

121 FERC ¶ 61,128  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 141 and 385

(Docket No. RM07-18-000)

Elimination of FERC Form No. 423

(November 2, 2007)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to eliminate the FERC Form No. 423, Monthly Report of Cost and Quality of Fuels for Electric Plants. The Commission's infrequent use of the information no longer justifies the burden and cost of collecting it. Conversely, the Energy Information Administration has expressed a need for this information and, upon cessation of the Commission's collection, proposes to collect the information, as part of its newly proposed EIA-923.

COMMENT DEADLINE: Comments are due 30 days after publication in the Federal Register [insert date that is 30 days after publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments identified by Docket No. RM07-18-000, by one of the following methods:

- eFiling: From the Commission's web site: <http://www.ferc.gov>, follow the instructions for submitting comments electronically found by selecting eFiling under the Documents & Filing heading.

- Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C. 20426.

Please refer to the Comment Procedures section for additional information.

FOR FURTHER INFORMATION CONTACT:

Lawrence Greenfield (Legal Information)  
Office of the General Counsel – Energy Markets  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426  
Telephone: (202) 502-6415  
E-mail: [lawrence.greenfield@ferc.gov](mailto:lawrence.greenfield@ferc.gov)

Patricia W. Morris (Technical Information)  
Division of Administration, Budget and Strategic Planning  
Office of Energy Market Regulation  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426  
Telephone: (202) 502-8730  
E-mail: [patricia.morris@ferc.gov](mailto:patricia.morris@ferc.gov)

James Krug (Technical Information)  
Division of Administration, Budget and Strategic Planning  
Office of Energy Market Regulation  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426  
Telephone: (202) 502-8419  
E-mail: [james.krug@ferc.gov](mailto:james.krug@ferc.gov)

SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Elimination of FERC Form No. 423

Docket No. RM07-18-000

NOTICE OF PROPOSED RULEMAKING

(November 2, 2007)

1. In this Notice of Proposed Rulemaking, the Commission is proposing to amend its regulations, 18 CFR 141.61, to eliminate its Form No. 423, Monthly Report of Cost and Quality of Fuels for Electric Plants (OMB No. 1902-0024). The Commission's infrequent use of the information no longer justifies the burden and cost of collecting it. While the Commission is proposing to eliminate the Form 423, the Energy Information Administration (EIA) has expressed a need for this information and, upon cessation of the Commission's collection, has proposed to collect the information, as part of its newly proposed EIA-923 survey.<sup>1</sup>

**Background**

2. Form 423 gathers information on the cost and quality of fuels delivered to steam electric generating plants of 50 MW or greater. This information has been used over the years for a variety of purposes, including: (1) to conduct fuel reviews under Federal

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<sup>1</sup> Energy Information Administration Electric Power Survey, OMB Control No. 1905-0129, Supporting Statement A, (submitted to the Office of Management and Budget for review on October 4, 2007), available at: [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=200709-1905-003](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200709-1905-003).

Power Act (FPA) sections 205(a) and (e);<sup>2</sup> (2) to address fuel costs and fuel purchase practices affecting public utility rates under FPA sections 205 and 206;<sup>3</sup> and (3) to detect abnormally high fuel costs in public utility fuel purchases indicative of affiliate preference under FPA sections 205 and 206.<sup>4</sup>

3. Form 423 is submitted electronically on a monthly basis by approximately 190 utilities for their 569 steam electric generating plants.

### **Discussion**

4. The issuance of Order No. 888<sup>5</sup> and the public utility industry's increasing reliance on market-based rates have created a diminished need for the Form 423 information; greater use of market-based rates has resulted in less reliance on cost-based rates and less need to evaluate rates by reference to the utility's costs. In short, there are

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<sup>2</sup> 16 U.S.C. 824d(a), (e).

<sup>3</sup> 16 U.S.C. 824d, 824e.

<sup>4</sup> Id.

<sup>5</sup> 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 (1996), 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 Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

fewer public utilities with cost-based rates<sup>6</sup> and particularly with fuel adjustment clauses as part of their rates. This, in turn, has resulted in fewer rate cases and fewer complaints filed with the Commission. Moreover, should the Commission have a need for information concerning fuel costs and purchases, it can obtain such information on a case-by-case basis through special reports, investigations, or in formal proceedings.<sup>7</sup>

5. The Commission's infrequent use of the information collected through Form 423, in sum, no longer justifies the burden of collecting it. The Commission therefore proposes to cease to collect the Form 423 information ending with the December 2007 information, due February 15, 2008.

6. In contrast to the Commission's lack of need for the information, the EIA, in a collection statement to the Office of Management and Budget (OMB), states that EIA has multiple uses for it and request approval to collect it. Presently, EIA collects similar information from nonutility generators and, as explained in EIA's collection statement to OMB, adding to it information from Commission-jurisdictional public utilities would, for the first time, capture all such data on one form for the entire industry. EIA further proposes to merge the combined data collection with information from three other

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<sup>6</sup> A review of data from the Electric Quarterly Reports for calendar year 2006 indicates that market-based power sales constituted ninety percent of jurisdictional power sales (reported as energy sales and booked out transactions). Five percent were at cost-based rates, and the other five percent could not be readily categorized given the information reported.

<sup>7</sup> See, e.g., 16 U.S.C. 825e, 825f.

existing EIA collections: EIA-906, EIA-920 and EIA-767, in an effort to improve data quality, consistency and reporting efficiency. The result, EIA states, will be a new survey, the EIA-923, Power Plant Operations Report.

