

Route 219, West Valley, NY 14171, (716) 942-4555; and the U.S. Department of Energy, FOIA Reading Room, 1G-033, Forrestal Bldg., 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-5955. Written requests for copies of the document should be directed to: Catherine Bohan, EIS Document Manager, West Valley Demonstration Project, U.S. Department of Energy, Ashford Office Complex, 9030 Route 219, West Valley, NY 14171. This Final EIS is also available electronically at <http://www.westvalleyeis.com> and the DOE's NEPA Web site at <http://www.gc.energy.gov/NEPA>.

Signed in Washington, DC, this 20th day of January 2010.

**Frank Marcinowski,**

*Acting Chief Technical Officer for Environmental Management.*

[FR Doc. 2010-1725 Filed 1-28-10; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Portsmouth

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth (known locally as the Portsmouth Site-Specific Advisory Board [PORTS SSAB]), Decontamination and Decommissioning (D&D) and Future Land Use Subcommittees. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Tuesday, February 9, 2010—4:30 p.m.

**ADDRESSES:** Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

**FOR FURTHER INFORMATION CONTACT:** Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897-3822, [Joel.Bradburne@lex.doe.gov](mailto:Joel.Bradburne@lex.doe.gov).

#### SUPPLEMENTARY INFORMATION:

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

*Purpose of the D&D Subcommittee:* The purpose of the subcommittee is to

focus on waste disposition and recycling issues at the Portsmouth site.

*Purpose of the Future Land Use Subcommittee:* The purpose of the subcommittee is to focus on reuse incentives, reindustrialization, and technology development at the Portsmouth site.

#### Tentative Agenda

4:30 p.m.—D&D Subcommittee Session

- Review of January Summary
- Waste Disposition Option Updates
  - Shipping, Transporting, and Contamination Levels
- Public Comment Period
- Review of Action Items

6:30 p.m.—Future Land Use Subcommittee Session

- Review of January Summary
- Discussion of Priorities
- Public Comment Period
- Review of Action Items

Adjourn

*Public Participation:* The EM SSAB, Portsmouth, welcomes the attendance of the public at its meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Joel Bradburne at least five days in advance of the meetings at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Joel Bradburne at the address or telephone number listed above. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

*Minutes:* Minutes will be available by writing or calling Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: <http://www.ports-ssab.org/publicmeetings.html>.

Issued at Washington, DC, on January 22, 2010.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 2010-1684 Filed 1-28-10; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM10-12-000; 130 FERC ¶61,039]

### Electricity Market Transparency Provisions of Section 220 of the Federal Power Act

January 21, 2010.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) seeks comments on whether the Commission's Electric Quarterly Report (EQR) filing requirements should be applied to market participants that are excluded from the Commission's jurisdiction under section 205 of the Federal Power Act (FPA). This Notice of Inquiry will assist the Commission in determining what changes, if any, should be made to its regulations under the electric market transparency provisions of section 220 of the FPA, as adopted in the Energy Policy Act of 2005 (EPAct 2005).

**DATES:** Comments are due March 30, 2010.

**ADDRESSES:** You may submit comments, identified by docket number by any of the following methods:

- *Agency Web Site:* <http://ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Raymond Montini, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8714.

[Raymond.Montini@ferc.gov](mailto:Raymond.Montini@ferc.gov).  
Christina Switzer (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6379.  
[Christina.Switzer@ferc.gov](mailto:Christina.Switzer@ferc.gov).

*Before Commissioners:* Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

## Notice of Inquiry

Issued January 21, 2010

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comments on whether the Commission's Electric Quarterly Report (EQR)<sup>1</sup> filing requirements should be applied to market participants that are excluded from the Commission's jurisdiction under section 205 of the Federal Power Act (FPA).<sup>2</sup> Section 201(f) of the FPA excludes certain entities (*i.e.*, Federal entities, municipalities, and certain cooperatives with Rural Electrification Act financing and that sell less than 4,000,000 MWh of electricity per year) from the Commission's jurisdiction.<sup>3</sup> However, section 201(b)(2) states that, notwithstanding section 201(f), several sections of the FPA, including section 220,<sup>4</sup> shall apply to the entities described in those sections and such entities shall be subject to the Commission's jurisdiction for the purposes of carrying out those particular provisions. Section 220 of the FPA directs the Commission "to facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce \* \* \*" and states that the Commission may obtain "information about the availability and prices of wholesale electric energy and transmission service" from "any market participant." Thus, section 220 of the FPA, when read in conjunction with section 201(b)(2), provides the Commission with jurisdiction to require information regarding the availability and prices of wholesale electric energy and transmission service from market participants, including those that are typically beyond the Commission's jurisdiction for other purposes.

