sets

355. Implementation

361. Regulatory Flexibility Act Certification

363. Environmental Statement

365. Public Reporting Burden and Information Collection Statement  
 383. Document Availability  
 389. Effective Date and Congressional Notification  
 Attachment A—List of Commenters  
 Attachment B—Summary of Required Data Sets  
 Attachment C—Description of Data Elements to Be Filed  
 Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

## 1. Introduction

2. On July 26, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed a change in the reporting requirements for jurisdictional public utilities. Specifically, the NOPR

proposed to eliminate the requirements for filing the following documents: (1) Short-term and long-term service agreements<sup>2</sup> for market-based sales of electric energy; (2) agreements for generally applicable services, such as point-to-point transmission service, for which a public utility has a standard form of service agreement under its tariff; and (3) Quarterly Transaction Reports summarizing short-term purchases and sales of power at market-based rates.<sup>3</sup>

3. The NOPR proposed replacing these filings with an electronic filing to the Commission, known as the Index of Customers,<sup>4</sup> summarizing the contractual terms and conditions in each utility's agreements for

jurisdictional service—that is, for market and cost-based power sales and transmission service—and transaction information for each utility's short and long-term power sales during the most recent calendar quarter. The NOPR also proposed that each utility would post its Index of Customers on its Internet web site. Comments in response to the NOPR were due by October 5, 2001. In response to the NOPR, comments were filed by 39 respondents.<sup>5</sup>

4. Existing filing requirements, the proposed filing requirements, and the filing requirements being adopted in this final rule are illustrated by the two tables below. Table 1 summarizes the Commission's current filing requirements.

5. 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	
Market-Based Power Sales Tariff or Rate Schedule.	Affiliated or Unaffiliated Power Marketer .....	o <sup>1</sup>		x

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

<sup>1</sup> *Southern Company Services, Inc. et al.*, 76 FERC ¶61,321 (1996); 87 FERC ¶61,214 at 61,849 (1999), *reh'g pending (Southern)*, rescinded on a prospective basis previously-granted waivers of the requirement that power marketers file long-term service agreements, effective thirty days after the issuance of a final order in that proceeding. The Commission delayed the effectiveness of this finding until the issuance of a final order in the *Southern* proceeding. In an order being issued concurrently with this rule, there rehearings are being denied as moot.

6. Table 2 summarizes the filing requirements proposed in the NOPR and adopted in this rule.

7. TABLE 2.—SUMMARY OF PUBLIC UTILITY FILING REQUIREMENTS PROPOSED IN THE NOPR AND ADOPTED IN THIS FINAL RULE

Type of tariff or rate schedule	Filing party	Do standard forms of service agreements apply?	Are conforming service agreements to be filed?	Are nonconforming service agreements to be filed?	Reported in electric quarterly reports <sup>1</sup>
Open Access Transmission Tariff.	Non-marketer Public Utility	Yes .....	No .....	Yes .....	C
Cost-Based Power Sales Tariff.	Non-marketer Public Utility	Yes .....	No .....	Yes .....	C, T
Other Generally Applicable Services.	Non-marketer Public Utility	Yes .....	No .....	Yes .....	C
Market-Based Power Sales Tariff or Rate Schedule.	Affiliated or Unaffiliated Power Marketer.	No .....	N/A .....	N/A .....	C, T
Market-Based Power Sales Tariff.	Non-marketer Public Utility	No .....	N/A .....	N/A .....	C, T

Legend: "N/A" means not applicable, "C" means file contract data, "T" means file transaction data.

<sup>1</sup> Referred to in NOPR as the Index of Customers

<sup>2</sup> All references to "agreements" in this rule include all the forms an agreement may take under 18 CFR 35.2(b), including contracts, purchase or sales agreements, lease of facilities, etc.

<sup>3</sup> Revised Public Utility Filing Requirements, 66 FR 40929, FERC Stats. & Regs., Proposed Regulations, ¶34,554 at 34,056–57 (2001).

<sup>4</sup> As discussed below, the Commission is changing the name "Index of Customers" to "Electric Quarterly Report." Thus, when we discuss the NOPR and Data Sets Order proposals, and comments in response thereto, we will refer to the Index of Customers, but when we refer to the filing

requirements adopted in this final rule we refer to the Electric Quarterly Report.

<sup>5</sup> Attachment A lists the persons and entities who filed comments in response to the NOPR and the abbreviations used to identify them.

8. On December 20, 2001, the Commission issued an order seeking comment on the specific data elements that public utilities would report in the Index of Customers.<sup>6-8</sup> These items were generally described in the NOPR, but the Data Sets Order provided more specificity as to the actual information in each data field. The Data Sets Order also clarified that any “book out or net out based on the physical characteristics \* \* \* of the transactions must be reported as separate transactions”<sup>9</sup> and that utilities would be required to “report book outs and net outs of physical transactions on a disaggregated basis showing each individual leg of the transaction that generated the book out or net out.”<sup>10</sup> Finally, the Data Sets Order declined to postpone action on a final rule pending the Commission’s completion of a review of the information needed for market monitoring purposes.<sup>11</sup> Comments in response to the Data Sets Order were due by January 28, 2002. In response to the Data Sets Order, comments were filed by 19 respondents.<sup>12</sup>

## 9. Discussion

### 10. Overview

11. The Commission’s Part 35 regulations, 18 CFR Part 35, implement FPA section 205(c), which allows the Commission to prescribe the rules and regulations under which public utilities shall file with the Commission schedules showing their rates, terms, and conditions of jurisdictional services.<sup>13</sup>

12. In its July 26, 2001 NOPR, the Commission proposed to revamp its

<sup>6-8</sup> Revised Public Utility Filing Requirements, 67 FR 67134, FERC Stats. & Regs. ¶ 35,541 (2001) (Data Sets Order).

<sup>9</sup> FERC Stats. & Regs. ¶ 35,541 at 35,806. As explained in the Data Sets Order and as further discussed below, “book outs” occur when the cumulative effect of a number of separate power sales between two parties is such that they mutually agree to exchange their obligations to physically deliver power to each other, while maintaining all their other obligations, including payment. “Net outs” are an accounting device to minimize offsetting payments.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 35,804.

<sup>12</sup> Attachment A also lists the persons and entities who filed comments in response to the Data Sets Order and the abbreviations used to identify them.

<sup>13</sup> Section 205(c) of the FPA provides:

Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

filings requirements to improve the quality and accessibility of information available to the public and the Commission, while at the same time reducing the filing and reporting burden on public utilities. The Commission specifically examined the filing requirements under Part 35 of the Commission’s regulations applicable to the filing of service agreements by traditional public utilities, and the filing of Quarterly Transaction Reports by traditional public utilities and power marketers with a view towards making these filings less burdensome and more usable and understandable. For the most part, based on comments received on the NOPR, the Commission has decided to retain the reported data currently reported for both traditional public utilities and power marketers. However, through this final rule, the Commission will change the format through which these entities will satisfy their FPA section 205(c) reporting responsibilities for filing agreements.

13. The revised filing requirements the Commission is adopting here are one part of a larger and on-going assessment of information needs for regulating and monitoring current and evolving energy markets. The final rule is part of a comprehensive review of information and reporting requirements the Commission is undertaking to assess the adequacy of energy market infrastructure, the adequacy of the supply of electricity and natural gas, the efficiency of market rules and industry compliance with them.

14. The revised filing requirements will allow the Commission to perform its historic regulatory functions over transmission and cost-based power sales while providing information on market-based power sales in a usable format. This will also better allow customers and the Commission to identify situations that indicate the possible exercise of market power that warrant specific investigation. The importance of these goals requires the issuance of this final rule now, before the Commission completes the comprehensive information needs assessment.

15. The revised filing requirements also reflect the Commission’s commitment to using information technology to both reduce the burden on reporting entities and to increase the usefulness of the data reported. In Order No. 619,<sup>14</sup> the Commission established an electronic filing initiative to meet the goals of the Government Paperwork

Elimination Act, which directs agencies to provide for the optimal use and acceptance of electronic documents and signatures and electronic record-keeping, where practical, by October 2003.<sup>15</sup> Similarly, Office of Management and Budget (OMB) Circular A-130 requires agencies to use electronic information collection techniques where such means will reduce the burden on the public, increase efficiency, reduce costs and help provide better service.

16. The regulations the Commission is adopting here meet these goals by replacing paper filings with electronic filings that will be easy for customers to access and use. The Commission has also decided to establish a place on its own web site for the posting of Electric Quarterly Reports, which will make the reports of all public utilities easily accessible in one place and eliminate the burden on public utilities of having to maintain postings on their own web sites.

17. The revised filing requirements also reflect the Commission’s careful balancing of the need for data transparency against the concern that price information can be used for anti-competitive purposes. The Electric Quarterly Reports will be filed 30 days after each calendar quarter. This time delay will greatly reduce the usefulness of the data as a tool for collusion but gives customers data they need for long-term decision making.

18. The proposals adopted in this final rule have five main features. First, public utilities that have standard forms of agreements in their transmission, cost-based power sales tariffs, or tariffs for other generally applicable services will no longer file conforming agreements with the Commission. The filing requirements of FPA section 205(c) will be satisfied by the standard forms of agreements and by the electronic filing of Electric Quarterly Reports. Electric Quarterly Reports will be filed with the Commission, and the Commission will post them on FERC’s Internet web site.

19. Second, agreements for transmission, cost-based power sales, and other generally applicable services that do not conform to an applicable standard form of agreement in a public utility’s tariff, including agreements with individualized terms and conditions or unexecuted agreements for any service, must continue to be filed with the Commission for approval before going into effect.

<sup>14</sup> Electronic Filing of Documents, Final Rule, 65 FR 57088, FERC Stats. & Regs., Regulations Preambles 1996-2000, ¶ 31,107 (2000).

<sup>15</sup> Pub. L. 105-277, Sections 1702-1704.

20. Third, the standard forms of service agreements are not applicable to market-based rate agreements. Public utilities will continue to file requests for market-based rate authority on a case-by-case basis, and agreements under the umbrella tariffs approved in these cases need not be filed with the Commission. However, public utilities (both traditional utilities and power marketers) will include data about their market-based power sales in their Electric Quarterly Reports.

21. Fourth, the Electric Quarterly Report will include contract data and transaction data. The transaction data will provide information about all the power sales the public utility made during the reporting period.

22. For the filing periods ending July 31, 2002 and October 31, 2002, respondents will use the FERC electronic filing system (available on the FERC Internet site, [www.ferc.gov](http://www.ferc.gov)) using the link labeled e-Filing. Contract data for agreements entered into between April 1, 2002 and June 30, 2002 will be reported in the July 31, 2002 filing and thereafter. Contract data for agreements entered into between July 1, 2002 and September 30, 2002 will be reported in the October 31, 2002 filing and thereafter. Electric Quarterly Reports filed on July 31, 2002 will include transaction data for all power sales made between April 1, 2002 and June 30, 2002. Electric Quarterly Reports filed on October 31, 2002 will include transaction data for all power sales made between July 1, 2002 and September 30, 2002. The public will be able to view and download filed documents from the FERC Internet site using either the RIMS or FERRIS document management systems. In the near future, the Commission will issue an instruction manual to govern the filing of the July 31, 2002 and October 31, 2002 Electric Quarterly Reports. For reports filed after October 31, 2002, this filing format will be replaced by a relational database now under development. The final format will be implemented in a subsequent order. The final format will incorporate the same data sets adopted in this rule.

23. Fifth, in the Data Sets Order, we clarified that we were seeking additional information on book outs and net outs. In this final rule, in response to comments on this issue, we further clarify the book out information that must be reported and drop the requirement to report net outs.

24. The reporting of disaggregated book outs and transaction data for cost-based power sales are new reporting requirements. The burden associated with reporting these data are reflected in

the burden estimate and is more than offset by the burden reductions achieved by the reduction in required filings.

25. Regarding the specific data sets adopted in this final rule, we have made only minor revisions to the data sets proposed for comment in the Data Sets Order. These changes for the most part further reduce the amount of data that must be filed in the Electric Quarterly Reports. With these exceptions, the data sets change only the format and not the substance of data to be reported.

26. The current requirements for public utilities to file agreements and Quarterly Transaction Reports detailing their market-based rate transactions are rescinded as of July 1, 2002. Public utilities may begin to file their standard forms of service agreements for Commission approval immediately.<sup>16</sup> Finally, the Commission will take a further look at filing requirements when it completes its Standard Market Design initiative. We will ensure that the data public utilities report are consistent with and support a standard market design.

#### *27. Justification for Actions Taken in this Final Rule*

28. This rulemaking was initiated in response to the dramatic changes that have occurred in the electric power industry in recent years as a result of numerous factors, including the onset of open access transmission under Order Nos. 888 and 889<sup>17</sup> and the Commission's approval of umbrella tariffs under which public utilities may make wholesale sales of power at market-based rates. Each of these market-based rate authorizations

<sup>16</sup> Public utilities may wish to file their proposed standard forms of agreements for Commission approval as soon as possible. Until a public utility has standard forms of agreement in place for transmission (OATT), cost-based power sales and other generally applicable services, it must continue filing agreements for those services.

<sup>17</sup> 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 (Mar. 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), *aff'd in relevant part sub nom.*, Transmission Access Study Group, *et al. v. Federal Energy Regulatory Commission*, No. 97-1715 (D.C. Cir. 2000), *aff'd sub nom.*, *New York v. FERC*, 122 S. Ct. 1012 (2002); Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (Apr. 24, 1996), *order on reh'g*, Order No. 889-A, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,049 (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).

contained the condition that the public utility (whether a traditional utility or a power marketer) would file Quarterly Transaction Reports detailing the short-term power sales they had made during the period. In addition, traditional utilities were required to file their long-term and short-term service agreements with the Commission. Further, although the Commission had determined that power marketers would file their long-term service agreements with the Commission for approval, this requirement has not yet gone into effect, pending issuance of a further order in the *Southern* proceeding.<sup>18</sup>

29. While the industry has changed dramatically since public utilities began making wholesale power sales at market-based rates, the Commission's filing requirements have not been changed to keep abreast of new developments. The volume of transactions taking place has grown significantly. Moreover, the quality of information provided in quarterly transaction reports has proven to be inconsistent and not always sufficiently informative for the Commission and the public. The number of service agreement filings have also increased. The Commission estimates that, based on the number of filings in Fiscal Year 2000, approximately 2500 annual filings would be eliminated, although this amount will vary from year to year. These factors led the Commission to initiate this proceeding to revise the Commission's filing requirements to improve the quality and accessibility of information available to the public and to the Commission, while at the same time reducing the burden on filing public utilities.

30. We believe that with issuance of this final rule, we accomplish these goals. We note, however, that as actual experience is gained in implementing these procedures, we will be receptive to consensus suggestions that would improve the Data Sets and to recommendations on other technical matters.<sup>19</sup>

31. The revised public utility filing requirements adopted in this final rule create a level playing field vis a vis the filing requirements applicable to traditional utilities and power marketers. While the data to be reported in the data sets reduces public utilities'

<sup>18</sup> See note 6, *supra*.

<sup>19</sup> In Electricity Market Design and Structure, 97 FERC ¶ 61,289 (2001), the Commission invited industry to propose a single organization to make recommendations on electric standards. This organization could recommend further revisions to the data sets in the future, if needed. The Commission has not yet made any decisions on a standards-setting organization.

overall reporting burden as compared to existing requirements, it is hoped that the Electric Quarterly Reports' more accessible format will make the information more useful to the public and the Commission and will better fulfill the public utilities' responsibility under FPA section 205(c) to have rates on file in a convenient form and place. The data should provide greater price transparency, promote competition, enhance confidence in the fairness of markets, and provide a better means to detect and discourage discriminatory practices.

32. The reason we are collecting information about book outs is because these transactions, at a minimum, relate to sales for resale of electric energy in interstate commerce, and the information will provide the Commission and the public with a more complete picture of wholesale market activities which affect jurisdictional services and rates, thereby helping to monitor for any market power and to ensure that customers are protected from improper conduct.

33. Likewise, we are collecting information about cost-based power sales to obtain a more comprehensive picture of matters under our jurisdiction. Currently, we are receiving transaction reports about market-based transactions only. While we review the terms and conditions of cost-based power sale agreements, we have had an information void regarding the actual sales and rates that take place under those agreements. We now fill that void.

34. Commenters such as NARUC, PJM, and TDUS applaud the Commission's initiative and the enhanced price transparency the rule will foster. Other commenters express concern that disclosure of the data reported in the Index of Customers will harm them and the market. They also contend the rule is burdensome, although they are much more concerned about confidential treatment. After reviewing these arguments in detail, we find that confidentiality is not warranted. The Commission's primary focus is on implementing section 205(c), promoting competition and protecting customers, and not on protecting competitors. Because almost all the data that will be reported in Electric Quarterly Reports are already publicly available <sup>20</sup> and will be 30–120 days old when reported, negative competitive impact from disclosure is minimized.

<sup>20</sup> See Attachment B.

### 35. Response to Comments

#### 36. Reasons for Data Collection

#### 37. Price Transparency and FPA Section 205 Filing Requirements

### 38. Comments

39. Numerous commenters state that posting or reporting price information regarding sales at market-based rates is unnecessary. Engage states that the Commission has not articulated a sound basis for imposing "greater" reporting obligations on public utilities. It argues that, unless the Commission shows there is a specific need for more information or transparency, it is premature to burden the industry with having to provide it.<sup>21</sup> EEI and others<sup>22</sup> argue that there is a mismatch between the data requested and the ends to which they will be used.<sup>23</sup>

40. SCE&G and others note that the Commission only grants market-based rate authority to those entities that lack market power in the relevant geographic and product markets. Thus, they argue, the rates charged by these entities are deemed to reflect the operation of market forces in a competitive market and are inherently just and reasonable. They further argue that, if a customer believes otherwise, it can always use the FPA section 206 complaint procedures or the Commission can institute its own investigation. SCE&G argues that FPA section 206 investigations and the higher standard for approving applications for market-based rate authorization<sup>24</sup> make it unnecessary for the Commission to require the posting of data on individual market-based transactions.<sup>25</sup>

41. Williams and others argue that the Commission has flexibility in satisfying the FPA section 205 requirements for filing and posting of terms, conditions and rates. These commenters argue that the data required to satisfy the FPA section 205 requirements are different from those required to monitor the market, and the two should not be mixed. They state that the Commission's precedent for the filing of individual agreements was based on a narrow justification.<sup>26</sup> They argue that the current transaction reports filed by power marketers more than satisfy the needs of FPA section 205. They argue

that, if stricter reporting is needed from traditional utilities, this is not an adequate reason to burden power marketers.<sup>27</sup>

42. By contrast, APPA states that the Index of Customers "will afford substantial savings to filing utilities, impose uniform requirements on all types of public utilities, and provide much needed data to customers and the public in a much more accessible format."<sup>28</sup>

### 43. Commission Conclusion

44. The Commission concludes that the reporting requirements adopted in this final rule are consistent with public utilities' filing obligations under FPA section 205(c). These requirements will provide transparency of prices and other information for both market-based and cost-based transactions. As shown on Table 1, different types of filing requirements currently apply to public utilities depending on whether the seller is a traditional utility or a power marketer, on whether the sale is short-term or long-term, and on whether the sale is market-based and cost-based. Based on the increase in transactions and the current state of information technology, we believe that the new reporting and filing formats are a better way to satisfy FPA section 205(c) both substantively and procedurally (*i.e.*, electronically rather than through paper formats). The current transaction reporting was designed at a time when market-based rates made up a very small part of trade in the electric power industry and the Internet was not a primary means of transferring and sharing information. We agree with APPA that the electronic filing of what we are now referring to as the Electric Quarterly Report will enhance the public availability of transaction information and secondarily will provide useful information for the Commission's market oversight and monitoring efforts.