7. The Commission proposes to collect Form 423 information ending with the December 2007 report, due February 15, 2008, to coordinate with the initiation of EIA's collection of that information. However, if EIA is not prepared to collect the information at that time, to prevent a gap in data continuity, the Commission will continue to collect the information, until such time as EIA is prepared to begin collection, but not beyond the December 2008 report, due in February 2009.

8. The annual estimated \$385,128 cost to filers to provide the Form 423 information, added to the \$193,869 cost to the Commission to collect it, means eliminating the collection would save \$578,997. The added burden on EIA to collect the FERC Form 423 data, EIA states in its OMB submission, is offset by the added efficiencies of reorganizing their data collections.

### **Solicitation of Comments**

9. The Commission seeks comments both on its proposal to eliminate the Form 423, and on the date the Commission proposes to eliminate the Form 423.

**Information Collection Statement**

10. OMB regulations require OMB to approve certain information collection requirements imposed by an agency.<sup>8</sup> Here, the Commission is proposing to cease collecting certain information. Nevertheless, OMB has been notified of the Commission's actions in this case. The Commission will submit a copy of the Notice of Proposed Rulemaking (NOPR) to OMB for information purposes only.

11. Interested persons may obtain information on the elimination of these reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attn: Michael Miller, Information Services Division (202) 502-8415, fax: (202) 273-0873]. Comments also can be sent to the Office of Information and Regulatory Affairs of OMB [Attn: Desk Officer for the Federal Energy Regulatory Commission; phone, (202) 395-4650, fax: (202) 395-7285, e-mail: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov)]. Comments regarding EIA's collection of information now collected on Form 423 should be addressed to OMB at the above address.

**Environmental Analysis**

12. Commission regulations require that an Environmental Assessment or an Environmental Impact Statement be prepared for any Commission action that may have a

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<sup>8</sup> 5 CFR 1320.11.

significant adverse effect on the human environment.<sup>9</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant adverse effect on the human environment. No environmental consideration is necessary for the promulgation of a rule concerning information gathering, analysis or dissemination.<sup>10</sup> Because this NOPR concerns the elimination of an information collection, no environmental consideration is necessary.

### **Regulatory Flexibility Act Certification**

13. The Regulatory Flexibility Act of 1980 (RFA)<sup>11</sup> generally requires either a description and analysis of a rule that will have a significant economic impact on a substantial number of small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. Most utilities to which this proposed rule applies would not fall within the RFA's definition of small entity.<sup>12</sup> Consequently, the Commission certifies that this NOPR, if adopted, will not

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<sup>9</sup> Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (codified at 18 CFR Part 380).

<sup>10</sup> 18 CFR 380.4(a)(5).

<sup>11</sup> 5 U.S.C. 601-12.

<sup>12</sup> 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of

(continued...)

have a significant economic impact on a substantial number of small entities. Moreover, elimination of the Form 423 will reduce the burden on all entities, including small entities.

### **Comment Procedures**

14. The Commission invites interested persons to submit comments on the changes proposed in this NOPR to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due [ **Insert Date 30 days from publication in the FEDERAL REGISTER**]. Comments must refer to Docket No. RM07-18-000, and must include, in the comments, the commenter's name, the organization represented, if applicable, and the address. Comments may be filed either in electronic or paper format.

15. Comments may be filed electronically via the eFiling link found under the Documents & Filings heading on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats, but requests commenters to submit comments in a text-searchable format rather than a scanned image format.

Commenters filing electronically do not need to make a paper filing. 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 N.E., Washington, DC, 20426.

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electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. 13 CFR 121.201.

16. 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.

### **Document Availability**

17. 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 the Commission's Home Page (<http://www.ferc.gov>) and in the Commission'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.

18. From the Commission's Home Page on the Internet, the full text of this document is available in the Commission's document management system, eLibrary, in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number (excluding the last three digits of the docket number), in the Docket Number field.

19. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact FERC Online Support at (202) 502-6652 (toll-free at 1-866-208-3676), e-mail [fercon-linesupport@ferc.gov](mailto:fercon-linesupport@ferc.gov), or contact the Public Reference Room at (202) 502-8371, TTY (202) 502-8659, e-mail: [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

List of subjects

18 CFR Part 141

Electric Power

Reporting and recordkeeping requirements

18 CFR Part 385

Administrative practice and procedure

Electric power

Penalties

Pipelines

Reporting and recordkeeping requirements

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 141 and 385, Chapter I, Title 18, Code of Federal Regulations, as follows:

**PART 141 – STATEMENTS AND REPORTS (SCHEDULES)**

1. The authority citation for part 141 continues to read as follows:

**Authority:** 15 U.S.C. 79; 16 U.S.C. 791a-828c, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Section 141.61 is revised, to read as follows:

**§ 141.61 [Reserved]**

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**PART 385 - RULES OF PRACTICE AND PROCEDURE**

3. The authority citation for part 385 continues to read as follows:

**Authority:** 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C.791a-825v, 2601-2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101-7352, 16441, 16451-16463; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

4. Section 385.2011, paragraph (a)(8) is revised to read as follows:

**§ 385.2011 Procedures for filing on electronic media (Rule 2011).**

(a) \* \* \*

(8) **[Reserved]**

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