2. This Notice of Inquiry will assist the Commission in determining what changes, if any, should be made to its regulations under the electric market transparency provisions of section 220 of the FPA, as adopted in the Energy Policy Act of 2005 (EPAAct 2005).<sup>5</sup> In

<sup>1</sup> At present, all public utilities, including power marketers, must file EQRs summarizing contractual terms and conditions in their agreements for all jurisdictional power sales. In addition to other requirements, EQR filers must provide detailed transactional information, including product type, price, quantity, duration and receipt and delivery points.

<sup>2</sup> 16 U.S.C. 824d (2006).

<sup>3</sup> 16 U.S.C. 824(f) (2006).

<sup>4</sup> 16 U.S.C. 824t (2006).

<sup>5</sup> EPAAct 2005, Public Law 109-58, 119 Stat. 594. EPAAct 2005 § 1281(a)(1)-(2) states:

in addition, the Commission is considering other refinements to the existing EQR filing requirements that may significantly enhance the effectiveness of the information gathered.

## I. Background

### A. Commission Authority

3. EPAAct 2005's transparency provisions<sup>6</sup> enhance the Commission's authority to collect "information about the availability and prices" of natural gas and electricity sold at wholesale in interstate commerce "to facilitate price transparency."<sup>7</sup> EPAAct 2005 requires that the Commission consider the degree of price transparency provided by existing price publishers and trade processing services, and rely on such publishers and services to the maximum extent possible.<sup>8</sup> However, if the Commission determines that existing price publications do not adequately provide price discovery or market transparency, the Commission may establish an electronic information system.<sup>9</sup> EPAAct 2005 also permits the Commission to require "any market participant," except for entities with a *de minimis* market presence, to provide information with "due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers."<sup>10</sup>

4. In 2006, Commission staff conducted an extensive outreach effort to formulate options for implementing EPAAct 2005's transparency provisions

(1) The Commission is directed to facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.

(2) The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of wholesale electric energy and transmission service to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.

<sup>6</sup> See EPAAct 2005 § 316 (*codified as* 15 U.S.C. 717t-2) (amending the Natural Gas Act (NGA) to add the Natural Gas Market Transparency Rules in section 23); EPAAct 2005 § 1281 (*codified as* 16 U.S.C. 824t) (amending the FPA to add the Electricity Market Transparency Rules in section 220).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> EPAAct 2005 § 1281(a)(4).

<sup>10</sup> EPAAct 2005 § 1281(d). In addition, EPAAct 2005 § 1281(b)(1-2) directs the Commission to exempt from disclosure information that is "detrimental to the operation of an effective market or [that would] jeopardize system security," and "to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of proprietary trading information."

for wholesale natural gas and electric markets. As a result, the Commission used its new transparency authority to adopt additional filing and posting requirements for the sale or transportation of physical natural gas in interstate commerce. Specifically, Order No. 704 requires buyers and sellers of more than a *de minimis* volume of natural gas to report aggregate volumes of relevant transactions in an annual filing.<sup>11</sup>

5. In exercising its new market transparency authority, the Commission explained that it required information from a market participant regardless of whether it is subject to the Commission's traditional jurisdiction because "[p]rice formation in natural gas markets makes no distinction between transactions that are jurisdictional." The Commission further explained that the "final rule will facilitate transparency of the price formation process in natural gas markets by collecting information to understand in broad terms the size of the natural gas market and the use of fixed prices and of index prices." In turn, this information

further[s] the Commission's efforts to monitor price formation in the wholesale natural gas markets, which supports the Commission's market-oriented policies for the wholesale natural gas industries. [Such] policies require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that