45. Attachment B, adapted from Attachment A to the Data Sets Order, shows all the data elements required to be reported in Electric Quarterly Reports and also identifies existing Commission regulations and orders that require the filing and public disclosure of the same data.

46. The argument that the reporting requirements are not necessary because the Commission has approved the rates as just and reasonable overlooks several points. The Commission has held that the approval or acceptance of an umbrella market-based rate tariff, in

<sup>21</sup> Engage NOPR Comments at 4.

<sup>22</sup> Morgan Stanley, Reliant, APGI, AEP, Dynegy, Engage, Exelon, SCE&G, Tenaska.

<sup>23</sup> EEI NOPR Comments at 7.

<sup>24</sup> SCE&G (NOPR comments at 4) cites a Staff Position Paper in Docket No. EX01-4-000 issued on October 1, 2001, as supporting more stringent standards for approving market-based rates.

<sup>25</sup> SCE&G NOPR Comments at 4, 5.

<sup>26</sup> Williams NOPR Comments at 26.

<sup>27</sup> Williams NOPR Comments at 25.

<sup>28</sup> APPA NOPR Comments at 1.

conjunction with the filing of quarterly reports, satisfies public utilities' filing obligations under FPA section 205(c).<sup>29</sup> The Commission has considerable discretion as to both the content and timing of filing requirements under section 205(c) and we conclude that the transparent price data required by section 205(c) and as reflected in this rule will better help the Commission in monitoring the reasonableness of prices and undue discrimination in the marketplace and also assist the public in filing complaints.<sup>30</sup> Without good information about energy transactions, it is difficult for anyone to prepare a well-documented complaint. In addition, an important goal of this rule is to convert the Commission's existing agreement filing and transaction data filing requirements into an electronic format. For these reasons, we believe that having these data reported, and having them reported in a more accessible format, will benefit the development of robust power markets and provide better protection of customers.

#### 47. Information about Cost-based Transactions under Section 205(c) of the FPA

#### 48. Comments

49. Whereas many commenters opposed the collection and publication of market-based power sales data, AEP, FPL and Consumers Energy argue that the Commission need not collect data about their cost-based power sales agreements. These commenters argue that actual rate and transaction data are not currently reported about cost-based power sales and, as the Commission's current filing requirements satisfy the requirements of FPA section 205(c), this shows that these data need not be reported to satisfy the FPA. They argue that confidentiality arguments are equally applicable to cost-based agreements,<sup>31</sup> and argue that the data are not needed for market monitoring, as the maximum rates are cost-based. They argue, further, that these rates have been reviewed by the Commission, and they are not the result of market power. They also point out that, if the Commission

<sup>29</sup> See Power Company of America, L.P. v. FERC, 245 F.3d 839, 845-846 (D.C. Cir. 2001), which affirmed the termination of short-term market-based power sales by power marketers without 60-days' prior notice. Prior notice was not required because the agreements were not required to be filed. Instead, power marketers file umbrella tariffs and after-the-fact quarterly reports.

<sup>30</sup> Any provisions in agreements that purport to bind the Commission to a standard other than the just and reasonable standard of FPA section 206, and that are not explicitly ruled upon and accepted by the Commission, will not be binding on the Commission.

<sup>31</sup> FPL NOPR Comments at 1, 5, 7-8.

were not to adopt the proposed rule, it would still have authority to request the necessary data to fulfill its market monitoring functions for cost-based power sales agreements.<sup>32</sup> They argue that the Commission has the discretion to determine what is necessary to satisfy the filing requirements of the FPA, and has used that discretion many times in the past.<sup>33</sup> They argue that nothing has changed, nor are there any public policy reasons for the reporting of cost-based transactions.<sup>34</sup> NYSEG argues that pre-2000 agreements should not be reported.<sup>35</sup> Likewise, Pinnacle states that the Index of Customers should be filed only on a go forward basis.

#### 50. Commission Conclusion

51. FPL is correct that the Commission does not currently require public utilities to report transaction data on cost-based power sales. However, this does not mean that the Commission is precluded from determining that reporting of this information is appropriate under the FPA.

52. We disagree with the assertion that nothing has changed to warrant reporting about cost-based rate transactions. First, the volume of trade and the variety of products and services sold in wholesale markets has increased significantly since the time the current requirements for reporting cost-based transactions were designed. Second, only with the advent of sophisticated business information systems and the ease of information transfer and sharing on the Internet has it become practical to make actual rate information open to public inspection for many of these transactions. Moreover, there are a number of "cost-based" rate agreements on file at the Commission for which the actual rate is not specified. These agreements include split-the-savings rates, discounts below a maximum rate, and formula rates. Under the new filing requirements, the actual rate being charged under these agreements will now be reported. We conclude that cost-based transaction data should be filed to provide the public with more accurate information as to the rates actually charged.

53. We also reject the suggestion that pre-2000 agreements need not be reported or that the data need only be filed on a go forward basis. The reporting requirement is for any agreement in existence (not expired) as of the reporting period. Contract data for pre-2000 agreements will be included in

each public utility's Electric Quarterly Report filed using the final software now under development, and without subsequent revision will remain included in all subsequent Electric Quarterly Reports until the agreement is terminated. The Commission is trying to create a comprehensive picture of all jurisdictional sales. Eliminating pre-2000 data would prevent that from happening. To avoid imposing an additional burden on industry, the pre-2000 contract data will not be collected before the final software is fully developed and implemented.

#### 54. The Transaction Data Will Also Be Useful for Market Monitoring Purposes

#### 55. Comments

56. EEI and others argue that the Commission is seeking transaction data to conduct market monitoring functions and that the data will not be useful in that endeavor.<sup>36</sup> Edison Mission states that it is unclear how these particular data sets achieve the Commission's objectives and that this exemplifies the continuing dissonance between the policy objectives of the Commission and the proposed data sets, and underscores its position that the administrative burden associated with the reporting requirements outweighs any expected benefits.<sup>37</sup>

57. EEI states that there is a danger in isolating segments of the wholesale industry and imposing reporting requirements that other segments do not have.<sup>38</sup> As an example, EEI states that public power utilities do not have to report, and, as "recently been borne out," public power utilities may manipulate the market.<sup>39</sup> Similarly, APGI states that the California and Pacific Northwest refund proceedings make clear that many of the significant players in the bulk power markets are not subject to the Commission's jurisdiction and would not file an Index of Customers under the Commission's proposals. APGI argues that incomplete data will make analysis of the markets for legitimate purposes difficult because the market data will be incomplete. EEI and Southern contend that streamlining filings and market monitoring cannot be separated. Therefore, EEI and Southern contend, the Commission should focus on the larger and more important market monitoring issue.<sup>40</sup> EEI contends that the need for and type of information required will become apparent once

<sup>36</sup> EEI NOPR Comments at 9.

<sup>37</sup> Edison Mission Data Sets Comments at 4.

<sup>38</sup> EEI NOPR Comments at 9.

<sup>39</sup> EEI NOPR Comments at 9.

<sup>40</sup> EEI NOPR Comments at 10.

<sup>32</sup> FPL NOPR Comments at 4.

<sup>33</sup> FPL NOPR Comments at 5-6.

<sup>34</sup> FPL NOPR Comments at 6-7.

<sup>35</sup> NYSEG Data Sets Comments at 1.

markets are in place.<sup>41</sup> EEI contends that the transaction data are irrelevant, if not placed in the context of barriers to entry, load response, and net long versus net short trades.

58. Dynegy suggests that, in lieu of the transaction data proposed in the NOPR, the Commission should consider alternative means of monitoring the market, such as its Dynegy Direct online trading platform. These platforms, which Dynegy states the Commission has access to, provide real-time gas and electric commodity price information from around the country. Dynegy states that the Commission should make use of this meaningful information as opposed to the meaningless transaction data.<sup>42</sup> Enron suggests market monitoring would be better served if the Commission required the posting of outages, load flow studies, generation injection, consumption at nodes, and transmission system configuration. Such physical data, Enron contends, provide a better basis for price determination.<sup>43</sup> Enron also notes that the Commission's market monitoring goals may be better served by the removal of market barriers and the implementation of clear and consistent interconnection policies rather than adopting new reporting requirements.<sup>44</sup> Duke summarized its stance by recommending that the Commission should narrow its focus on information collected, and instead focus more on "global market trends" to monitor the markets.<sup>45</sup>

## 59. Commission Conclusion

60. While the Commission agrees that the reporting of transaction data proposed in this rulemaking may be used to help monitor the market, this is but a small piece of a much larger information assessment and monitoring effort the Commission will undertake. The Commission is already comprehensively assessing what information is currently filed by all the entities we regulate (electric, gas, and oil), what we no longer need to have filed for market monitoring purposes, and what will be needed in the future for comprehensive market monitoring purposes. The primary purposes of the reporting requirements adopted in this rule are to streamline and refine the current reporting requirements for public utilities and assure greater consistency in public utility compliance with FPA section 205(c).

<sup>41</sup> EEI NOPR Comments at 10.

<sup>42</sup> Dynegy NOPR Comments at 7.

<sup>43</sup> Enron NOPR Comments at 9.

<sup>44</sup> Enron NOPR Comments at 10.

<sup>45</sup> Duke Data Sets Comments at 7.

61. EEI is correct that the transaction data reporting does not cover all transactions, *i.e.*, sales made by entities not subject to the Commission's rate jurisdiction under FPA sections 205 and 206. Congress has determined that FPA section 205(c) requirements extend only to public utility sellers. This rule is consistent with the Commission's statutory authority under FPA section 205(c). Moreover, while these limitations affect the secondary benefits of the proposal (*i.e.*, market monitoring) they do not interfere with the primary benefit of the proposal (*i.e.*, enhancing the rate information disclosed to the public under FPA section 205(c)).

62. The Commission will consider the commenters' suggestions on approaches to market oversight as it continues to expand this function. However, with respect to the commenters' suggestion that we rely on a single trading platform for our market monitoring data, while we believe that such platforms provide excellent real-time market data, they represent only one of the many sources of data that will support an effective market monitoring function.

## 63. The Commission Will Not Defer Action Until Completion of a Comprehensive Review of Market Monitoring Functions.

64. A number of commenters argued that the Commission should postpone action on a final rule until we complete a comprehensive assessment of our market monitoring efforts. In response to these arguments, the Data Sets Order included the following statement:

[w]e find these arguments without merit because, although the Commission has not completed its comprehensive review of market monitoring data, we believe that the information proposed to be reported would be the minimum needed for market monitoring purposes, even if we later determine that additional data also will be necessary. Moreover, as we noted in the NOPR, we believe that the proposed reporting requirements would improve the quality of information reported to the Commission by prescribing that public utilities report information in a consistent, accessible format.<sup>46</sup>

## 65. Commission Conclusion

66. As noted above, the Commission is currently performing a comprehensive analysis of current information filings and what will be needed in the future. Theoretically, it may be preferable to wait and undertake the Part 35 "clean-up" at the same time. However, as a practical matter we are faced with a very rapidly changing

marketplace and a lack of quality and consistency in what public utilities currently are filing pursuant to their market-based rate authorizations. The comprehensive information assessment we are undertaking will take more time to complete and we cannot afford to delay implementation of any realignment of our filing requirements, in light of current market conditions, including recent market dysfunctions in the West and major utility bankruptcies.

67. We reject the implication that the Commission cannot justify revising its reporting requirements unless it undertakes a comprehensive review of its market monitoring program. Commission reporting requirements rarely, if ever, spring from a single, comprehensive initiative. They evolve over time as the Commission's experience and understanding grows. For example, the Commission's requirements for market-based rates have evolved over the past 14 years and continue to change.<sup>47</sup> If the Commission had to wait until all things were known or decided before taking its first step, it would not be able to adequately protect customers pursuant to its statutory obligations under the FPA.

68. Further, as the Commission develops its market oversight and monitoring functions, we will explore what additional information is needed to enhance our market monitoring abilities, including ways to obtain relevant information about transactions in which non-public utilities are sellers. But we will not delay implementing the improved data reporting requirements adopted in this rule simply because non-public utilities are not covered by the rule. The Commission is aggressively pursuing the important market monitoring issues raised by EEI and Southern. However, although this information is likely to be a core component of the Commission's market monitoring program, our adoption of this final rule need not await these developments.

69. Finally, while the FPA's long-standing statutory mandate is unchanged, the Commission must adapt its filing requirements for public utilities to keep pace with recent growth in the number of transactions and in available information technology. The revised filing requirements promulgated in this final rule are needed so that the Commission can continue to properly fulfill its statutory responsibilities.

<sup>46</sup> Data Sets Order. FERC Stats. & Regs. ¶35,541 at 35,804.

<sup>47</sup> E.g., Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization, 97 FERC ¶ 61,220 (2001).

70. Electric Quarterly Reports Will Be Implemented in Two Phases

#### 71. Comments

72. Several commenters<sup>48</sup> note that the Commission has not issued the Index of Customers Manual and ask the Commission for a Technical Conference. EEI, Southern, and Enron<sup>49</sup> request participation in the Technical Working Groups that the Commission suggested might follow issuance of the NOPR. EEI and Southern request that the Technical Working Groups include industry representatives. These representatives, EEI states, can also provide the Commission with input as to the impact Index of Customers will have on the industry.<sup>50</sup> EEI suggests Technical Working Group topics could include: how to report prices based on indices;<sup>51</sup> how to report pricing information not available until after the reporting period; how to report blended prices; how to report long-term agreements filed with the Commission; and settlement agreements/grandfather agreement reporting.<sup>52</sup> FirstEnergy supports EEI's position but believes that the Technical Working Groups should meet before issuance of a final rule.<sup>53</sup>

73. EEI is concerned that the NOPR is unclear about the parameters of the data to be reported. For example, EEI seeks clarification as to which services and/or markets must be reported: long and/or short-term; day ahead, 10-hour ahead, hour ahead, 10-minute ahead and/or 5-minute ahead markets; ancillary services; and new services.<sup>54</sup> Consumers Energy states several of the data sets would be difficult to obtain, such as buyers' DUNS numbers.<sup>55</sup>

#### 74. Commission Conclusion

75. These comments were filed in response to the NOPR. The issuance of the Data Sets Order, issued subsequent to the NOPR, resolved a number of these questions, clarified issues about the data sets, and gave the content information that a manual would have had.

76. Before the final software for the Electric Quarterly Report is implemented, there will be an opportunity for utilities to test it and provide feedback. Instructions for the

final format of the Electric Quarterly Report will be issued with the implementation of the software. This matter is further discussed in the implementation section. Issuance of this final rule need not await these developments. As discussed above, the Electric Quarterly Reports for the filing periods ending July 31, 2002 and October 31, 2002, will use the FERC electronic filing system (available on the FERC Internet Web site, [www.ferc.gov](http://www.ferc.gov)) using the link labeled e-Filing. A sample Microsoft Excel format document will be posted on the FERC internet site prior to the filing period ending July 31, 2002. In the near future, the Commission will issue an instruction manual to govern the filing of the July 31, 2002 and October 31, 2002 Electric Quarterly Reports.

#### 77. Confidentiality Issue

78. While NARUC, TDUS, and PJM support the Commission's proposals and the enhanced price transparency they will bring about, other commenters argue that we should extend confidential treatment to cover market-based transactions to prevent harm to competitors and to the market generally.

79. The Commission finds that the disclosure requirements proposed in the NOPR are appropriate to give customers better information to benefit from competitive power markets, and the disclosure requirements adopted in this rule differ from the proposals in the NOPR in only one respect. Points of Delivery (PODs) will be reported at the level of detail specified in the agreement. With this change, the Commission believes that the information that will be disclosed better fulfills the mandate of FPA section 205(c) to make rate and agreement information available to the public "in a convenient form and place," and will enhance competitive markets.

#### 80. The Transaction-Specific Information Is Not Commercially Sensitive and Will Not Be Given Confidential Treatment

#### 81. Comments

82. Some commenters applaud the Commission's efforts to make public utility rate filings more transparent. For example, NARUC states that competition and robust markets demand more, not less, transparency of data. It applauds FERC for giving priority to this issue and states that the greater transparency that the Commission's proposals will provide will be helpful not only to the Commission, but to state

commissions and the public.<sup>56</sup> NARUC states that transparency is important to ensure well-functioning electricity markets and to ensure the integrity of electricity markets.<sup>57</sup> Likewise, TDUS states that there is a need for greater data transparency in competitive wholesale markets.<sup>58</sup> PJM also states its support for the Commission's proposals and for the level of detail provided by the proposed data sets.<sup>59</sup> PJM states that the "principle benefit of the proposed rulemaking is its potential to make more market information public and to make it available in a much more accessible, convenient, and usable form." PJM views this as helpful to its own market monitoring activities and as even more important to the public interest than the burden reductions achieved by the rule.<sup>60</sup>

83. Southern and others argue<sup>61</sup> that disclosure of data on power sales could cause competitive harm, and that there is no countervailing policy requiring disclosure.<sup>62</sup> Williams argues that the proposed mandatory disclosure of sensitive and confidential commercial and financial information would create unwarranted market risks and may undermine competition.<sup>63</sup>

84. Southern contends that competitors would be harmed by "their competitors" free access to information about their supply curve and about their innovative product and marketing efforts that directly benefit their customers.<sup>64</sup> Southern contends this would harm customers because public utilities will be less likely to engage in such innovative efforts.<sup>65</sup> Moreover, Southern argues customers are likely to be harmed by the disclosure of information about the prices they will pay and because the required disclosures will facilitate collusion among suppliers on output and pricing decisions.<sup>66</sup> In addition, National Grid

<sup>48</sup>EEI, Southern, Enron, FirstEnergy, PSEG, Consumers Energy.

<sup>49</sup>*Id.*

<sup>50</sup>TDUS NOPR Comments at 8, 9.

<sup>51</sup>PJM Data Sets Comments at 2.

<sup>52</sup>*Id.*

<sup>53</sup>Southern NOPR Comments at 5, 9, FP&L, NOPR Comments at 3, Mirant NOPR Comments at 1, Pinnacle NOPR Comments at 8–10, PSEG NOPR Comments at 4, 10–12.

<sup>54</sup>Southern NOPR Comments at 5, 9.

<sup>55</sup>Williams NOPR Comments at 1, 11–14.

<sup>56</sup>Southern NOPR Comments at 4. An example of a "supply curve" can be found in Atlantic City Electric Company and Delmarva Power & Light Company, 80 FERC ¶ 61,126 at 61,406 (1997) where the applicants listed all of the generating units that were their potential suppliers in ascending cost order and referred to this list as the supply curve.

<sup>57</sup>Southern NOPR Comments at 4, Williams NOPR Comments at 16–17. CMS, Reliant, EEI, and Tenaska make similar claims.

<sup>58</sup>Southern NOPR Comments at 4, Williams NOPR Comments at 17–19.

<sup>50</sup>EEI NOPR Comments at 6.

<sup>51</sup>EEI NOPR Comments at 6.

<sup>52</sup>EEI NOPR Comments at 7.

<sup>53</sup>First Energy NOPR Comments at 3.

<sup>54</sup>EEI NOPR Comments at 8.

<sup>55</sup>Consumers Energy NOPR Comments at 5.

"DUNS numbers" refer to the Data Universal Numbering System, maintained by Dunn and Bradstreet.

argues that the regulated industry has invested large sums in the development of trading strategies and risk management tools and this should not be made available to free rider competitors.<sup>67</sup>

85. Williams argues<sup>68</sup> that the Commission must exercise its broad discretion under FPA section 205(c) in a manner that not only respects its obligations under that provision but also its obligations under Freedom of Information Act (FOIA)<sup>69</sup> and the Trade Secrets Act.<sup>70</sup> Williams further argues that the Trade Secrets Act prohibits the public release of information qualifying under FOIA Exemption 4, *i.e.*, the exemption for “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” Thus, Williams argues that any rule that mandates public disclosure without exception, thereby removing an entity’s opportunity to show that the information is exempt under FOIA and protected from disclosure by the Trade Secrets Act, is necessarily unlawful.<sup>71</sup>

86. SCE&G fears that with transaction data available in electronic format, public utilities will have the ability to develop an accurate understanding of the trading policies, strategies, and practices of their competitors. Thus, allowing unfettered access to such data, could have the effect of changing the behavior of market participants to the detriment of the market and consumers. For example, it argues that public utilities might refrain from conducting transactions or signing service agreements with new customers near the end of a reporting quarter and instead wait until a new quarter has begun in order to delay the availability of information to its competitors.<sup>72</sup>

## 87. Commission Conclusion

88. The argument that the rule calls for the disclosure of commercially sensitive information that should be given confidential treatment overlooks the key fact that nearly all of the information claimed to be confidential is already being publicly disclosed on a quarterly basis pursuant to the Commission’s regulations and as set forth in prior determinations.<sup>73</sup> This can best be illustrated by Attachment B to

<sup>67</sup> National Grid NOPR Comments at 5.

<sup>68</sup> Williams NOPR Comments at 4.

<sup>69</sup> 5 U.S.C. 552 (1994).

<sup>70</sup> 18 U.S.C. 1905 (1994).

<sup>71</sup> Williams NOPR Comments at 3–4, 20–24.

<sup>72</sup> SCE&G NOPR Comments at 6.

<sup>73</sup> Attachment B identifies the relevant Commission regulations and prior determinations that each data element is to be made publicly available.

this rule, a table demonstrating that, in main part, the information to be reported in Electric Quarterly Reports is currently required to be reported quarterly by public utilities and publicly disclosed.

89. The Data Set Order established two new data elements: DUNS number, and the contact’s e-mail address. No objections were made to either of these being made publicly available.

90. The OASIS SC&P Document requires the reporting of customers’ DUNS numbers as part of OASIS’ electronic data interchange information. The Commission will now also require DUNS numbers for all customers and sellers reported in Electric Quarterly Reports. This puts both the power sale and the transmission reporting requirements on the same basis. The Commission is using public utility DUNS numbers to reduce possible confusion among similarly named, but different, providers of service. DUNS are available at no cost.<sup>74</sup>

91. The Commission is also requiring for the first time the contact’s e-mail address. The Commission is proposing that utilities will file Electric Quarterly Reports using the Internet. E-mail uses the Internet, and it is a common business tool available to the industry. E-mail will facilitate any discussions between the Commission and the public with regard to the formatting or completeness of the filed material.

92. The controversy over disclosure is limited to those that concern rates and does not concern the new elements. But FPA section 205(c) requires public utilities to disclose their rates and contracts for all transmission and sales subject to the jurisdiction of the Commission. As a result, these rate elements as well as the data public utilities currently file are not protected from disclosure under Exemption 4 of the FOIA or by the Trade Secrets Act. Although the Commission has discretion to determine the time and form for disclosure, the underlying decision to disclose rate and contract information was made by Congress.

93. Because nearly all of the information at issue is already publicly available, we give little credence to predictions of competitive harm, based on conjecture, and which are not supported by evidence of actual harm from the Commission’s current reporting requirements. Moreover, the allegations of harm are exactly the kind of “conclusory and generalized allegations of substantial competitive harm” that do not suffice to show

<sup>74</sup> DUNS numbers are available at <http://www.dnb.com>.

substantial harm to a company’s competitive position or to competition in general.<sup>75</sup>

94. We also disagree with predictions that disclosure would be harmful to the market generally. To the contrary, we believe that disclosure will promote competition and make the market operate more efficiently. We agree with NARUC that competitive and robust markets demand more, not less, transparency of data and this final rule advances that goal. As to concerns that disclosure might lead to illegal price fixing and collusion, the Commission and other federal agencies will take strong actions if public utilities engage in such illegal acts. However, we reject the arguments that this will be the outcome of providing the public with better price information. To the contrary, the data will help the Commission and the public detect instances of undue discrimination and abuses of market power.

95. Although nearly all of the information at issue is already publicly available under the Commission’s existing filing requirements, with the requirements we are adopting in this final rule, the public will be provided with better access to the information and the format will make the information more consistent and understandable. As a result, we find that the filing requirements we are adopting in this final rule better meet the statutory requirement of FPA section 205(c) to make rate information accessible in a convenient place and form.

96. Our decision to disclose rate information is consistent with judicial directives to focus on the needs of the overall market, rather than focusing on protecting the interests of individual competitors within the market.<sup>76</sup> For

<sup>75</sup> See, e.g., Center for Auto Safety v. NHTSA, 244 F.3d 144, 148 (D.C. Cir. 2001) (*Center for Auto Safety*). Commercial information is “confidential” under Exemption 4 of FOIA if its disclosure is likely either to: (1) impair the government’s ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. As to “substantial harm,” a company making this claim must “show with ‘sufficiently specific’ evidence that disclosure is likely to cause substantial competitive harm.” A company “need not conduct a sophisticated economic analysis of the likely effects of disclosure,” but “conclusory and generalized allegations of substantial competitive harm” will not suffice.

<sup>76</sup> See Open Access Same-Time Information System and Standards of Conduct, 83 FERC ¶ 61,360 at 62,456 & n.48 (1998) in which similar concerns led us to unmask source and sink data reported on utilities’ OASIS sites.

This focus on the competitive process, rather than on the fortunes of particular competitors was also present in *Town of Concord v. Boston Edison Company*, 915 F.2d 17 (1st Cir. 1990), *cert. denied*, 499 U.S. 931 (1990), where the court found that,

example, in *Alabama Power Company v. FPC*, 511 F.2d 383, 390–91, (D.C. Cir. 1974) (*Alabama Power*), the court affirmed the Commission's refusal to amend a rule that required affected utilities to publicly disclose their monthly Form No. 423 reports of fuel purchases. The court in *Alabama Power* considered various arguments that "disclosure of information would lead to bargaining disadvantages in future fuel contract negotiations,"<sup>77</sup> as well as opposing arguments that any bargaining disadvantage as a result of disclosure would merely reflect the removal of information imperfections in an otherwise competitive market thereby facilitating efficient allocation of resources.<sup>78</sup>

97. The court concluded that the dissemination of information in a competitive market tends to "facilitate prompt adjustment to the market clearing price by all parties to transactions."<sup>79</sup> Here, commenters opposing disclosure fear that, by making this information more accessible and easy to understand, its disclosure will take on added importance. However, easy access to contract and transaction data will give customers a basis on which to compare a variety of suppliers and monitor for market power and anti-competitive behavior. This information will allow customers to reap further benefits from open access transmission by giving them improved tools to use in making buying decisions. In addition, the Commission hopes that making this information more understandable and accessible will promote competition and confidence in the fairness of the market.

98. Disclosure will help the public detect and bring to the Commission's attention any instances of undue preferences, discrimination, or market power abuse by public utilities<sup>80</sup> and will promote confidence in the fair operation of the market. Moreover, the mere fact that this scrutiny will occur

<sup>77</sup> A practice is not "anticompetitive" simply because it harms competitors. After all, almost all business activity, desirable and undesirable alike, seeks to advance a firm's fortunes at the expense of its competitors. Rather, a practice is "anticompetitive" only if it harms the competitive process. It harms that process when it obstructs the achievement of competition's basic goals—lower prices, better products, and more efficient production methods. [915 F.2d at 21, 22.]

<sup>78</sup> *Alabama Power*, 511 F.2d at 390.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 391, n.13.

<sup>80</sup> We note that the Supreme Court recently affirmed the Commission's Order No. 888 and the Commission's authority to remedy undue discrimination in the provision of interstate transmission services. See note 17, *supra*. The Commission is equally concerned about undue discrimination in wholesale power sales and in the provision of other jurisdictional services.

will have a prophylactic effect and discourage improper conduct. However, the Commission can only take action to remedy abuses, if the Commission has available adequate information to detect them. In our view, the benefits of disclosure strongly outweigh the generalized claims of potential harm to competitors, unsupported by actual evidence of harm to competitors or to the market.<sup>81</sup>

#### 99. There Is Good Reason to Treat Data in Electric Quarterly Reports Differently than Natural Gas Sales Data

#### 100. Comments

101. Southern cites the Commission's *Reporting of Natural Gas Sales to the California Market*, 96 FERC ¶ 61,119 at 61,466–68 (2001) *order on reh'g*, 97 FERC ¶ 61,029 (2001) (*California Gas Order*), where the Commission found that gas sellers' contract and transaction data fall under FOIA Exemption No. 4 as trade secrets and commercial or financial information obtained from a person and privileged or confidential; and that potential harm from public disclosure outweighs any public interest.<sup>82</sup> Similarly, Mirant argues that these kinds of data are treated confidentially by the Department of Energy, PJM Interconnection LLC, New York ISO, ISO New England, and the California ISO.<sup>83</sup> Thus, they argue that the Commission should make the same finding here.<sup>84</sup>

#### 102. Commission Conclusion

103. The Commission found that gas sellers' contract and transaction data could be considered trade secrets and commercial or financial information and that disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained. The Commission then found that the potential of competitive harm from public disclosure outweighs any public interest in disclosure of data concerning individual sales transactions, and stated that the Commission would not disclose

<sup>81</sup> The Commission recognizes that any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act. See 18 CFR 388.112. Nevertheless, as explained, the information required to be filed by this rule must be public to achieve the purpose of its being filed in the first instance. Therefore, our expectation is that the Commission will deny requests for confidential treatment of these materials.

<sup>82</sup> Southern NOPR Comments at 8, 19–24.

<sup>83</sup> Mirant NOPR Comments at 2, 5–7, 9–11.

<sup>84</sup> AEP NOPR Comments at 5,7, EEI NOPR Comments at 4, FP&L NOPR Comments at 3, Reliant NOPR Comments at 3.

individual sales information to the public.<sup>85</sup> The finding of competitive harm, however, was based on the unregulated nature of much of the data sought there. In the *California Gas Order*, we acknowledged that not all parties from whom information was requested were jurisdictional under the Natural Gas Act. We further acknowledged that it was likely many of the gas sales for which information was requested were not or are no longer jurisdictional services under the Natural Gas Act. Confidential treatment of natural gas sales data was necessary in the *California Gas Order* to encourage non-jurisdictional entities to provide data to the Commission.

104. By contrast, the regulations and reporting requirements adopted in this final rule apply only to public utilities and are being adopted pursuant to FPA section 205(c). Under this statutory authority, the Commission is prescribing rules and regulations for the format jurisdictional public utilities must follow when they file with the Commission data related to their jurisdictional activities. The Commission is not applying this rule to non-public utilities or non-jurisdictional services.

105. The purpose of the instant rule differs from the purpose of the *California Gas Order* proceeding. The *California Gas Order* had the limited objective of requesting data from the industry to aid in prescribing rules and regulations necessary to carry out the Commission's responsibilities, and seeking information to serve as a basis for recommending further legislation to the Congress. The Commission terminated the data collection upon determining the conditions no longer required additional reports.<sup>86</sup> This is in contrast to the purpose of this rule, which is to establish rules and regulations governing the required format and content of contract and transaction data for purposes of reporting and public disclosure pursuant to FPA section 205(c). In these circumstances, there is a reasoned basis for treating electricity sales differently from the cited natural gas sales.

106. Similarly, information collected by the Department of Energy is pursuant to different statutory authority. Although ISOs keep bid data information confidential for six months, this rule does not require the reporting of bid data.

<sup>85</sup> 96 FERC at 61,466–468.

<sup>86</sup> Reporting of Natural Gas Sales to the California Market, notice of decision not to seek extension of reporting requirement, 67 FR 5585, 98 FERC ¶ 61,251 (January 30, 2002).

107. Transparency Regarding the Rates, Terms, and Conditions of Market-based Power Sales

108. Southern argues that the NOPR fails to consider that market-based rates have only been granted in instances where the Commission has found that an entity lacks market power to manipulate markets or act in an anti-competitive manner.<sup>87</sup> Thus, it argues, no across-the-board rule is needed covering a utility's wholesale power sales functions.

#### 109. Commission Conclusion

110. When a public utility applies for authority to make wholesale sales at market-based rates, it presents evidence that it either lacks market power or has taken adequate steps to mitigate its market power.<sup>88</sup>

111. However, the Commission's market-based rate findings do not absolve the Commission from its continuing responsibility to assure that rates are just and reasonable. Because the Commission is concerned that circumstances may change, it imposes standard conditions on every market-based rate approval. The standard conditions include: the requirement to file Quarterly Transaction Reports, which are made available for public review; and the requirement to submit data on a triennial basis to confirm that the public utility continues to lack (or has mitigated) market power. The Electric Quarterly Reports will enable the Commission and others to ensure that market-based rates remain justified over time.

#### 112. Disclosure Does Not Compromise National Security

113. EEI argues that the Commission needs to be sensitive to possible national security consequences from revealing vulnerabilities in the nation's infrastructure.<sup>89</sup>

#### 114. Commission Conclusion

115. The Commission takes concerns about revealing vulnerabilities in the nation's infrastructure very seriously. Indeed, the Commission issued a policy statement in Docket No. PL02-1 on October 11, 2001, announcing the removal from the Internet and the Public Reference Room of certain documents such as oversized maps that detail the specifications of energy

<sup>87</sup> Southern NOPR Comments at 18.

<sup>88</sup> See, e.g., Pinnacle West Capital Corp., Arizona Public Service Company and APS Energy Services Company, Inc., 91 FERC ¶ 61,290 (2000), *reh'g denied*, 95 FERC ¶ 61,300 (2001) and Pinnacle West Energy Corp., 92 FERC ¶ 61,248 (2000), *reh'g denied*, 95 FERC ¶ 61,301 (2001).

<sup>89</sup> EEI NOPR Comments at 5-6.

facilities.<sup>90</sup> Subsequently, on December 16, 2001, the Commission issued a Notice of Inquiry on the possibility of amending its rules to address the public availability of critical energy infrastructure information.<sup>91</sup> The information at issue here, however, does not present comparable concerns, as it does not reveal any system vulnerabilities. We therefore will not grant confidential treatment to Electric Quarterly Reports on this basis.

#### 116. Proposals That Would Avoid Disclosure of Transaction-Specific Data Are Inadequate

117. CMS argues that, in devising filing rules for power marketers, the Commission determined that, to encourage the emergence of a competitive wholesale power market, power marketers would not be required to follow the same filing requirements as traditional utilities. CMS argues that this policy should be retained, because a fully competitive power market has not yet emerged.<sup>92</sup> Morgan Stanley argues that power marketers should be allowed to file certain transaction information on a confidential basis.<sup>93</sup>

118. Williams argues that, in lieu of adopting the proposals in the NOPR, the Commission should make only the reporting requirements currently applicable to power marketers applicable to non-marketers.<sup>94</sup>

119. SCE&G suggests the Commission lengthen the time before transactions must be reported. It argues that this would help to alleviate concerns over the harm to competitors caused by the dissemination of sensitive data.<sup>95</sup> Engage argues that the Commission should extend the reporting interval from quarterly to semi-annually and not require disclosure until (30) days after a transaction is completed.<sup>96</sup> Exelon argues that the Commission should ensure that data reported is current enough for market analysis, but stale enough to prevent harm to competitors filing the information.<sup>97</sup> Another suggested alternative is to have public disclosure of aggregated data.<sup>98</sup> Advocates of this approach argue that disaggregating data regarding individual sale transactions offers no benefit.<sup>99</sup>

<sup>90</sup> See Treatment of Previously Public Documents, 97 FERC ¶ 61,030 (2001).

<sup>91</sup> See 67 FR 3129 (Jan. 23, 2002).

<sup>92</sup> CMS NOPR Comments at 4.

<sup>93</sup> Morgan Stanley NOPR Comments at 9.

<sup>94</sup> Williams NOPR Comments at 4.

<sup>95</sup> SCE&G NOPR Comments at 8, 9.

<sup>96</sup> Engage NOPR Comments at 11.

<sup>97</sup> Exelon NOPR Comments at 6.