<sup>11</sup> *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704, FERC Stats. & Regs. ¶ 31,260, at P 32 (2007), *order on reh'g*, Order No. 704-A, 73 FR 55726 (Sept. 26, 2008), FERC Stats. & Regs. ¶ 31,275 (2008), *order dismissing reh'g and clarification*, Order No. 704-B, 125 FERC ¶ 61,302 (2008) ("Without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are 'just and reasonable.'"); see also, *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, Order No. 720, 73 FR 73494 (Dec. 2, 2008), FERC Stats. & Regs. ¶ 31,283, at P 3 (2008), *order on reh'g*, Order No. 720-A, 130 FERC ¶ 61,040 (2010). In addition, if a market participant buys or sells less than a *de minimis* volume, but operates under blanket sales certificate authority pursuant to section 284.402 or section 284.284 of the Commission's regulations, then it must make a filing with the Commission for identification and reporting purposes. However, it is not required to report aggregate volumes of relevant transactions. A market participant that buys or sells less than a *de minimis* volume and does not operate under blanket sales certificate authority is not required to make an annual filing with the Commission.

jurisdictional prices are “just and reasonable.”<sup>12</sup>

6. In Order No. 720, the Commission required major non-interstate pipelines to post scheduled flow information and information for each receipt and delivery point with a design capacity greater than 15,000 MMBtu per day.<sup>13</sup> Order No. 720 also requires interstate pipelines to post information regarding no-notice service.<sup>14</sup> Similar to the Commission’s reasoning in Order No. 704, the Commission explained that Order No. 720’s posting requirements . . . are grounded in the Commission’s authority under section 23 of the NGA (as added by EPCA 2005), which directs the Commission, in relevant part, to obtain and disseminate ‘information about the availability and prices of natural gas at wholesale and in interstate commerce.’ This provision enhances the Commission’s authority to ensure confidence in the nation’s natural gas markets. The Commission’s market-oriented policies for the wholesale natural gas industry require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the efficiency of price formation, the true value of transactions is very difficult to determine.<sup>15</sup>

7. In the Natural Gas Transparency Notice of Proposed Rulemaking (NOPR), the Commission declined to extend such requirements to wholesale electric markets because, at the time, the Commission was considering other reforms to its regulation of electric markets.<sup>16</sup> In particular, the Commission referred to its open access transmission service reforms and the more general review of competition in wholesale electric markets.<sup>17</sup> These efforts eventually led to two final rules. In Order No. 890, the Commission exercised its remedial authority “to limit further opportunities for undue discrimination, by minimizing areas of discretion, addressing ambiguities and

clarifying various aspects of the *pro forma* [Open Access Transmission Tariff].”<sup>18</sup> Moreover, in Order No. 719, the Commission made reforms “to improve the operation [and competitiveness] of organized wholesale electric power markets” in connection with “fulfilling its statutory mandate to ensure supplies of electric energy at just, reasonable and not unduly discriminatory or preferential rates.”<sup>19</sup> Nonetheless, these final rules did not specifically address the facilitation of price transparency in electric markets. As a result, the Commission now seeks comments on whether the EQR filing requirements should be applied to market participants that are excluded from the Commission’s jurisdiction under section 205 of the FPA.

#### B. Current Collection and Uses of EQR Data

8. At present, market participants that fall within the Commission’s jurisdiction under section 205(c) of the FPA must file EQRs summarizing contractual terms and conditions in their agreements for all jurisdictional services, including market-based rate power sales, cost-based rate power sales and transmission service sales that are part of power sales. EQR filers also must provide detailed transactional information, including product type, price, quantity, duration and receipt and delivery points for all power sales.

9. As explained in Order No. 2001, one goal of the EQR is to ensure that customers and the Commission have the information “to identify situations that indicate the possible exercise of market power that warrant specific investigation.”<sup>20</sup> Requiring EQR information from market participants that are excluded from the Commission’s section 205 jurisdiction

will enhance the Commission’s ability to effectively examine and monitor: (1) Price formation; (2) the number of sales; and (3) the market concentration occurring in electric markets where market participants that are excluded from the Commission’s section 205 jurisdiction play a large role.<sup>21</sup> Because numerous market participants that are excluded from the Commission’s section 205 jurisdiction do not file EQRs, a jurisdictional seller’s market presence (*i.e.*, its role in price formation) is difficult to determine.<sup>22</sup> Obtaining more complete price and volume information for sales of electricity will increase the Commission’s ability to monitor power sales for indications of market power and manipulation.