<sup>98</sup> Enron NOPR Comments at 9, PSEG NOPR Comments at 5, Pinnacle NOPR Comments at 9-10.

<sup>99</sup> EEI NOPR Comments at 7.

#### 120. Commission Conclusion

121. None of these suggested alternatives is adequate to meet the goals the Commission is seeking to accomplish in this rulemaking. Customers need data about power sales to realize the competitive advantages of open access transmission and to have confidence that markets are competitive. First, as to Williams' suggestion to disclose only summary data, this argument is based on the false premise that power marketers' quarterly transaction reports currently are limited to summary and aggregated data.<sup>100</sup>

122. Second, the suggestion to extend the lag before the information becomes publicly available overlooks the fact that the existing Quarterly Transaction Reports and the Electric Quarterly Reports that will replace them already create a lag of 30-120 days. This lag reduces any potential harm to competitors that could result from the disclosure of price data.

123. Nor will the Commission allow the data to be aggregated. Customers of market-based rate transactions are not each charged the same rate. Aggregated data do not provide sufficient disclosure of rates to the public. Further, market power is possible not just over a market area. It can also be exercised over individual customers. Aggregated data would prevent customers from detecting (and filing a complaint with the Commission about) improper conduct and would be less helpful in promoting competition. We conclude that section 205(c) does not allow the aggregation of this information.<sup>101</sup>

124. Moreover, aggregated data have never been allowed by the Commission for power marketers' Quarterly Transactions Reports. In *Enron*,<sup>102</sup> Enron requested (1) waiver of detailed purchase and sales transactions, and (2) permission to report the data on an aggregate basis (*i.e.*, without identifying the other parties or the terms of the individual transactions) or to file on a confidential basis.<sup>103</sup>

125. The Commission denied Enron's waiver requests and directed Enron to submit a quarterly informational filing on an unaggregated, public basis. Specifically, we stated:

[w]e will deny Enron's request to modify the reporting requirement in any way. Enron

<sup>100</sup> See Enron Power Marketing, 65 FERC ¶ 61,305 at 62,406 (1993) (*Enron*), where the Commission denied Enron's request to file aggregated data in Quarterly Transaction Reports.

<sup>101</sup> See *Maislin Industries U.S. Inc. v. Primary Steel, Inc.*, 497 U.S. 116 (1990) (*Maislin*) and *Southwestern Bell Corp. v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995) (*Southwestern Bell*).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 62,404.

misreads the Commission's purpose in requiring quarterly reporting of a marketer's transactions. None of our orders indicates that the purpose for requiring information from power marketers is to assess the size and strength of the market. On the contrary, the Commission has indicated that informational filings are necessary so that the marketer's rates will be on file as required by section 205(c) of the FPA, 16 U.S.C. § 824d(c), to evaluate the reasonableness of the charges, and to provide for ongoing monitoring of the marketer's ability to exercise market power \* \* \* .

With respect to Enron's request that its informational filings be afforded confidential treatment, we note that we previously denied a similar request in *National Electric Associates Limited Partnership*, 50 FERC ¶ 61,378 (1990). In that case, the marketer sought to reserve the right to seek confidential treatment of its informational reports. The Commission rejected this request, stating that section 205(c) of the FPA 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 affect or relate to such charges, classifications and practices. For the same reason, we will deny Enron's request for confidentiality.<sup>104</sup>

126. On August 9, 1994, in *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 (1994), the Commission held Heartland, an affiliate of Wisconsin Power and Light Company, to the reporting standards in *Enron*.<sup>105</sup> Heartland's filing was the first application by an affiliated power marketer for open-ended authorization to transact at market-based rates.

127. The Commission also rejected the use of aggregated data in *Commonwealth Electric Company*, 78 FERC ¶ 61,191 (1997). In this order, the Commission directed the reporting of prices for short-term transactions and the reporting of separate prices for wholesale generation, transmission and ancillary services in the quarterly reports. Pursuant to Order Nos. 888 and 888-A, the Commission stated:

[a]ccordingly, we will direct the Applicants to revise their market-based power sales tariffs to state explicitly separate prices for generation, transmission and ancillary services.<sup>106</sup>

128. Further, the Commission stated:

[W]e are permitting the Applicants to report prices for short-term transactions \* \* \* in quarterly summaries \* \* \* the separate prices for the unbundled services in such short-term transactions should be included in those quarterly summaries.<sup>107</sup>

<sup>104</sup> 65 FERC at 62,406.

<sup>105</sup> See also LG&E Power Marketing, Inc., 68 FERC ¶ 61,247 (1994) and Detroit Edison Company, et al., 80 FERC ¶ 61,348 (1997).

<sup>106</sup> 78 FERC at 61,813.

<sup>107</sup> 78 FERC at 61,813.

129. Therefore, the requirement to report disaggregated data is not new, and this final rule merely continues our prior practice.

#### 130. Power Marketers and Traditional Utilities Are Treated Equally

131. Williams suggests, as an alternative to disclosure, that, if the Commission wishes to streamline its reporting requirements and move toward a uniform system applicable to power marketers and traditional utilities alike, it could merely extend the requirement to file quarterly transaction reports, currently applicable to power marketers, to non-marketers. This approach, it argues, would achieve true efficiency while protecting confidential data and promoting competition.<sup>108</sup>

132. Conversely, CMS argues that, in devising filing rules for power marketers, the Commission determined that, to encourage the emergence of a competitive wholesale power market, power marketers would not be required to follow the same filing requirements as traditional utilities. This policy should be retained, because a fully competitive power market has not yet emerged.<sup>109</sup> Morgan Stanley argues that power marketers should be allowed to file certain transaction information on a confidential basis.<sup>110</sup>

#### 133. Commission Conclusion

134. In this rulemaking, the Commission affirms the principles outlined in *Southern*. We agree with Williams that there should be consistent reporting requirements for both power marketers and traditional utilities. We will apply equal filing requirements for both traditional utilities and power marketers. These filing requirements will provide information consistent with the requirements of FPA section 205(c). The public interest in the disclosure of the information to be reported is the same regardless of whether the agreements and power sales at issue are made by power marketers or traditional utilities.

135. However, this in no way eliminates the need to improve our existing Quarterly Transaction Reports. While the Commission could, on a case by case basis, address the inconsistencies and inadequacies of current quarterly transaction filings, we believe it would be more productive and efficient to correct the problems we are experiencing regarding the quality of Quarterly Transaction Reports by replacing them with the Electric

<sup>108</sup> Williams NOPR Comments at 2, 4.

<sup>109</sup> CMS NOPR Comments at 5.

<sup>110</sup> Morgan Stanley NOPR Comments at 8, 9.

Quarterly Reports mandated by this rule.

#### 136. Burden Issue

##### 137. The Information Collections Do Not Impose an Unreasonable Burden

#### 138. Comments

139. NARUC states that competition and robust markets demand more, not less, transparency of data and it applauds the Commission for giving priority to this issue.<sup>111</sup> It also endorses reducing the number of routine agreements to be processed by the Commission so that greater resources can be devoted to the complex and important issues that arise in competitive markets. These resources are needed, NARUC states, because "achieving well-functioning electricity markets will require diligent oversight by both FERC and State utility commissions."<sup>112</sup> PJM agrees that the revised filing requirements will achieve reductions in the administrative burdens on the Commission and regulated companies, but views these as less important than the greater public benefit that will result from making market information available in a much more accessible, convenient, and usable form.<sup>113</sup>

140. The California Commission argues that the Commission's electronic filing requirements should complement, not replace, the Commission's existing filing requirements. The California Commission would have public utilities file Indexes of Customers, but would also retain the current requirement for public utilities to file for approval of all new agreements, with notice to the public, so that third parties such as state Commissions can review those agreements before they become effective, and file protests where appropriate.

141. By contrast, many commenters (e.g., EEI, Avista, Puget, Wisconsin, and Otter Tail) state that the transaction data required by this rule is a large increase in content and detail as compared to the data currently required in power marketers' Quarterly Transaction Reports. While they support efforts to minimize the reporting burden and to modernize data collection methods in general, they state that the Index of Customers will not achieve these goals. Avista, in a representative comment states:

[f]ar from 'minimizing the reporting burden on public utilities,' the December 20 Order imposes a reporting requirement template

<sup>111</sup> NARUC Data Sets Comments at 2-3.

<sup>112</sup> Id. at 2.

<sup>113</sup> PJM Data Sets Comments at 2.

that will create undue burdens on public utilities and will result in the disclosure of commercially sensitive information. Thus, it is clear that the Commission's efforts to 'streamline' regulations in this proceeding is likely to have a detrimental effect on wholesale electric power markets, and should be modified \* \* \*.<sup>114</sup>

142. Likewise, Wisconsin Electric states that,

[t]he proposal will require significant efforts on the part of [the utility] \* \* \* to convert all of the relevant data, which is currently maintained in disparate databases, into the format requested by the Commission. It will also require that Wisconsin Electric expend significant resources to develop and maintain the database necessary to post the relevant information on its Web site.<sup>115</sup>

143. Puget and Avista state that the Commission:

has greatly underestimated the potential reporting burden of the proposed requirements and the complexity and cost inherent in posting such large volumes of data on utility web sites. FERC should reduce the number of proposed data elements and eliminate or significantly simplify the requirement to post information on utility web sites.<sup>116</sup>

144. Otter Tail argues that the filing requirements would be onerous for small entities.<sup>117</sup> Edison Mission states that the three year requirements for maintaining the information in a database adds to the cost.<sup>118</sup>

#### 145. Commission Conclusion

146. We believe the views expressed by NARUC, TDUS, and PJM more accurately assess the burdens and benefits of this final rule than those argued by other commenters.

147. The Commission has balanced the need for data with efforts to minimize the burden on filers. Specific comments about the burden of creating an electronic file, creating an electronic file of transaction data, web-site development and maintenance, and data retention requirements are discussed below.

148. We acknowledge that the filing of transaction data for cost-based power sales will create an additional burden. However, this burden will be offset by the fact that conforming service agreements will no longer be filed. In addition, the lack of a standard format in the current Quarterly Transaction Reports has led to power marketers to submit their reports using a multitude of formats. To the extent power marketers use the same format for each quarter's

filings, they will have to expend time and effort to map their data into the new required format. But once a utility's system is mapped to the interim and final formats, the burden will be reduced. There will be no more paper to print, mail or file. The public utilities will be able to file Electric Quarterly Reports with the Commission electronically over the Internet.<sup>119</sup>

149. The burden of electronically filing contract data each quarter is less onerous than the current requirements to file executed copies of all service agreements. Since the system is being designed so contract data need only be entered once, after the initial filing, only certain data about new agreements and terminations will have to be reported. In comparison, under our current filing requirements, each service agreement must be filed as a rate filing within 30 days of commencement of service. Specifically, 18 CFR 35.7 and 35.8 currently require that a filer submit an original and five copies of a filing to the Commission. Each copy must contain a number of components: first, the formal letter of transmittal; second, all other materials and information required by these regulations (e.g., the executed service agreements); third, a form of notice for the **Federal Register**; and, finally, a copy of the same notice in electronic format (in ASCII text or WordPerfect 8.0 format) on a 3 1/2" diskette. Also, the filer must serve a copy of the filing to the public utility's jurisdictional customers (including: other parties receiving service from the public utility, state public service commissions, other government agencies, etc.).

150. The current filing requirements for service agreements are based on the use of paper copies and are burdensome to both the filing parties and the Commission. The replacement of this archaic paper format will reduce the burden on filing utilities and the burden on the Commission of processing those filings.

151. The use of Electric Quarterly Reports will also avoid critical time delays. Incomplete filings have been a burden for both the filers and the Commission, due to lost time in processing and issuance of decisions. Omission of any required item could hold up the acceptance and processing of the filing (e.g., if the filer omits the diskette, the processing stops and a request by the Commission to the filer for a proper submittal of the diskette is triggered). The filer must then be

notified and resubmit the missing component(s) of the filing.

152. With the implementation of the revised filing requirements adopted in this rule, the processing of applications for approval will become much more streamlined. The resources currently devoted to processing paper filings involving routine noncontroversial matters will be freed up and available for further review and evaluation of nonconforming rate filings, enhanced market oversight, and other important matters. Currently, the Commission receives approximately 2,500 service agreement filings per year that would be eliminated by this order.<sup>120</sup>

153. We reject the suggestion by the California Commission that the Index of Customers (*i.e.*, the Electric Quarterly Report) should accompany and not replace current rate filings. This proposal would not accomplish the Commission's objective of streamlining the process. Instead, it would increase the reporting burden on public utilities and would retain the Commission's current administrative burden of processing these filings without enhancing the level of review. Moreover, the filing of standard forms of agreements will provide a safeguard to ensure that conforming agreements do not contain unreasonable terms and conditions.

154. Some commenters offer to aggregate the data, which would be an additional step on their part, at the same time that they object to the reporting unaggregated data as being too burdensome. They also state that they could cope with the reporting requirements, if the data are kept confidential. These inconsistent arguments suggest that the objections raised concerning the reporting burden reflect actual disagreement with other aspects of the rule (*i.e.*, confidentiality).

155. Moreover, maintaining the status quo for the current Quarterly Transaction Report is not a viable option. The Government Paperwork Elimination Act, Pub. L. No. 105-277, sections 1702-1704, requires that every agency develop electronic filing options by October 2003 for all of the data it requires to be submitted. Therefore, the Commission is required to move to an electronic filing format for all of its data, including Quarterly Transaction Reports, which currently are filed on paper. With a few exceptions discussed elsewhere, this data collection primarily involves an adaptation of our current filing requirements to an electronic format. Moreover, public utilities are currently converting their data from

<sup>114</sup> Avista Data Sets Comments at 1.

<sup>115</sup> Wisconsin Electric Data Sets Comments at 1.

<sup>116</sup> Puget Data Sets Comments at 4.

<sup>117</sup> Otter Tail Data Sets Comments at 2.

<sup>118</sup> Edison Mission Data Sets Comments at 3.

<sup>119</sup> Because informational filings are Class I filings under our fee structure, no filing fees are currently applicable.

<sup>120</sup> NOPR at 34,075.

different formats, often electronic, to a paper format to file with the Commission. They will now file electronically, thereby eliminating the step of making paper filings, and their filing burden will be reduced.

156. Several commenters expressed concerns over the expense of developing web sites to capture and display Index of Customers data. The Commission recognizes that this requirement would be a duplication of the data we will maintain on our own web site.

Therefore, we will eliminate the requirement for each company to develop and maintain an information site. An added benefit is that having one central location for the data will make it easy for the public to find and research power prices. Although the Commission will post the data, this does not eliminate the FPA section 205(c) requirement for public utilities to have actual agreements available for public inspection at their business locations.

157. Numerous commenters contend that the amount of data requested represents an increase in burden over the current requirements. We disagree.

158. In *Citizens Power & Light Corporation*, 48 FERC ¶ 61,210 (1989) (*Citizens Power*), the Commission stated that:

Citizens Power must make informational filings describing its purchase and sale contracts for generation and transmission. These filings will be used to monitor Citizens Power's ability to exercise market power \* \* \* The informational filings will also be used to monitor the rates being paid to Citizens.<sup>121</sup>

*Citizens Power* also stated that, for each purchase contract and sale contract, Citizens should provide the following information:

For each purchase contract and sale contract, Citizens Power should provide the following information: the buyer's or seller's name; a brief description of the service, including degree of firmness; the delivery points for each service; the price of each service; the quantities to be served or purchased; the contract's duration; \* \* \* and any other attributes of the product being purchased or sold which contribute to its market value. Citizens Power shall file this contract information quarterly as to all contracts signed within the time period. Citizens Power must file this information within thirty days of the end of each quarterly period.<sup>122</sup>

<sup>121</sup> 48 FERC at 61,778.

<sup>122</sup> "In deciding that informational filings are to be made on a quarterly basis, we have balanced the need to ensure that the data are not stale for purposes of any market analysis, against the desire that Citizens Power not be competitively disadvantaged by having to file sensitive marketing information while it might still be useful to Citizens Power's competitors." 48 FERC at 61,778.

Thus, it can be seen that reporting this information is not a new requirement.

159. In *Southern II*, the Commission provided that power marketers need only report a limited data set in the Quarterly Transaction Report for short-term power sales.<sup>123</sup> The Commission, in the NOPR, proposed to retain the data reporting distinctions for short-term sales. This final rule does not change the data burden for short-term transactions.

160. As shown in Attachment B, all of the data requested for transactions reported in Electric Quarterly Reports are currently required of utilities selling at market-based rates, with the exception of contact e-mail address, company DUNS number, transaction identification, and a contract ID number. The reporting of cost-based transactions and book outs are new requirements and are discussed below. Offsetting those additions, the current requirement to report purchase data is being eliminated.

161. Finally, Otter Tail comments that the proposed rule would be prejudicial and burdensome to small entities. In *Southern*, the Commission removed the waiver commonly granted market-based rate power sellers, and required them to follow the same Part 35 filing requirements all public utilities, both large and small, have had to abide by for decades. The Commission believes that filing Electric Quarterly Reports constitutes a lesser burden for market-based rate agreements than the burden required by the current Part 35 filing requirements.

162. Consistent with the Paperwork Reduction Act, the Filing Requirements Are the Least Burdensome Possible

### 163. Comments

164. EEI argues that the Paperwork Reduction Act requires the Commission to design reporting requirements that are the least burdensome possible and that the Commission's proposal does not accomplish this.<sup>124</sup>

### 165. Commission Conclusion

166. We agree with EEI that, under the Paperwork Reduction Act, the Commission is required to minimize the reporting burden it imposes on the regulated community and to explain the need for proposed new information requests. But as shown on Attachment B, *infra*, almost all of the information that will be reported in Electric Quarterly Reports is currently filed in paper format and an electronic filing

<sup>123</sup> Southern Company Services, Inc., 75 FERC ¶ 61,130 at 61,444–445 (1996) (*Southern II*).

<sup>124</sup> EEI Data Sets Comments at 4.

will reduce the burden. In addition, by including data in Electric Quarterly Reports, public utilities will no longer file conforming service agreements, Quarterly Transaction Reports or purchase data. Moreover, we believe we have shown that the proposed changes in transaction reporting are consistent with FPA section 205(c) and will help ensure that rates are and remain just and reasonable. For example, the Commission is no longer requiring purchase data. This rule also gives us the opportunity to make use of current technology to enhance the usefulness of the data.

167. The Information Reported Will Be Useful

### 168. Comments

169. PSEG states that Index of Customers filings, as proposed, would constitute a "data dump."<sup>125</sup> PSEG and Reliant ask, for example, what use are prices that change by the minute or hour?<sup>126</sup>

### 170. Commission Conclusion

171. It is true that the volume of transactions in electric power markets is extensive and growing. This will produce a large number of reported transactions. Even so, the proposed reporting requirements are likely to reduce reporting burden with a standard electronic reporting format. We reject the contention that this reporting requirement would only produce a data dump. The reason for the specific formatting of the data is to enable Commission staff and other interested parties to perform analyses of the data.

172. Uniform Data Sets Are Needed

### 173. Comments

174. Avista states that it does not currently maintain its data in the format that the template requires. It states that many of the elements are not maintained in electronic format and compiling the data will be both costly and labor intensive.<sup>127</sup>

### 175. Commission Conclusion

176. We acknowledge that not all public utilities are currently keeping their data in formats that match the data sets adopted in this rule. This current chaotic diversity, however, may explain why the current quarterly transaction reports are so inconsistent and why uniform data sets are so necessary. Because some of the contract data elements may not currently be in

<sup>125</sup> In other words, it would be filed, but it would never be of any use or even looked at.

<sup>126</sup> PSEG NOPR Comments at 8–9.

<sup>127</sup> Avista Data Sets Comments at 6.

utilities' computer systems, we will be providing in the final format (for Electric Quarterly Reports due on January 31, 2003 and thereafter) a user-friendly application through which the data can be entered.

177. Reporting the Termination Dates of Agreements, Instead of Filing Notices of Termination, Constitutes a Significant Burden Reduction

#### 178. Comments

179. Duke argues that the data element for "actual\_termination\_dt" is burdensome because it seeks data that Duke does not currently collect. Duke argues that this information can only be produced if Duke manually monitors each and every transaction to determine if the transaction ends prior to the agreed time and date.<sup>128</sup>

#### 180. Commission Conclusion

181. Duke's understanding of the data reported in this data element is incorrect. The actual termination date to be reported in Electric Quarterly Reports refers to the dates when public utilities' agreements terminate. As proposed in the NOPR,<sup>129</sup> reporting this data element in Electric Quarterly Reports replaces the existing requirement that public utilities file notices of termination requesting approval to terminate their agreements and a cancellation sheet.<sup>130</sup> Thus, this item yields a burden reduction, not an increase.

182. Data Will Be Collected Efficiently, Without Duplicate Entries

#### 183. Comments

184. Constellation states that the data sets in Appendices A and B of the Data Sets Order did not eliminate duplication in required data elements as promised by the Commission's NOPR. Constellation notes that the Appendices identify multiple data elements as required for both contract and transaction data sets. Further, it argues, the Data Sets Order provided no instructions on how to report these fields without duplication.<sup>131</sup>

#### 185. Commission Conclusion

186. Although some data elements are related to both contract and transaction data, this does not mean that they will necessarily be entered twice. The software being developed for the final format of the Electric Quarterly Reports

will use a relational database, so one data entry (e.g., company name) will automatically show up in both the contract data and transaction data portions of the Electric Quarterly Report without duplicate data entries being made. This feature will not be implemented for the July 31 and October 31, 2002 periods. For these periods, the individual files will be posted on the Commission's website.

#### 187. Filing Procedures and Related Issues

188. All Unexecuted and Nonstandard Non-Market-Based Rate Agreements Are Nonconforming Agreements and Must Be Filed with the Commission for Approval

189. In the NOPR, we proposed to revise 18 CFR 35.1 to add paragraph (g). The NOPR proposed that agreements that conform to approved forms of service agreements in a public utility's tariff and any market-based rate agreement need not be filed with the Commission.

#### 190. Comments

191. Southern argues that the filing of agreements is unnecessary for negotiated, bilateral market-based sales now that purchasers have numerous choices and agreements are negotiated under market-based umbrella tariffs and service agreements.<sup>132</sup>

192. Other commenters raise concerns about unexecuted and nonstandard agreements. Calpine urges that all unexecuted and nonstandard agreements continue to be filed with the Commission to help the Commission remedy instances of discrimination.<sup>133</sup> Otherwise, Calpine states, the proposed regulation could have the unintended effect of increasing opportunity for discrimination. Calpine is concerned that case-by-case review of interconnection agreements could lead to disparate treatment.<sup>134</sup> Engage states that, in the event of an FPA-related dispute, the Commission should honor any negotiated terms for dispute resolution contained in a power agreement. Engage further argues that the Commission should confirm that it will honor such negotiated dispute resolution procedures and not open itself to forum shopping by any of the parties.<sup>135</sup> TDUS states that executed service agreements must be made

available to customers, such as through a central clearinghouse. In addition, TDUS states that "material deviations" must be clearly spelled out. Third parties should be able to object to terms and conditions to the Commission.<sup>136</sup>

193. National Grid states nonstandard agreements should be permitted to be posted in PDF on utilities' web sites and filed electronically with the Commission, and the Commission would then put the file in RIMS.<sup>137</sup>

194. The California Commission argues that the electronic filing requirements should complement, not replace, the Commission's existing filing requirements. Otherwise, the burden would be put on third parties, such as state Commissions to challenge the reasonableness of contracts in FPA section 206 proceedings.

#### 195. Commission Conclusion

196. We believe that, because the Commission will review the reasonableness of the terms and conditions of the standard agreements for transmission, cost-based sales, and other generally applicable services, and because utilities will be required to retain copies of these agreements and make them available for public inspection and copying, the requirement for public utilities to file all individual service agreements with the Commission can be eliminated so long as those agreements are consistent with a public utility's applicable approved standard forms of service agreements. However, if an agreement does not precisely match the applicable standard form of service agreement, or if the agreement is unexecuted, it is necessarily nonconforming and must be filed individually for Commission approval. Given these safeguards, we do not believe that the proposals adopted in this rule in any way compromise the Commission's ability to review substantive issues.

197. It is true that conforming agreements will not be filed before becoming effective. Thus, third parties will first learn of them when they are reported in a public utility's Electric Quarterly Report. It is also true that, a third party (such as the California Commission) finding the agreement objectionable would have the option of filing a complaint, but not a protest. The opportunity to file a protest would come earlier in the process, when the public utility submits its standard forms of agreement or market-based rate tariff for Commission approval. In response to such filings, third parties may protest

<sup>128</sup> Duke Energy NOPR Comments at 6,7.

<sup>129</sup> NOPR, FERC Stats. & Regs. ¶ 32,554 at 34,068.

<sup>130</sup> Similarly, the 60-day notice provisions for new filings is inapplicable to conforming agreements that are not filed.

<sup>131</sup> Constellation Data Sets Comments at 6.

<sup>132</sup> Although Calpine's particular concern is with transmission and interconnection agreements, it also expresses support for the continued filing of all unexecuted and nonconforming agreements.

Calpine NOPR Comments at 6.

<sup>133</sup> Calpine NOPR Comments at 5-6.

<sup>134</sup> Engage NOPR Comments at 8-8.

<sup>135</sup> TDUS NOPR Comments at 5-6.

<sup>136</sup> National Grid NOPR Comments at 5.

any terms and conditions in those proposed standard forms that they find objectionable.<sup>138</sup> Moreover, if a public utility fails to file an agreement on the incorrect assumption that it is a conforming agreement, it does so without Commission approval.

198. Exelon and Calpine are concerned that the revised filing requirements will change utilities' obligations to file with the Commission or change the Commission's review process for non-market-based agreements that do not conform to a standard form of service agreement. However, that is not the case. There is nothing in this proceeding proposing any change on how the Commission will process, analyze and review unexecuted and/or nonconforming agreements.<sup>139</sup> The regulation specifically requires that utilities must continue to file unexecuted and nonconforming agreements with the Commission under the existing and otherwise unchanged filing requirements of Part 35.

199. TDUS states that the Commission should define material deviations from the cost-based standard form of service agreement. The Commission does not believe it is appropriate to try to enumerate all the potential variations to a standard form of service agreement. Public utility services are diverse and will require significant differences in form, structure and elements that may be negotiated without prior Commission review. This issue may be addressed as standard forms of service agreements are proposed by the public utilities and are reviewed by the Commission.

200. Calpine is concerned as to the impact this proposed regulation may have on Commission review of interconnection agreements. Part 35 of the Commission's regulations does not make a distinction between an interconnection agreement and other agreements for services that must be filed in conformance with this part of the Commission's regulations. If an interconnection agreement conforms with a Commission approved standard

<sup>138</sup> This is the same procedure that the Commission uses regarding conforming gas transportation agreements reported in the gas Index of Customers. *See, e.g.*, ANR Pipeline Company, 97 FERC ¶ 61,224 at 62,022 (2001), where the Commission explained that interested parties have an opportunity to review whether standard forms of agreement are just and nondiscriminatory before they are approved and thus, there is no need to review conforming agreements to determine if they comply with requirements of the NGA. By contrast, nonconforming agreements are individually filed and carefully reviewed before approval.

<sup>139</sup> Engage's request for the Commission to presume any negotiated term and condition of service is just and reasonable goes beyond the scope of this proceeding.

form of interconnection agreement,<sup>140</sup> the utility does not have to file it with the Commission, but it must be reported in Electric Quarterly Reports. The Commission will review any proposed standard form of service agreement to ensure that the terms are just and reasonable, and not unduly discriminatory or preferential.

201. National Grid argues that nonstandard agreements should be permitted to be posted on utilities' web sites and filed electronically with the Commission. The Commission has no objection to utilities posting either standard or nonstandard agreements on their Web sites. The Commission has initiated other proceedings in preparation of receiving rate filings and tariff sheets electronically.<sup>141</sup> However, this is beyond the scope of this proceeding.

#### 202. Scope of Standard Service Agreements

203. In the NOPR, we proposed adoption of § 35.10a, containing guidelines for the inclusion of a standard form of service agreement in a public utility's tariff. We proposed 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 other information may also be included, as appropriate. For example, spaces may be provided for receipt and delivery points, contract quantity, and other specifics of each transaction. New standard agreements must be filed in accordance with the form and style required of rate schedule filings.

#### 204. Comments

205. Pinnacle states that streamlined OATT agreements would be beneficial. Wisconsin argues that the Commission should clarify that all generally applicable services offered under a tariff may be included in the form of service agreements under that tariff.

206. EEI requests an opportunity to discuss with Commission staff opportunities to further reduce service agreement filings with nonstandard, customer specific, conditions.<sup>142</sup>

<sup>140</sup> See Standardization of Generator Interconnection Agreements and Procedures, *Notice of Proposed Rulemaking*, Docket No. RM02-1-000, which is being issued concurrently with this rule.

<sup>141</sup> See Docket No. RM01-5-000, where Electronic Tariff Filings, Notice of Inquiry and Informational Conference, 66 FR 15673, FERC Stats. & Regs. ¶ 61,270 (2001) was issued and Docket Nos. RM00-12-000, where Order No. 619, *supra* at n.14, was issued.

<sup>142</sup> EEI NOPR Comments at 14.

#### 207. Commission Conclusion

208. Pinnacle's and Wisconsin's concerns about the content and scope of standard forms of service agreements are beyond the scope of this rulemaking. The Commission has already prescribed the OATT standard forms of service agreements in Order No. 888. The Commission has also approved other standard forms of service agreements as part of utilities' individual tariffs and rate schedules. This rulemaking was not intended to reexamine those standard forms of service agreements.

209. Just as the Commission is not reexamining standard forms of service agreements already found to be consistent with the FPA, the Commission's regulations and policy, this rulemaking is not adopting a rule or finding that predetermines whether a particular standard form of service agreement is just and reasonable. Utilities must file and support their proposed standard forms of service agreements. The Commission will review these filings consistent with the FPA, the Commission's regulations and Commission policy in the same manner as it did prior to this rulemaking.

210. EEI requests an opportunity to discuss with Commission staff opportunities to further reduce service agreement filings with nonstandard, customer-specific conditions. EEI and public utilities are welcome to discuss their ideas with Commission staff, consistent with 18 CFR 35.6.

#### 211. Duration of Requirement to Report Data

#### 212. Comments

213. Engage states that the NOPR is unclear as to whether the Commission intends that public utilities post the terms of the agreements when negotiated or only after performance commences. Engage urges that postings about a transaction not be required until performance commences.<sup>143</sup> Edison Mission argues that,

FERC does not need contract-specific data for the life of the contract in order to satisfy market monitoring or legitimate filing requirements. A shorter time frame on which contract information is to be provided, as well as reasonable limits on long-term contract information, is more appropriate.<sup>144</sup>

214. Southern asks the Commission to clarify that umbrella agreements that have not experienced a transaction need not be included in Index of Customers. Southern explains that these umbrella agreements are non-transactional. They are merely authorizing agreements that

<sup>143</sup> Engage NOPR Comments at 6.

<sup>144</sup> Edison Mission Data Sets Comments at 5.

allow the customer to later submit specific requests for that type of service.

#### 215. Commission Conclusion

216. In response to comments from Engage and Southern, we clarify that under this rule, the requirement to file contract data and transaction data begins with the first Electric Quarterly Report filed after service commences under an agreement, and continues until the Electric Quarterly Report filed after the agreement expires or by order of the Commission. We reject Edison Mission's suggestion that contract data should be reported only in the quarter when the agreement is entered. Removing information about agreements that are still in effect does not adequately comply with the requirements of FPA section 205(c). Moreover, once the data are entered into an Electric Quarterly Report, it takes no work to retain this information in subsequent Electric Quarterly Reports.

217. Umbrella agreements are commonly filed under market-based rate tariffs. They allow the parties to transact business from time to time without waiting to obtain specific approval for each transaction. These agreements may "sit on the shelf" until such time as the customer requests service. Under the this rule, umbrella agreements are first reported in the first Electric Quarterly Report filed after service commences. The Commission agrees with Southern that agreements for which service has not commenced as of the reporting period do not have to be reported in Electric Quarterly Reports. However, once reported, the contract data continues to be reported in all subsequent Electric Quarterly Reports until the agreement terminates by its own terms or by order of the Commission, even if no further transactions occur under the agreement.

#### 218. Consequences of Noncompliance

#### 219. Comments

220. TDUS states that the Commission should clarify the penalties for failure to comply with the new filing requirements.<sup>145</sup> APPA states that the Final rule should outline the Commission's plan for auditing the Index of Customers for accuracy.<sup>146</sup> Similarly, TDUS is concerned with the apparent self-policing of the filed reports.<sup>147</sup> EEI expressed concern with the potential penalties should a utility's Index of Customers contain inadvertent or inconsequential omissions.<sup>148</sup>

<sup>145</sup> TDUS NOPR Comments at 8.

<sup>146</sup> APPA NOPR Comments at 4.

<sup>147</sup> TDUS NOPR Comments at 8.

<sup>148</sup> EEI NOPR Comments at 9.

#### 221. Commission Conclusion

222. While the Commission is not proposing any specific audit procedures as a part of this rulemaking, the Commission expects to audit utilities' reports either as the result of a filed complaint or on our own initiative. This does not mean, however, that there are no incentives for utilities to make full and complete reports, or that there are no consequences for failing to make complete or accurate reports. Electric Quarterly Reports are intended to satisfy the FPA section 205(c) filing requirements. If utilities are found to have violated the requirements of the Commission's regulations, the Commission will not hesitate to impose remedies, as appropriate. If a public utility has not received approval for a cost-based rate transaction and neglects to include in its Electric Quarterly Report relevant contract data, the Commission may determine that the agreement was not on file and adjust the rate in that agreement as appropriate.<sup>149</sup> If a public utility fails to file a Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.

223. The Electric Quarterly Reports are designed to satisfy the FPA section 205(c) requirements. For power marketers, the Electric Quarterly Report is intended to replace the current filing of Quarterly Transaction Reports summarizing their market-based rate transactions and the filing of long-term agreements. Electric Quarterly Reports are also intended to replace the Quarterly Transaction Reports and rate filings required of traditional utilities with market-based rate authority. Once this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.

<sup>149</sup> See, e.g., Central Maine Power Company, 56 FERC ¶ 61,200, Order on Rehearing, 57 FERC ¶ 61,083 (1991), where the Commission established a policy that remedies would be provided in instances of late-filed agreements.

224. This Rule Does Not Nullify Existing Tariff Conditions or System Agreements

#### 225. Comments

226. WSPP asks for clarification of whether it must continue to comply with the reporting requirements currently in its tariff. It also asks for clarification of whether it should file a joint Index of Customers on behalf of its members, or should they individually file for themselves. WSPP also asks whether any postings will be required on the WSPP web site as a result of this NOPR.

#### 227. Commission Conclusion

228. WSPP's tariff contains a requirement for it to file certain margin data. This requirement was imposed in 1991. In Docket No. ER91-195-035, WSPP asked the Commission to rescind this requirement because it is not required of other comparable entities. WSPP's request is being addressed in an order being issued in Docket No. ER91-195-035 concurrently with this rule.

229. Each WSPP member has its own tariff on file with the Commission, and each WSPP member must satisfy the various reporting requirements for utilities. The proposed regulations do not change the nature of the relationship between organizations, such as WSPP, and their members or agency arrangements, such as Southern Services, Inc., have with its affiliated utilities.

230. We also note that the current Commission orders granting market-based rate authority each contain a requirement to report any material changes in circumstances. This rule does not rescind this requirement.

#### 231. Timing and Frequency for Filing Electric Quarterly Reports

232. The NOPR proposed, in § 35.10b(a), that the Index of Customers must be filed quarterly 30 days after the end of the reporting quarter.

#### 233. Comments

234. PJM supports the NOPR proposals, but would have Index of Customers filed monthly rather than quarterly. It takes this view because this would make the data more useful for market monitoring purposes.<sup>150</sup> Likewise, TDUS is concerned that the three month time gap in reporting the agreements will inhibit the public from discovering potential reporting or contracting problems in a timely fashion. In addition, TDUS suggests that public utilities should post a downloadable and searchable copy of

<sup>150</sup> PJM Data Sets Comments at 2.

each service agreement referenced in their Index of Customers within five days after they become effective.<sup>151</sup>

### 235. Commission Conclusion

236. The Commission will not adopt PJM's proposal. We are not prepared to impose this additional burden at this time because it is not necessary to switch from quarterly to monthly reporting to meet the Commission's objectives in this rulemaking.

237. However, the Commission is not finished with its review of its market monitoring data requirements. This may require re-examination of whether Electric Quarterly Reports should be filed on a quarterly basis or on some other basis. This examination would occur at a later date as part of the Commission's ongoing review of its market monitoring responsibilities.