10. In addition, the EQR assists the Commission’s analysis of whether to grant a seller market-based rate authority (*ex ante* analysis) and provides an after the fact look at market-based rate authorization (*ex post* analysis).<sup>23</sup> Collecting information from market participants that are excluded from the Commission’s section 205 jurisdiction would strengthen the Commission’s regulatory scheme and enhance its oversight of the market-based rate program.

11. For instance, the Commission’s *ex ante* analysis of whether to grant a seller market-based rate authority<sup>24</sup> may

<sup>21</sup> The Energy Information Administration’s Electric Power Industry Overview 2007 estimated that 29 percent of electric utility sales are made by publicly-owned electric utilities (municipals, public utility districts or public power districts, State authorities, irrigation districts, and joint municipal action agencies), consumer-owned rural electric cooperatives, and Federal electric utilities. Energy Information Administration, *Electric Power Industry Overview 2007* (March 2009), <http://www.eia.doe.gov/cneaf/electricity/page/prim2/toc2.html>.

<sup>22</sup> For example, obtaining the sales information from market participants that are excluded from the Commission’s jurisdiction under section 205 of the FPA in the West and Southeast would enhance Commission staff’s ability to assess market conditions and identify the sales volumes transacted at major trading hubs in these regions.

<sup>23</sup> *Ex post* analysis includes ongoing oversight (EQR post analysis) and a timely reconsideration of market-based rate authorization (triennial review). Ongoing EQR post analysis is conducted by Commission staff after each quarterly filing. A triennial review is an updated market power analysis filed every three years by large jurisdictional sellers that have been granted market-based rate authorization. The filing includes, among other things, representations of how the seller satisfies the Commission’s concerns with regard to horizontal and vertical market power.

<sup>24</sup> The Commission’s market-based rate program does not rely on an *ex ante* finding alone, but instead depends on a consistent review of transaction data to ensure that such rates are just and reasonable. In approving the Commission’s market-based rate program, the Ninth Circuit upheld the Commission’s program because it relies on a “system [that] consists of a finding that the

<sup>12</sup> Order No. 704, FERC Stats. & Regs. ¶ 31,260 at P 7.

<sup>13</sup> Order No. 720, FERC Stats. & Regs. ¶ 31,283 at P 1. Issued contemporaneously with this order is Order No. 720–A, which broadly affirms Order No. 720, but grants certain requests for rehearing and clarification, including a finding that major non-interstate pipelines must post scheduled flow data for virtual or pooling points, subject to certain conditions.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* P 3.

<sup>16</sup> See *Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act*, Notice of Proposed Rulemaking, FERC Stats. & Regs. 32,614, at P 9–11 (2007) (Natural Gas Transparency NOPR) (“The Commission does not propose action with respect to electric markets at this time. The Commission has recently addressed and is currently addressing electric market transparency in other proceedings.”).

<sup>17</sup> *Id.*

<sup>18</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 40, *order on reh’g*, Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g and clarification*, Order No. 890–B, 73 FR 39092 (Jul. 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890–D, 129 FERC ¶ 61,126 (2009).

<sup>19</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281, at P 1 (2008), *order on reh’g*, Order No. 719–A, 74 FR 37776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order denying reh’g and providing clarification*, Order No. 719–B, 129 FERC ¶ 61,252 (2009).

<sup>20</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, at P 1,4, *reh’g denied*, Order No. 2001–A, 100 FERC ¶ 61,074, *reh’g denied*, Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

include, among other things, a detailed review of price data. One tool used by the Commission is the delivered price test (DPT),<sup>25</sup> a well-established test that has been used routinely to analyze market power for market-based rate authorizations and merger analyses. Commission staff and outside parties preparing a DPT analysis rely on proxy prices and published price indices to determine the price at which market participants that do not file EQRs may be able to deliver power. A better approach would be to obtain more complete price and volume information for sales of electricity to more accurately reflect market prices, improve the quality of the DPT results and assist the Commission in determinations regarding the ability of sellers to exercise market power. Further, market participants also will benefit as a result of having more transparency in the market because enhanced transparency will provide more information for market participants to make decisions regarding the value of transactions. In addition, with regard to mergers and acquisitions, because the DPT is a primary tool used to evaluate the effect on competition, obtaining power sales information from market participants that are excluded from the Commission section 205 jurisdiction will provide a better basis for consideration of whether to approve merger/acquisition proposals under section 203 of the FPA.<sup>26</sup>

12. *Ex post* analysis using market information from market participants that are excluded from the Commission's section 205 jurisdiction would provide the Commission with critical information to consider whether,

applicant lacks market power (or has taken sufficient steps to mitigate market power), coupled with strict reporting requirements to ensure that the rate is 'just and reasonable' and that markets are not subject to manipulation." *State of California, ex rel. Bill Lockyer v. FERC*, 383 F.3d 1006, 1013 (9th Cir. 2004), *cert. denied* (S. Ct. Nos. 06–888 and 06–1100, June 18, 2007)).

<sup>25</sup> The DPT defines the relevant market by identifying potential suppliers based on market prices, input costs and transmission availability, and then calculates each supplier's economic capacity and available economic capacity for each season/load condition. *Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 106 (2007), *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697–A, 73 FR 25832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268, *order on reh'g*, Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009). The Commission requires the DPT if a seller fails one of the indicative screens. The indicative screens analyze the number of megawatts of capacity an applicant owns or controls, rather than analyzing actual price data. However, "sellers that do not pass the indicative screens are allowed to provide additional analysis for Commission consideration," including price data. *Id.* P 62.

<sup>26</sup> 16 U.S.C. 824b (2006).

based on actual sales data,<sup>27</sup> a seller with market-based rate authority has obtained an excessive market share since the original authorization to transact at market-based rates or since its last review of such rates. *Ex post* analyses that fail to include sales by all market participants, except for those with a *de minimis* market presence, are under-inclusive and may provide unreliable results. In addition, because market information from market participants that are excluded from the Commission's section 205 jurisdiction is not available, the Commission is not able to compare prices for power sold by section 205 jurisdictional sellers with those prices of certain sellers in the same market. The Commission's post-approval reporting requirements are a crucial aspect of the Commission's market-based rate program.<sup>28</sup> Thus, requiring market participants that are excluded from the Commission's section 205 jurisdiction to file market information would improve the quality of the information available to the Commission and enhance staff's ability to evaluate jurisdictional markets.

### C. Refinements to Existing EQR Requirements

13. In combination with the broader effort to improve the Commission's access to information about the availability and prices of wholesale sales of electricity outlined above, the Commission is also considering other refinements to the existing EQR filing requirements that may significantly enhance the effectiveness of the information. The specific refinements include: (1) Reporting the trade date (*i.e.*, the date on which a transaction price is set) and the type of rate (*i.e.*, fixed price, a formula, or an index); (2) reporting resales of financial transmission rights in secondary markets; (3) standardizing the unit for reporting energy and capacity transactions (*i.e.*, dollars per MWh and dollars per MW/month); and (4) omitting the time zone from the contract section of the EQR.

<sup>27</sup> The use of actual sales information is consistent with the analysis used by the Department of Justice's Antitrust Division and the Federal Trade Commission.

<sup>28</sup> As noted above, the Ninth Circuit upheld the Commission's market-based rate regulatory scheme and found that it was valid due to the Commission's "dual requirement of an *ex ante* finding of the absence of market power and sufficient post-approval reporting requirements." *State of California, ex rel. Bill Lockyer, Attorney General of the State of California*, 125 FERC ¶ 61,016 (2008) (denying the California Parties' request for rehearing).

## II. Discussion

14. Applying the EQR filing requirements to all market participants that are excluded from the Commission's section 205 jurisdiction, except for those with a *de minimis* market presence, would aid the Commission's oversight and surveillance of wholesale electric markets and increase price transparency for market participants. The Commission requests comments on what EQR information should be obtained from these market participants for the Commission to ensure that electricity markets are transparent. Specifically, the Commission requests comments on the following questions:

(1) Should the Commission extend EQR filing requirements to market participants that are excluded from the Commission's section 205 jurisdiction?