### 238. Use of Utility Web Sites

239. The NOPR addressed the use of OASIS or other public utility web sites to post Index of Customers filings in two provisions (§§ 35.10(b) and 37.6(g)). In § 35.10b(b), the NOPR proposed that each public utility with an OASIS web site post its Index of Customers in the portion of its OASIS web site that is accessible to the public without registration or fee. We proposed that each public utility that does not have an OASIS web site shall post its Index of Customers on a web site that also is accessible to the public without registration or fee. We explained that, in the alternative, we would consider allowing the use of a joint web site so that data about numerous public utilities could be found at one common site.

240. In addition, we proposed 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.

### 241. Comments

242. Various commenters raised objections to the use of OASIS and other web sites as locations to post Electric Quarterly Reports. Midwest ISO suggests a two year retention period, instead of the three years proposed in § 35.10b(d), to reduce posting burden.

<sup>151</sup> TDUS NOPR Comments at 4, 7.

### 243. Commission Conclusion

244. The Commission has reconsidered the use of OASIS and other web sites to post Electric Quarterly Reports and has decided that it will be more efficient to maintain a single web site for Electric Quarterly Reports at FERC's Internet site rather than to require each utility to maintain its own site. Thus, the Commission will not adopt the proposed revisions on this subject. These changes make MISO's comment moot. The existing requirements for public utilities to retain copies of their contracts and other data are unchanged by this rule.<sup>152</sup>

### 245. Procedures for Cancelling Expiring Agreements

#### 246. Comments

247. Southern supports the proposal that a utility would merely delete from its Index of Customers canceled and terminated agreements that expire by their own terms instead of having to make a separate filing with the Commission.<sup>153</sup> TDUS suggests that cancellations of service agreements that do not expire of their own terms should be filed with the Commission.<sup>154</sup>

### 248. Commission Conclusion

249. Under this rule, agreements that conform to approved standard forms of service agreement and market-based rate agreements may terminate by their own terms without the need for the public utility to file a notice of cancellation or cancellation tariff sheet with the Commission. The public utility simply removes the agreement from its Electric Quarterly Report the quarter after it terminates.<sup>155</sup> For agreements that remain in public utilities' Commission-maintained tariffs after the implementation date of this rule (basically non-conforming agreements), public utilities also must comply with the requirements to file a notice of cancellation and a cancellation tariff sheet. TDUS' request assumes that there is no consent between the parties to terminate a service. All proposals to change terms of an agreement without the consent of the customer must be filed with the Commission. Additionally, if an agreement terminates on a date other than the original

<sup>152</sup> See 18 CFR 125.3, which provides that contracts are to be retained for the later of 4 years after they expire, or until all proceedings or disputes are concluded.

<sup>153</sup> Southern NOPR Comments at 27.

<sup>154</sup> TDUS NOPR Comments at 5-6.

<sup>155</sup> The simplified termination procedures will not apply to agreements entered into before the final software is developed and ready for implementation. Further instructions on this issue will be included in a subsequent order.

agreement termination date (for instance, due to extension provisions being executed or termination by mutual agreement), the utility must enter the actual termination date in the subsequent Electric Quarterly Report, regardless of whether that agreement is a conforming agreement, a non-conforming agreement, or a market-based rate agreement.

250. If an agreement terminates on a date within the reporting quarter, the utility must enter the actual termination date in the Electric Quarterly Report for that calendar quarter, and remove the agreement from the subsequent Electric Quarterly Report.

### 251. Data to Be Filed in Electric Quarterly Reports

252. In the NOPR, the Commission provided a general description of the data to be reported in Index of Customers filings. In the Data Sets Order, the Commission added specific details about the exact data definitions and data elements to be used in Index of Customers filings. These data fall into two main categories, contract data and transaction data. The Data Sets Order also clarified the Commission's policy regarding the reporting of book outs and net outs. The Data Sets Order invited comment on these issues. In the discussion below, we will address each of the issues raised by the commenters.

### 253. Transaction Data

254. Public Utilities Will Report Actual Prices for All Transactions, Including Those Lasting Less than One Day

#### 255. Comments

256. AEP states that the Commission's decision to allow marketers to report only the high, low and average price for transactions shorter than one day is "somewhat of an improvement."<sup>156</sup>

257. PJM recommends that hourly reporting along with the actual transaction specific data is essential for market development and analysis. PJM supports hourly reporting of transaction data as essential to be combined with load data that is already, or will soon be, publicly available in areas with structured markets.<sup>157</sup> It argues that reporting only high, low and weighted average prices does not give sufficient information needed for understanding, characterizing and monitoring markets.<sup>158</sup>

258. Consumers asks if there are a limited number of price changes, could the reporting utility report real data that

<sup>156</sup> AEP Data Sets Comments at 4.

<sup>157</sup> PJM Data Sets Comments at 1.

<sup>158</sup> PJM Data Sets Comments at 1-2.

would be more useful and easier to provide?<sup>159</sup>

#### 259. Commission Conclusion

260. As stated, section 205(c) of the FPA requires that “every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges. . . .” The Commission concludes that public utilities reporting the actual rates charged for transactions lasting less than a day complies with the requirements of section 205(c) of the FPA.<sup>160</sup>

261. We agree with PJM that reporting actual prices would actually be less burdensome than reporting the prices of transactions lasting less than one day on a high, low, and weighted average basis (when the prices change during the day) because the data could be reported as is, without the extra steps of identifying the high and low prices and computing the weighted average. This was confirmed in site visits conducted by Staff to observe how these data are currently maintained.

262. Report Reactive Power as an Ancillary Service

#### 263. Comments

264. Consumers is not clear how or where to report reactive power. Consumers suggests that the option of using “NA” for appropriate fields, such as in rates, should be available.<sup>161</sup>

#### 265. Commission Conclusion

266. Reactive power will be reported as an ancillary service. If reactive power service is rendered, required contract data summarizing the terms and conditions applicable to this service should be provided. When a service is not provided, we agree that the use of “NA” in certain fields will be permissible.

<sup>159</sup> Consumers Data Sets Comments at 6.

<sup>160</sup> The courts have repeatedly emphasized the importance of statutory requirements to have rates on file as a critical component of complaint-based statutory enforcement mechanisms. In *Maislin*, the Supreme Court rejected an Interstate Commerce Commission policy permitting carriers to charge undisclosed negotiated rates, finding that disclosure of rates was required both to allow the agency to review the rates and to allow other shippers to know whether they should challenge a carrier's rates as discriminatory. 497 U.S. at 132. *See also* *Southwestern Bell* 43 F.3d at 1524, and *MCI v. AT&T*, 512 U.S. 218, 230 (1994).

<sup>161</sup> Consumers Data Sets Comments at 2–4.

267. Report Transaction Data for Ancillary Services Associated with Power Sales

#### 268. Comments

269. Southern seeks clarification that no transaction information is required for OATT ancillary services.<sup>162</sup>

#### 270. Commission Conclusion

271. We clarify that ancillary service transaction data associated with transmission need not be reported when the transmission services are provided on an unbundled basis.

272. On the other hand, ancillary service transaction data associated with power sales are currently required to be filed in Quarterly Transaction Reports and the requirement to file these data is retained in this rule.<sup>163</sup> This matter is discussed in *Commonwealth Electric Company*, 78 FERC ¶ 61,191 at 61,813 (1997), where we stated,

[t]he prices for wholesale generation, transmission and *ancillary services must be separately stated* for sales under requirements or coordination contracts executed after July 9, 1996. [Emphasis added.]

#### 273. Book Outs

#### 274. Defining Book Outs

#### 275. Comments

276. Commenters recommend that the Commission eliminate the proposed requirement to file information pertaining to the offsetting of transactions (called book outs). Commenters argue that the Commission's characterization of book outs in the NOPR is inaccurate and unclear, that it fails to adequately distinguish between physical and financial transactions, and that it shows a fundamental misunderstanding of the market and what these transactions really are.

277. Wisconsin states that book outs more closely resemble financial transactions than the Commission has exempted from its reporting requirements. Others argue that book outs are purely financial transactions and, as a result, are beyond our jurisdiction. Commenters claim that the proposal to require marketers to report book outs ignores Commission precedent that only transactions that go to physical delivery are subject to our jurisdiction.<sup>164</sup>

<sup>162</sup> Southern NOPR Comments at 28–29.

<sup>163</sup> This occurs in instances when the power is sold in a bundled transaction covering the underlying power sales and any ancillary services associated with transmission of the power.

<sup>164</sup> In support of this claim, they cite Morgan Stanley Capital Group, Inc. (*Morgan Stanley 1*), 69

#### 278. Commission Conclusion

279. As we explained in the Data Sets Order, a “book out” is the offsetting of opposing buy-sell transactions. The Data Sets Order gave the simplified example of a sale of 100 MW of power from A to B and a sale of 90 MW of power from B to A, which would result in these transactions being booked-out and treated as a 10 MW sale from A to B. These book out transactions are currently being reported, without objection, in Quarterly Transaction Reports, albeit in aggregated form. The Data Sets Order proposed that, under this hypothetical situation, public utilities would report both the 100MW and 90MW sales, and not just the 10MW delivered.

280. Typically, however, book outs involve a chain of transactions (e.g., A sells 50MW of power to B, B sells 55MW of power to C, C sells 60MW of power to A). Under this hypothetical, if no further transactions were made, 50MW would be booked out, B would deliver 5MW to C, and C would deliver 10MW to A. If the parties wished to use book outs to avoid making physical transmission for power deliveries, A could sell an additional 10MW of power to B and B could sell an additional 5 MW of power to C, in which case all three transactions would be booked out in their entirety and all delivery obligations would be offset, although all other obligations under the agreements, including payment, would remain in effect.

281. Now that the Commission is considering requiring book outs to be reported on a disaggregated basis, objections are being raised arguing that the Commission lacks jurisdiction over these transactions, unless they result in an actual physical delivery of power. We find that these objections focus on the wrong issue and are without merit. The Commission is not here asserting (or disclaiming) jurisdiction over the underlying sales transactions. Instead, the Commission is deciding what information must be reported to us by public utilities.

282. The power sales that make up book out transactions on their face typically are for the sale for resale of electric energy in interstate commerce by a public utility. The buyer, seller, price, quantity and other agreement details in such agreements are indistinguishable from those in any other power sale agreement. The

FERC ¶ 61,175 (1994), *order on reh'g*, 72 FERC ¶ 61,082 (1995) (*Morgan Stanley 2*); and Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, 87 FERC ¶ 61,074 (1999) (*Annual Charges*).

agreements obligate the seller to provide power and obligate the buyer to pay the agreed-on prices. Only after there are subsequent offsetting agreements entered (as shown in the illustration above) such that deliveries can be offset, does the book out result.

283. In *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶61,139, at 61,986, order on reh'g, 65 FERC ¶ 61,081 (1993) (*Prior Notice Order*), the Commission explained that FPA section 205(a) gives the Commission authority to ensure that:

[a]ll rates and charges made, demanded, or received by any public utility *for or in connection with* the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations *affecting or pertaining to* such rates or charges shall be just and reasonable \* \* \*. [Emphasis in original.]

In addition, FPA section 205(c) requires all public utilities to file:

schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, *together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services*. [Emphasis added].

The Commission recognizes that this provision has the potential to be interpreted very broadly. Thus, we have devised a "rule of reason" to identify the agreements that must be filed under this provision.<sup>165</sup>

284. As we stated in the *Prior Notice Order*:

[a]scertaining the extent of what the industry must file [under FPA section 205] depends on how expansively we define the terms "for," "in connection with," "affect/affecting," "pertaining to," and "relate to." [166]

We further stated that, as a general matter, the Commission typically requires parties to file arrangements involving, among other matters, "a public utility selling or exchanging wholesale power in interstate commerce."<sup>167</sup>

285. We believe that the power sales transactions that make up book out transactions fall within this category and should be reported to us. As noted above, the agreements obligate the parties to deliver power at a specified

<sup>165</sup> See, e.g., PJM Interconnection, L.L.C., et al., FERC ¶61,251 at 61,894-95, reh'g denied 95 FERC ¶61,333 at 62,186 (2001); Western Systems Coordinating Council, 87 FERC ¶61,060 at 61,233-34 (1999); Public Service Company of Colorado, 67 FERC ¶61,371 at 62,267 (1994).

<sup>166</sup> *Prior Notice Order*, 64 FERC at 61,986.

<sup>167</sup> *Id.*

price and, but for the subsequent offsetting power sales, transmission of power would be made. Moreover, such transactions in the marketplace plainly affect or relate to those transactions and the prices paid for power sales that do go to delivery. Thus, under FPA section 205(c), we find that the power sales transactions that make up book out transactions must be reported to us in Electric Quarterly Reports.<sup>168</sup>

286. Reporting Book Outs Is Not Unduly Burdensome

### 287. Comments

288. Commenters claim that reporting book outs would be burdensome and unreasonable and would not provide data that is meaningful or useful. Commenters claim that the proposal shows a fundamental misunderstanding of the types and volume of purchase/sales transactions occurring on a daily basis in electricity markets. Commenters argue that the volume of sale/purchase transactions typically exceeds the volume of power delivered by three or four fold or more in today's liquid markets.

### 289. Commission Conclusion

290. Although we acknowledge that the number of market-based transactions taking place daily is large, we do not believe that this provides an adequate reason not to report them. The transacting entities are fully capable of keeping track of their own transactions, if for no other purpose than billing. Nothing presented by commenters shows that the incremental burden of making the information available would be significant. In this regard, none of the commenters gave any specific examples or explanations of how or why reporting book outs would be burdensome. Although a majority of market-based transactions at issue are delivered without physical transmission, there is physical delivery. The two sellers each physically deliver power when they exchange the power each produces.

291. We are amenable to working with the industry to come up with the most convenient format and meaningful way of presenting/transferring the data. But the Commission is charged with oversight of electric power markets, and we cannot perform this function adequately if we lack important information about how that market functions. We conclude that the transactions underlying the book outs must be reported if we are to adequately

<sup>168</sup> In the Data Sets Order, FERC Stats. & Regs. ¶ 35,541 at 35,806, we also proposed the reporting of "net outs." However, in consideration of the comments, we are withdrawing this proposal.

monitor wholesale markets, sellers in those markets and wholesale prices for electric energy.

292. Report Book Outs on a Disaggregated Basis

293. Virginia Power argues that book outs, if reported at all, should be reported in the aggregate because public disclosure of book outs of physical transactions reveals the negotiating positions of the parties and this would undermine competition. Other commenters add that utilities that aggregate their book outs would face the added burden of maintaining two sets of books—one for the Commission's filing requirements and one for accounting and billing purposes.

294. We will deny this request, consistent with our rulings in *Citizens Power*, where we directed information about wholesale power sales to be made on a disaggregated basis.<sup>169</sup>

### 295. Contract Data Requirement

296. All of the Contract Terms and Conditions To Be Reported Are Identified in the Data Elements

297. Comments on the contract data requirements focused on two major areas, identifying: (1) what contracts would be included in Electric Quarterly Reports and (2) specific perceived problems with the proposed contract data sets.

### 298. Comments

299. Exelon argues<sup>170</sup> that the requirement to include all terms and conditions in contract data reported in the Index of Customers is burdensome. From its comments, we surmise that it is concerned about reporting contractual terms and conditions beyond the data sets identified in the NOPR.

### 300. Commission Conclusion

301. If we have accurately interpreted commenter's concerns, we can alleviate this by clarifying that only the terms and conditions contained in Electric Quarterly Report data elements need be reported in Electric Quarterly Reports.

### 302. Data Elements Issues

303. Consistency with the OASIS Standards and Communications Protocols Document

### 304. Comments

305. Southern notes that in the NOPR, the Commission proposed to follow, to the greatest extent possible, the data element names and definitions contained in the Commission-approved

<sup>169</sup> 48 FERC at 61,778.

<sup>170</sup> Exelon Data Sets Comments at 2.

*OASIS Standards and Communications Protocols Document*, version 1.4 (OASIS S&CP Document). Southern contends that, notwithstanding this commitment, the Commission's Data Sets Order proposes data set names, definitions and formats that differ from their OASIS counterparts.<sup>171</sup> Southern argues that these discrepancies and differences may inhibit the construction of better reporting systems, and will create inefficiencies, undue burden, questionable data, and slower response times. Southern suggests that the Commission reconcile its Index of Customers data sets with its OASIS counterparts so that Index of Customers filings can be integrated with OASIS filings. Southern strongly opposes the imposition of another data set on top of the OASIS data set. Southern states that the Commission should work with the OASIS collaborative group as the Commission once suggested.<sup>172</sup>

### 306. Commission Conclusion

307. First, although we attempted to draft the Electric Quarterly Report data elements to match their OASIS counterparts wherever possible, as discussed in the Data Sets Order, certain apparent discrepancies were unavoidable because the OASIS data elements are exclusively designed to report on transmission-related transactions while the Electric Quarterly Report data elements must cover an entire range of transactions under 18 CFR Part 35. Southern states that the Commission should have used more of the OASIS S&CP data elements and their definitions than proposed in the Data Sets Order. However, the OASIS S&CP data set does not contain all the data elements or definitions that the Commission requires for contract data reported in Electric Quarterly Reports. For example, the OASIS S&CP product definitions are limited to those services under the OATT. However, public utilities provide many more jurisdictional services than those. An example of an element that is not in OASIS is the agreement termination date agreed on in the agreement.

308. As a result, Electric Quarterly Reports will include product definitions and termination data that are not in OASIS. The Commission believes that the resulting data set will not establish a new layer of data definitions on top of the existing S&CP data set. Rather, the Commission is expanding the S&CP data

set as necessary to collect the contract data.

### 309. Deleted Data Elements

#### 310. Comments

311. The Commission needs to clarify whether the data elements “point\_of\_receipt\_control\_area” and “point\_of\_receipt\_specific\_loc” apply to both sales and transmission services. It is Constellation's understanding that market-based sellers are required to report sales, not purchases, and, if this is indeed the case, Constellation sees no reason why a report of sales transactions should require receipt points. According to Constellation, reporting receipt points only makes sense for transmission.<sup>173</sup>

312. AEP proposes that the requirements to report Point of Receipt (POR) and Point of Delivery (POD) be replaced by identification of the NERC region of the transaction.<sup>174</sup> AEP argues that POR does not yield information that is useful in terms of examining the economics of a transaction because: (1) The POR could easily change on a daily basis depending on the requirements of scheduling needed to complete the transaction; (2) a seller with a defined POD may not have any control over the POR from which the seller's supplier chooses to deliver the energy; (3) each participant in the chain is unlikely to agree upon which of its transactions its upstream or downstream supplier is identifying;<sup>175</sup> (4) it would be difficult from a systems perspective to match daily physical schedules with term power sales in a meaningful manner other than by providing NERC tags for each day of physical flow and even then buyers and sellers are unlikely to agree on which specific agreement is moving from POR to POD because in practice they are not identified in such a manner to buyer to seller.<sup>176</sup> Consumers questions how PORs and PODs are to be provided on market-area and multiple point agreements.<sup>177</sup>

### 313. Commission Conclusion

314. We agree with the point made by Constellation. Since we are not collecting data on purchases, we will not require point of receipt (POR) data for power sales transactions. However, POR and POD information will be required for contract data. In response to Consumers' question, multiple POR and POD points will be allowed to be entered in the Electric Quarterly Report

system, thus multiple points are accommodated. POR and POD should be reported the way it is written in the agreement. If, for example, the agreement lists the information at the Control Area level, then the use of the POR or POD control area data element will be accepted. If the agreement specifies a specific location, then respondents should use the POR or POD specific location data element. This is consistent with OASIS standards.