(2) Should the Commission establish a threshold pursuant to which market participants (that are excluded from the Commission's jurisdiction under section 205 of the FPA) with a *de minimis* market presence would not be subject to the EQR filing requirements? If so, what should that threshold be and on what basis should it be established (*i.e.*, by total annual sales, total annual sales for resale, power exchanges delivered)?

(3) Would extending the EQR reporting requirements to market participants that are excluded from the Commission's section 205 jurisdiction impact liquidity (*e.g.*, the number of power sales) or the amount of power made available in the markets? If so how, and, to the extent possible, quantify it.

(4) What specific information should the Commission require to be filed? Include specific data elements from the Commission's EQR Data Dictionary, version 1.1 (issued October 28, 2008) and explain why the information with respect to these specific data elements should be required.

(5) Are there certain EQR filing requirements that should not extend to market participants that are excluded from the Commission's section 205 jurisdiction? If so, specify the data elements from the Commission's EQR Data Dictionary, version 1.1 (issued October 28, 2008) and explain why the information with respect to these specific data elements should not be required.

(6) What would the burden be on market participants that are excluded from the Commission's section 205 jurisdiction that must adapt their existing systems to be able to provide the information to comply with the Commission's EQR filing requirements?

Please estimate the amount of time and resources that would be necessary for market participants that are excluded from the Commission's section 205 jurisdiction to comply with the Commission's EQR filing requirements and provide explanation and support for any estimate.

15. In addition, as described above in section I.C., the Commission is evaluating whether refinements are needed to improve the effectiveness and analytical potential of the existing EQR filing requirements. Accordingly, the Commission requests comments on the following additional questions:

(7) Should the EQR filing requirements include the date on which parties to a reported transaction agreed upon a price (trade date) and type of rate by which the price was set (*i.e.*, fixed price, a formula, or an index)? If so, how should the trade date be defined and are there any issues in determining the trade date for sales under master agreement or evergreen contracts?

(8) Should the Commission collect information about the resale of financial transmission rights in secondary markets? Would collecting this information enhance market transparency? If so, what current EQR filing requirements should be imposed on resales of financial transmission rights in secondary markets? Include data elements from the Commission's EQR Data Dictionary, version 1.1 (issued October 28, 2008) and explain how the information with respect to these specific data elements would improve market transparency. In addition, identify all other filing requirements that may be applicable to resales of financial transmission rights in secondary markets that are not current EQR filing requirements and explain whether and, if so, how collection of the information would improve market transparency.

(9) Should the Commission require market participants to use a standardized unit for reporting energy and capacity transactions (*i.e.*, \$/MWh or \$/MWmonth for energy and \$/MW or \$/KW for capacity)? Would requiring market participants to use a standardized unit enhance market transparency?

(10) Should the Commission eliminate the requirement to report the time zone in the contract section of the EQR? Would doing so be detrimental to the market as a whole?

### III. Comment Procedures

16. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any

related matters or alternative proposals that commenters may wish to discuss. Comments are due March 30, 2010. Comments must refer to Docket No. RM10-12-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

17. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

18. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

19. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

### IV. Document Availability

20. 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

21. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

22. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By the Commission. Commissioner Norris voting present.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010-1545 Filed 1-28-10; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2009-0494; FRL-9108-2]

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Tips and Complaints Regarding Environmental Violations; EPA ICR No. 2219.03, OMB Control No. 2020-0032

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 1, 2010.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA-HQ-OECA-2009-0494, to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail to [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), or by mail to: The Enforcement and Compliance Docket and Information Center, Environmental Protection Agency, Mailcode 28221T, 1301 Constitution Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Michael Le Desma; Legal Counsel Division; Office of Criminal Enforcement, Forensics, and Training; Environmental Protection Agency, Building 25, Box 25227, Denver Federal Center, Denver, CO 80025; telephone number: (303) 462-9453; fax number: (303) 462-9075; e-mail address: [ledesma.michael@epa.gov](mailto:ledesma.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for