315. Transaction End Date.

#### 316. Comments

317. Consumers argues that providing transaction end date would “discourage long term transactions and unnecessarily divulge proprietary information about Buyers' and Sellers' positions for future quarters.”<sup>178</sup>

### 318. Commission Conclusion

319. The transaction end date does not provide sensitive proprietary information because it is reported on an historic basis. It is reported as the latter of the actual transaction end date or the last day of the quarter \* \* \*. Therefore, Consumers' concerns are unwarranted.

320. Cancellation Date

321. The Commission will eliminate the “cancellation\_of\_contract” data element. When an agreement expires, the actual termination date will be entered into the contract data. Therefore, the “cancellation\_of\_contract” data element provides redundant data. Signatories to an agreement will receive notice pursuant to the terms of the agreement, and cancellations without the other parties' consent must be individually filed with the Commission for approval.

322. Other Services

#### 323. Comments

324. Southern states the reference in the NOPR to “other services” should be clarified to be ancillary services under the OATTs because those are the only services provided under those tariffs other than transmission services.<sup>179</sup>

### 325. Commission Conclusion

326. That was not the intent of this reference. The ancillary services definitions already exist in the OASIS S&CP, and the Commission proposes to adopt those definitions. However, the OASIS S&CP service definitions were limited to OATT services performed through the OASIS. The Commission's

<sup>171</sup> Southern provides an example of “increment\_peaking\_name.” Southern states that Appendix B definition defines the field length as 15 characters, whereas the associated OASIS S&CP data element of “TS\_PERIOD” is 20 characters.

<sup>172</sup> Southern Data Sets Comments at 3-5.

<sup>173</sup> Constellation Data Sets Comments at 7.

<sup>174</sup> AEP Data Sets Comments at 5.

<sup>175</sup> AEP Data Sets Comments at 6.

<sup>176</sup> AEP Data Sets Comments at 6-7.

<sup>177</sup> Consumers Data Sets Comments at 2-4.

<sup>178</sup> Consumers Data Sets Comments at 5.

<sup>179</sup> Southern NOPR Comments at 28-29.

Electric Quarterly Reports will require reports on many other types of jurisdictional services. The Commission was simply indicating other services could be defined for the purposes of completing Electric Quarterly Reports data fields.

### 327. Future Revisions to Data Elements

328. We invited comments as to whether the same voluntary industry working group(s) that seek industry consensus and periodically recommend revisions to the OASIS S&CP Document would be available to aid the Commission in developing and maintaining the various codes for Index of Customers Data Sets, or whether another approach would be preferable. Southern, EEI and others encouraged the Commission to consult with the industry to establish the initial Index of Customers data elements and any subsequent modifications. The Commission has determined the data elements it requires to be filed, but we recognize that several of the data element definitions will require updating as new and unique types of services are introduced to the market. The Commission recognized this possibility when we proposed using OASIS S&CP, version 1.4's “{Registered}” variable. The Commission prefers that the industry create standard definitions. The OASIS community currently maintains the definitions through variable registration on TSIN.COM. The Commission invites the industry to expand the use of this mechanism to include non-OATT services.

329. While we are today issuing our final rule in this proceeding, we are not yet implementing the final format for Electric Quarterly Reports because further work on software development remains to be completed. As a result, there is a short window of opportunity if the industry is able to make consensus recommendations for minor revisions to the Electric Quarterly Report data elements that would better match the data elements used in the OASIS S&CP Document. As we noted above, the Commission is looking for a single group to emerge to tackle the development of uniform industry standards. When such a group is in place, it would be the proper group to address this issue.

### 330. Role of RTOs

#### 331. Comments

332. EEI asks what reporting requirements will the RTOs be required to satisfy? EEI argues that the Commission should delineate

differences between transmission providers and RTOs. EEI, Enron, and Illinois Power argue that the NOPR may be premature and should be delayed until there has been more progress with RTOs and the Commission has established standards for the RTOs. They argue that the proposed regulations may become outdated with formation of RTOs. Illinois Power also argues that delaying the implementation of the rulemaking until after RTOs become functional will relieve transmission providers, such as itself, of the burden of having to electronically file its transmission contract information. In the alternative, Illinois Power asks that the Commission give transmission utilities who are actively engaged in good faith efforts to become part of an RTO an exemption from filing electronically.<sup>180</sup>

### 333. Commission Conclusion

334. Some commenters request clarification as to the role of RTOs in filing transmission and sales contract data and transaction data. RTOs, as public utilities, are required to abide by the provisions of Part 35 of the Commission's regulations, except where specifically exempted. Under § 35.34(k) of the Commission's regulations, 18 CFR 35.34(k), an RTO must administer its own transmission tariff, which includes transmission and ancillary services under its OATT. The requirements of this rule do not create any conflict or ambiguity as to the responsibilities of RTOs to file and report transmission agreements consistent with Part 35. RTOs are responsible under Part 35 of the Commission's regulations for making tariff filings and following related reporting requirements.

335. The NOPR did not distinguish between an RTO and a traditional public utility concerning the requirement to report power sale transaction data. To the extent that an RTO makes wholesale power sales or transmission sales, these sales are subject to the same reporting requirements that would be applicable to any other public utility. To the extent that an RTO facilitates transactions by its members but title to the power never passes to or from the RTO, these transactions would be reported by the parties making the sales and not by the RTO itself.<sup>181</sup>

<sup>180</sup>EEI NOPR Comments at 16, Illinois Power NOPR Comments at 2–3, Enron NOPR Comments at 3, 4.

<sup>181</sup>The Commission will require PJM, ISO-New England, Inc., New York Independent System Operator, L.L.C. and the California ISO to follow the same reporting requirements as an RTO. The Commission will address particular filing

336. Public utilities making power sales to an RTO, or though an RTO's power market, must report their power sales agreements and transaction data pursuant to § 35.10b. However, this rule does not prevent an RTO from filing power sales transaction information on behalf of its members or participants as an agent, if authorized by its members or participants to do so.

337. The commenters also suggest that the Commission delay the electronic filing of transmission contract data until the RTOs are either more fully defined or operating. The Commission denies this suggestion.

### 338. Section By Section Revisions

#### 339. Deletion of § 2.8

340. In the NOPR, we proposed to delete 18 CFR § 2.8, concerning the simplification of public utility rate schedule filings, because that regulation has been superceded by the regulations promulgated by Order No. 614 and is no longer necessary. No comments were filed addressing this proposal. The Commission adopts the change as final.

#### 341. Revised Heading for 18 CFR Part 35

342. In the NOPR, we proposed to revise the heading of 18 CFR Part 35 to reflect that 18 CFR Part 35 will now cover the filing of both rate schedules and tariffs. No comments were filed addressing this proposal. The Commission adopts the change as final.

#### 343. Revisions to § 35.1—Conforming Service Agreements

344. In the NOPR, we proposed that conforming cost-based agreements and all market-based rate agreements would not be filed with the Commission. After a review of the comments on this issue, we concluded that we would adopt the NOPR proposal in this rule. Thus, we will adopt as final the same regulatory text we proposed in the NOPR.

#### 345. Revisions to § 35.10a—Forms of Service Agreements

346. No comments were filed on this provision. We will revise the section as needed to reflect the name change from Index of Customers to Electric Quarterly Report. The Commission revised the first two sentences in (a) to remove redundant phrases.

#### 347. Revisions to § 35.10b (a)—Electric Quarterly Reports

348. In the NOPR, we proposed adoption of § 35.10b(a), which stated that each public utility shall file, in an electronic format, an updated “Index of

requirements for auctions in the Standard Market Design proceeding in Docket No. RM01-12-000.

Customers" with the Commission on a quarterly basis. We will revise the provision to reflect the name change from "Index of Customers" to "Electric Quarterly Report." We also will revise the provision to delete the reference to an Instruction Manual. Although the Commission will be issuing an Instruction Manual in the near future, this manual will only apply to the Electric Quarterly Reports for the periods ending July 31, 2002 and October 31, 2002. Thereafter, this filing format will be replaced by a relational database now under development, which will be implemented in a subsequent order. The final format will not require a formal, separate Instruction Manual Document. It will use software that will be explained in guidance provided on the FERC web site. Thus, there is no need for the regulations to reference the Instruction Manual.

**349. Revisions to §§ 35.10b(b), (c) and (d)**

350. In § 35.10b(b) and (c), the NOPR proposed rules governing the utility's display of its web site address. The retention period for postings was covered in § 35.10(d). Given the Commission's findings that the Electric Quarterly Reports will be centrally posted by the Commission, we will not adopt these provisions.

**351. Revisions to § 37.6**

352. In the NOPR, we proposed 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. As discussed above, the Commission has reconsidered this issue and we will not make any revisions to § 37.6.

**353. Revisions to Data Sets**

354. Several data elements have been changed from what was issued in the Data Sets Order. Company\_web\_site\_address has been eliminated as we are not requiring each utility to post its Electric Quarterly Report data on its web site. Cancellation\_of\_contract has been eliminated because that information can be derived from other data elements. Product\_sub\_type\_name has been eliminated to simplify the filing requirement. Rate\_min and rate\_max will be used for contract data only as we will be collecting actual rates for transactions in the Electric Quarterly Report. Point\_of\_receipt\_control\_area and point\_of\_receipt\_specific\_loc will be used for contract data only as we are not collecting transaction data on

purchases, just sales.

Product\_type\_name will be collected for contract data only in order to simplify the transaction portion of the Electric Quarterly Report. The Transaction ID was added as a unique reference number assigned by a seller for each transaction.

***355. Implementation***

356. In the NOPR, we explained that we planned to "complete work on developing software and an instruction manual for completing Index of Customers filings by the time we issued a final rule in this proceeding." <sup>182</sup> We also stated that "the requirement to file Quarterly Transaction Reports will continue until we issue a final rule" and that, "[t]hereafter, these filings would be superseded by the Index of Customer filings." <sup>183</sup> Although this final rule has been completed and is being issued, further time will be needed before the software can be completed. The software will need to be thoroughly tested before it can be implemented.

357. Consequently, for the filing periods ending July 31, 2002 and October 31, 2002, respondents will use the FERC electronic filing system (available on the FERC Internet site, [www.ferc.gov](http://www.ferc.gov)) using the link labeled e-Filing to file transaction data and contract data. Contract data for agreements entered into between April 1, 2002 and June 30, 2002 will be reported in the July 31, 2002 filing and thereafter. Contract data for agreements entered into between July 1, 2002 and September 30, 2002 will be reported in the October 31, 2002 filing and thereafter. Electric Quarterly Reports filed on July 31, 2002 will include transaction data for all power sales made between April 1, 2002 and June 30, 2002. Electric Quarterly Reports filed on October 31, 2002 will include transaction data for all power sales made between July 1, 2002 and September 30, 2002.

358. When submitting the July 31, 2002 and October 31, 2002 Electric Quarterly Reports, Respondents will file documents in either Microsoft Excel or ASCII Comma Separated Values (CSV) format. A sample Microsoft Excel format document will be posted on the FERC internet site before the first report is due on July 31, 2002. The public will be able to view and download filed documents from the FERC internet site using either the RIMS or FERRIS document management systems. For filings after October 31, 2002, this filing format will be replaced by the more advanced,

relational database now under development. This will be implemented in a subsequent order. The final format will incorporate the same data sets adopted in this rule.

359. Once the software for the relational database is developed, the Commission will work with a number of public utilities to test the software and posting procedures after issuance of this final rule. During this testing period, the Commission will issue the formats and instructions for filing Electric Quarterly Reports using the software, and make the Electric Quarterly Report software available for download from the FERC Web site. Once testing is successfully completed, the Commission will issue an order requiring subsequent Electric Quarterly Reports to be filed using the software.

360. The NOPR further proposed that 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 to the standard forms of service agreements. The Commission will implement this procedure only after the final software format is implemented and will discuss this issue further in the order implementing the final software format. Once the final software format is implemented, the Commission will remove, as redundant, those conforming service agreements from the 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 at the Commission will continue to be subject to the filing, format, and designation requirements of Part 35.

**361. Regulatory Flexibility Act Certification**

362. The Commission adheres to its certification in the NOPR that this rule will not have a significant economic impact on a substantial number of small entities. As we stated in the NOPR, the rule will be applicable to all public utilities. While we do not foresee that the rule will 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 Regulatory Flexibility Act ("RFA"), we will consider granting waivers in appropriate circumstances. In fact, by

<sup>182</sup> NOPR, FERC Stats. & Regs. ¶ 32,554 at 34,073.

<sup>183</sup> *Id.*

eliminating the requirement to file most service agreements in paper format, this rule should reduce the economic impact on most entities. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of the RFA.

### 363. Environmental Statement

364. 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.<sup>184</sup> However, in 18 CFR 380.4(a)(5), we categorically excluded the type of information gathering required in this rule from the requirement to prepare an environmental impact statement. Thus, we affirm the finding we made in the NOPR that this final rule does not impose any requirements that might have a significant effect on the human environment and find that no environmental impact statement concerning this rule is required.

### 365. Public Reporting Burden and Information Collection Statement

366. In this final rule, we revise the filing requirements for public utilities to substitute the electronic filing of an Electric Quarterly Reports each calendar quarter for the current submittal of conforming individual service agreements, and quarterly reports summarizing the utilities' market-based rate transactions.<sup>185</sup>

367. This final rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995. The Commission identifies the information provided under Part 35 as FERC-516.

#### 368. Information Collection Statement:

369. *Title:* FERC-516, Electric Rate Schedule Filings.

370. *Action:* Final Rule.

371. *OMB Control No.:* 1902-0096.

372. *Respondents:* public utilities.

373. *Frequency of Responses:* Quarterly.

374. *Necessity of the information:* This final rule prescribes the information and procedures by which public utilities file with the Commission and present to the public the agreements and transactions under which power sales were made during the previous calendar quarter pursuant to the requirements of section 205(c) of the FPA. The revisions adopted in this rule will reduce the regulatory and administrative burden associated with processing public utilities' service agreement filings, improve public access to pertinent information on public utility rates and services and keep pace with changing market conditions.

375. *Burden Statement:* The burden issue can be divided into two categories: initial start-up and ongoing filing requirements thereafter.

376. The Commission recognizes that there will be a burden involved in the initial start-up associated with filing

Electric Quarterly Reports. This burden includes: the set-up of software on the utilities' computers; the initial entry of the contract data (this may range from a single rate schedule for a power marketer to over one hundred agreements for some traditional utilities); and, for companies with numerous transactions, the mapping of the transaction data from their internal computer systems into the format required by the Commission. For this start-up filing burden we estimate that the average burden for companies with minimal contract data and less than fifty (50) transactions per quarter (presuming they will enter their transactions manually into the software rather than mapping their systems) will average eighteen hours per utility. For utilities with more contracts and a greater number of transactions, we estimate that the average set-up burden will be 230 hours.

377. For the ongoing effort involved in filing the Electric Quarterly Report each subsequent quarter, the burden should be minimal. Contract additions and updates will be entered manually with minimal burden (much less than the current burden) and filing of transaction data will be totally automated for companies which have mapped their systems to the required format, and similar to the current burden for the utilities which enter the data manually.

378. Public reporting burden for this collection is estimated as:

### CURRENT REQUIREMENTS

Companies		Quarterly reports	Hours per filing	Service agreements	Hours per filing	Total hours
Utilities .....	216	840	6	1800	3	10440
Marketers .....	648	2592	6	200	3	16152
						26592

### NEW REQUIREMENTS

[excluding initial set-up burden]

Companies		Electric quarterly reports	Hours per filing	Service agreements	Hours per filing	Total hours	Net difference
Utilities .....	216	840	1	0	.....	840	-9600
Marketers .....	648	2592	2	0	.....	5184	10968
						6024	20568

<sup>184</sup> 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).

<sup>185</sup> A fuller description of the differences between the Commission's previous filing requirements and

the filing requirements directed by this final rule, see Tables 1 and 2 and the accompanying text, *supra*.

## CURRENT REQUIREMENTS

Companies	Quarterly Reports	Hours per Filing	Service Agreements	Hours per Filing	Total Hours
Utilities .....	216	840	6	1800	3 10440
Marketers .....	648	2592	6	200	3 16152
26592					

## NEW REQUIREMENTS

[excluding initial set-up burden]

Companies	Electric Quarterly Reports	Hours per Filing	Service Agreements	Hours per Filing	Total Hours	Net Difference
Utilities .....	216	840	1	0	.....	840 -9600
Marketers .....	648	2592	2	0	..... 6024	5184 10968 20568
.....						

## SET-UP BURDEN

Companies	Hours	Total hours
Utilities .....	216	230190
Marketers .....	648	18 11664
Totals .....	864	248 61,344

378a. Information Collection Costs: The Commission estimates the costs to comply with these requirements are as follows:

Annualized Capital/Startup Costs: \$3,451,957 (61,344 hours 2,080 hours per year  $\times$  \$117,041)  
 Annualized Costs (Operations & Maintenance): \$338,969 (6,024 hours + 2080 hours  $\times$  \$117,041)  
 Current annualized costs: \$1,496,324 (26,592 hours  $\div$  2,080 hours  $\times$  \$117,041)

The estimated annual total savings to respondents is approximately \$1,000,000 on a recurring basis. The collection of information as proposed in the NOPR was submitted to OMB under provisions of the Paperwork Reduction Act. OMB took no action on the NOPR pending a final determination with the issuance of the final rule. Several of the comments in response to the NOPR did raise the issue of the burden that would be imposed by this rule. The Commission is responding to these comments in modifications it has made to its earlier proposals in the NOPR and directly in the preamble of this rule.

## 379. Internal Review

380. 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 required by this rule 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.<sup>186</sup>

381. OMB regulations<sup>187</sup> require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this final rule will be submitted to OMB for review. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208-1415, fax: (202) 208-2425, E-mail: [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov).

382. Persons wishing to comment on the collections of information required by this rule 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: Ms. Magalie Roman Salas, 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.

## 383. Document Availability

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

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

- CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.
- CIPS can be accessed using the CIPS link or the Energy Information Online icon.
- The full text of this document will be available on IPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

386. RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

387. User assistance is available for RIMS, CIPS, and the Commission's web site during normal business hours from our Help line at (202) 208-2222 (e-mail

<sup>186</sup> See 44 U.S.C. 3506(c).

<sup>187</sup> 5 CFR 1320.11.

to *Webmaster@ferc.fed.us*) or the Public Reference Room at (202) 208-1371 (e-mail to *public.referenceroom@ferc.fed.us*).

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

### 389. Effective Date and Congressional Notification

This final rule will take effect on July 8, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>188</sup> The Commission will submit the Final rule to both houses of Congress and the General Accounting Office.<sup>189</sup>

### 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 rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

**Linwood A. Watson, Jr.,**  
Deputy Secretary.

In consideration of the foregoing, the Commission amends parts 2 and 35 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. 4321-4361, 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 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 agreement 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 agreement pursuant to a tariff shall not be filed with the Commission. All agreements 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 public upon request. Any individually executed service agreement for transmission, cost-based power sales, or other generally applicable services that deviates in any material respect 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 a service other than market-based power sales, the public utility shall include as part of its applicable tariff(s) an unexecuted standard service agreement approved by the Commission for each category of generally applicable service offered by the public utility under its tariff(s). The standard format for each generally applicable service must reference the service to be rendered and where it is located in its tariff(s). 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 Electric Quarterly Reports.

Each public utility shall file an updated Electric Quarterly Report 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. Electric Quarterly Reports must be prepared in conformance with the Commission's software and guidance posted and available for downloading from the FERC Web site (<http://www.ferc.gov>).

**Note:** The following attachments will not be published in the Code of Federal Regulations.

### ATTACHMENT A.—LIST OF COMMENTERS TO NOPR AND DATA SETS ORDERS (ALONG WITH ABBREVIATIONS USED TO IDENTIFY THEM)

Commenter/abbreviation	Filed comments on	
	NOPR	Data sets order
Alcoa Power Generating, Inc. (APGI) .....	X	.....
American Electric Power System (AEP) .....	X	X
American Public Power Association (APPA) .....	X	.....
American Transmission Company, LLC .....	X	.....
Avista Energy, Inc. (Avista) .....	.....	X
Calpine Corporation (Calpine) .....	X	.....
Carolina Power & Light Company (Carolina) .....	.....	X
CLECO Corporation (CLECO) .....	X	.....

<sup>188</sup> 5 U.S.C. 804(2).

<sup>189</sup> 5 U.S.C. 801(a)(1)(A).

## ATTACHMENT A.—LIST OF COMMENTERS TO NOPR AND DATA SETS ORDERS (ALONG WITH ABBREVIATIONS USED TO IDENTIFY THEM)—Continued

Commenter/abbreviation	Filed comments on	
	NOPR	Data sets order
CMS Marketing, Services, and Trading Company and CMS Generation Co. (CMS) .....	X	.....
Constellation Power Source, Inc. (Constellation) .....	X	X
Consumers Energy Company (Consumers Energy) .....	X	X
Duke Energy (Duke) .....	X	X
Dynegy, Inc. (Dynegy) .....	X	X
Edison Electric Institute (EEI) .....	X	X
Edison Mission Energy (Edison Mission) .....	.....	X
Electric Power Supply Association (EPSA) .....	X	X
Engage Energy America LLC (Engage) .....	X	.....
Enron Power Marketing, Inc. (Enron) .....	X	.....
Exelon Corporation, et al. (Exelon) .....	X	.....
FirstEnergy Corp. (FirstEnergy) .....	X	.....
Florida Power and Light Co. (FP&L) .....	X	.....
Illinois Power Company (Illinois Power) .....	.....	X
Midwest Independent Transmission System Operator, Inc. (Midwest ISO) .....	X	.....
Minnesota Power .....	X	.....
Mirant .....	X	.....
Morgan Stanley Capital Group, Inc. (Morgan Stanley) .....	X	.....
National Association of Regulatory Utility Commissioners (NARUC) .....	X	.....
National Grid USA (National Grid) .....	X	.....
New York State Electric & Gas Corporation (NYSEG) .....	.....	X
Oklahoma Gas and Electric Company (OK G&E) .....	X	.....
Otter Tail Power Company (Otter Tail) .....	X	.....
Pinnacle West Companies (Pinnacle) .....	X	.....
PJM Interconnection, L.L.C. (PJM) .....	X	X
PSEG Service Electric and Gas Co., et al. (PSEG) .....	X	X
Public Utilities Commission of California (California Commission) .....	X	.....
Puget Sound Energy, Inc. (Puget Sound) .....	.....	X
Reliant Resources, Inc. (Reliant) .....	X	X
South Carolina Electric & Gas Company (SCE&G) .....	X	.....
Southern Company Services, Inc., et al. (Southern) .....	X	X
Tenaska, Inc., et al. (Tenaska) .....	X	.....
Tractebel North America, Inc. (Tractebel) .....	.....	X
Transmission Dependent Utility Systems (TDUS) .....	X	.....
Virginia Electric and Power Company (VEPCO) .....	.....	X
Western Systems Power Pool, LLC (WSPP) .....	X	.....
Williams Energy Marketing & Trading Company (Williams) .....	X	.....
Wisconsin Electric Power Company (WEPCO) .....	.....	X
Wisconsin Public Service Company, et al. (Utility Coalition) .....	X	.....
Xcel Energy Services Inc. (Xcel) .....	X	.....

## SUMMARY OF REQUIRED DATA SETS—ATTACHMENT B

Data collected (field names)*	Id's filer	Commission requirement	Contract data	Commission requirement	Trans- action data	Commission require- ment
1. company_name .....	X	385.203(a)(10) .....	X	Seller: 385.203(a)(2) and (b)(1) Customer: 35.10(a).	X	Seller and Customer: <i>Citizens</i> 48 FERC ¶161,210. (1989) ( <i>Citizens</i> .)
2. company_duns .....	X	.....	X	OATT Customer: 37.5(b)(2) and (b)(3) [OASIS data element].	X	
3. contact_name .....	X	385.203(a)(10) and (b)(3)				
4. contact_title .....	X	385.203(a)(10) and (b)(3)				
5. contact_address .....	X	385.203(a)(10) and (b)(3)				
6. contact_city .....	X	385.203(a)(10) and (b)(3)				
7. state_fk .....	X	385.203(a)(10) and (b)(3)				
8. contact_zip .....	X	385.203(a)(10) and (b)(3)				
9. country_name .....	X	385.203(a)(10) and (b)(3)				
10. contact_phone .....	X	385.203(a)(10) and (b)(3)				
11. contact_email .....	X	New requirement				
12. filing_quarter .....	X	385.203(a)(6) and <i>Citizens</i>				
13. contract_affiliate .....			X	OATT Customer: 35.28(c) [tariff req't] 37.5(b)(2) and (b)(3) [OASIS data element].		
14. ferc_tariff_reference .....			X	35.9(a); 385.203(a)(1) .....		Y1.
15. contract_service_agreement_id .....			X	35.9(a) .....		Y.
16. contract_execution_dt .....			X	35.1(a), 35.12(a), 35.13(b)(6)		
17. contract_commencement_dt .....			X	35.9(b)(4), 35.12(a), 35.13(b)(2)		

## SUMMARY OF REQUIRED DATA SETS—ATTACHMENT B—Continued

Data collected (field names)*	Id's filer	Commission requirement	Contract data	Commission requirement	Trans- action data	Commission require- ment
18. contract_termination_dt .....	.....	.....	X	35.1(a) and (d) 35.12(a), 35.13(b)(6).	.....	Citizens.
19. actual_termination_dt .....	.....	.....	X	35.15, 35.16	.....	
20. class_name .....	.....	.....	X	35.1(a), 35.12(a) 35.13(b)(4) and (6).	X	Citizens.
21. quantity .....	.....	.....	X	35.1(a), 35.12, 35.13(a), (b)(6) and (c).	.....	
22. rate .....	.....	.....	X	35.1(a), 35.12, 35.13(a), and (c)	X	Citizens.
23. rate_min .....	.....	.....	X	35.1(a), 35.12, 35.13(a) and (c).	.....	
24. rate_max .....	.....	.....	X	35.1(a), 35.12, 35.13(a) and (c)	.....	
25. rate_desc .....	.....	.....	X	35.1(a), 35.12(b), 35.13(a) and (c).	.....	
26. units .....	.....	.....	X	35.1(a), 35.12, 35.13(a), (b) and (c).	X	Citizens.
27. point_of_delivery_control_area .....	.....	.....	X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).	X	Citizens.
28. point_of_delivery_specific_loc .....	.....	.....	X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).	X	Citizens.
29. point_of_receipt_control_area .....	.....	.....	X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).	.....	
30. point_of_receipt_specific_loc .....	.....	.....	X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).	.....	
31. begin_date .....	.....	.....	X	35.1(a), 35.12(a), 35.13(b)(6)	.....	
32. end_date .....	.....	.....	X	35.1(a), 35.12(a), 35.13(b)(6)	.....	
33. extensionprovisiondesc .....	.....	.....	X	35.1(a), 35.12(a), 35.13(b)(4) and (6).	.....	Citizens.
34. incrementname .....	.....	.....	X	35.1(a), 35.12(a), 35.13(b)(4) ....	X	Citizens.
35. increment_peaking_name .....	.....	.....	X	35.1(a), 35.12(a), 35.13(b)(4) ....	X	Citizens.
36. product_name .....	.....	.....	X	35.1(a), 35.12(a), 35.13(b)(4) ....	X	Citizens.
37. product_type_name .....	.....	.....	X	35.1(a), 35.12(a), 35.13(b)(4)	.....	
38. term_name .....	.....	.....	X	35.1(a), 35.12(a), 35.13(b)(4) and (6).	X	
39. transaction_end_dt .....	.....	.....	.....	.....	X	Citizens.
40. total_transmission_charge .....	.....	.....	.....	.....	X	Citizens.
41. total_transaction_charge .....	.....	.....	.....	.....	X	Short-term: Southern II, 75 FERC ¶61,130 (1996).
42. transaction_begin_dt .....	.....	.....	.....	.....	X	Citizens.
43. transaction_quantity .....	.....	.....	.....	.....	X	Citizens.
44. transaction_id .....	.....	.....	.....	.....	X	New requirement.

\*The data set field names are defined in Appendix A of the Data Sets Order and use the following abbreviations: id=identifier, dt=date, desc=description, loc=location, fk=foreign key.

<sup>1</sup>Data elements marked with a "Y" will be included as transaction data in interim filings. Thereafter, they will be reported as contract data.

## HEADER INFORMATION

Information	Definition
filings agent company name .....	Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report.)
respondent company name .....	
seller company name .....	DUNS Number for Company Unique Identification.
seller DUNS number .....	Name of contact(s) for the filing (may be from the filer, respondent, and/or seller).
contact name .....	Title of contact.
contact title .....	Street address for contact.
contact address .....	Contact city.
contact city .....	Two character state or province abbreviation.
state .....	Contact zip code.
contact zip .....	Country (USA, Canada, or Mexico) for contact address.
country name .....	Phone number of contact.
contact phone .....	E-mail address of contact.
contact email .....	The period for which the Electric Quarterly Report is being submitted.
filing quarter .....	

## CONTRACT INFORMATION

seller company name .....	Name of company (For consistency sake, it must be represented the same as it is listed in the DUNS Report.)
customer company name .....	DUNS Number for Company Unique Identification.
customer DUNS number .....	This is a flag to determine if the customer is an affiliate. Set to Yes if the customer is an affiliate of the provider.
contract affiliate .....	Valid Entries: FERC's designation, e.g., "FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2," or "FERC Electric Rate Schedule No. 126."
FERC tariff reference .....	Unique identifier for the contract used by the seller.
contract service agreement id .....	Date contract was signed by contracting parties.
contract execution date .....	

## HEADER INFORMATION—Continued

Information	Definition
contract commencement date .....	Date service under the contract commenced.
contract termination date .....	Specified contract termination date.
actual termination date .....	If parties terminate the contract at a date different from that specified in the contract, then the date must be specified here.
class name .....	Transmission service class provided as defined in OASIS. Name of class. Valid entries are "Firm", "Non-Firm", "TTC", "Secondary", "N/A", or {registered}.
extension provision description .....	Description of extension provision. This field would contain Text—for example "Automatically renewed until canceled."
product type name .....	The "Product type name" includes: T = Electric Transmission, MB = Market

## ELECTRIC QUARTERLY REPORT DATA DESCRIPTION—ATTACHMENT C

Information	Definition
<b>CONTRACT INFORMATION</b>	
term name .....	Based Power, CB = Cost Based Power, S = Services—Other, or {registered} Name for term. LT = Long-Term (>= one year), ST= Short- Term (< one year).
increment name .....	Name of increment. The increment selected would be one of the following: H = Hourly, D = Daily, W = Weekly, M = Monthly, Y = Yearly (or Annually) or {Registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
increment peaking name .....	Name for increment peaking. For products, services or transaction that are identified as "P" = on Peak, "OP" = Off-Peak, "FP" = Full Period, "NA" = Not Applicable for this product, service or transaction; or {registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
product name .....	A product is something being bought and sold, a type of service or standard agreement. Examples: Point-To-Point; Network; Capacity; Installed Capacity; SC—Scheduled system control and dispatch; RV—Reactive supply and vol. control; RF—Regulation and freq. response; EI—Energy imbalance; SP—Spinning reserve; SU—Supplemental reserve; DT—Dynamic Transfer; TL—Real Power Transmission Loss; BS—System Black Start Capability; Must Run Unit; Market Based Power Sale; Cost Based Power Sale; Economy Power Sale; Emergency Power Sale; General Purpose Power Sale; Unit Power Sales; Border Sales; Specialized affiliate transactions; Interconnection Agreements; System Impact and/or Facilities Study Charge(s); Direct Assignment Facilities Charge {registered} (New products may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
quantity .....	Product quantity for the contract item identified.
rate .....	Rate charged for this product per unit. Used when a single rate is designated for a product.
rate minimum .....	Minimum rate to be charged per the contract, if a range is specified.
rate maximum .....	Maximum rate to be charged per the contract, if a range is specified.
rate description .....	Text description of rate. May reference FERC tariff, or, description if a discounted or negotiated rate, include algorithm.
units .....	The unit of measurement for the quantity and rates represented. Examples include KW, MW and MWH.
point of receipt control area .....	Point of receipt control area. Examples include "AEP", "JACK", "FE". (These values will match what is provided area for in the OASIS.)
point of delivery control area .....	Point of delivery control area. Examples include "AEP", "JACK", and "FE". (These values will match what is provided for in the OASIS).
point of receipt specific location .....	The specific location for the point of receipt (POR) as spelled out in the contract. Examples include a named sub-station or generation plant.
point of delivery specific location .....	The specific location for the point of delivery (POD) as spelled out in the contract. Examples include a named sub-station or generation plant.
begin date .....	Beginning date of for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ=time zone.
end date .....	Ending date for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ=time zone.

## TRANSACTION INFORMATION

seller company name .....	Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report.)
customer company name .....	DUNS Number for Company Unique Identification.
customer DUNS number .....	Unique identifier for the contract used by the seller.
contract service agreement id .....	Unique reference number assigned by the seller for each transaction.
transaction id .....	Name of class. Valid entries are "Firm", "Non-Firm", "Secondary", "N/A", or {registered}.
class name .....	A product is something being bought and sold, a type of service or standard agreement.
product name .....	

## ELECTRIC QUARTERLY REPORT DATA DESCRIPTION—ATTACHMENT C—Continued

Information	Definition
term name .....	Examples: Energy; Capacity; SC—Scheduled system control and dispatch; RV—Reactive supply and vol. control; RF—Regulation and freq. response; EI—Energy imbalance; SP—Spinning reserve; SU—Supplemental reserve; DT—Dynamic Transfer; TL—Real Power Transmission Loss; BS—System Black Start Capability; Must Run Unit; Cost Based Power Sale; Economy Power Sale; Emergency Power Sale; General Purpose Power Sale; Unit Power Sales; Border Sales; Specialized affiliate transactions; {registered} (New products may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
transaction begin date .....	Name for term. LT = Long-Term (>= one year), ST= Short- Term (< one year). Transaction begin date must be prior to the end of the reporting quarter. Date must contain hours, minutes, seconds, and time zone (MM.DD.YYYY.HH.MM.SS.TZ). Where minutes and seconds are not provided, default to zeros.
transaction end date .....	Transaction end date and time must be after the beginning of the reporting quarter. Date must contain hours, minutes, seconds, and time zone (MM.DD.YYYY.HH.MM.SS.TZ). Where minutes and seconds are not provided, default to zeros.
transaction quantity .....	The quantity of the product in this transaction. This quantity could be a whole number or it could include decimals.
rate .....	Rate charged for this item per unit. Used with contract data when a single rate is designated for a product. Used with transaction data to designate the transaction period's actual rate.
units .....	The unit of measurement for the quantity and rates represented. Examples include KW, MW and MWH.
point of Point of delivery control area. .....	Examples include "AEP", "JACK", and "FE". (These values will match what is provided for in the OASIS.)
point of delivery specific location .....	The specific location for the point of delivery (POD) as spelled out in the contract. Examples include named sub-station or generation plant.
increment name .....	Name of increment which would be one of the following: H = Hourly, D = Daily, W = Weekly, M = Monthly, Y = Yearly (or Annually) or {Registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
increment peaking name .....	Name for increment peaking. For products, services or transaction that are identified as "P" = on Peak, "OP" = Off-Peak, "FP" = Full Period, "NA" = Not Applicable for this product, service or transaction; or {registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
total transmission charge .....	State N/A if transmission is not provided by the selling entity, else this represents the total transmission charge associated with the identified power sale transaction.
total transaction charge .....	Total revenue for transaction, including for the commodity and all other services related to the commodity charge sale under the terms of the contract, including bundled ancillary and transmission services provided by the respondent or others. This is in dollars and cents.
FERC tariff reference .....	Valid Entries: FERC's designation, e.g., "FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2;" or "FERC Electric Rate Schedule No. 126." <sup>1</sup>

<sup>1</sup> This data element will be included as transaction data in interim filings. Thereafter, it will be reported as contract data.