

149 FERC ¶ 61,229  
DEPARTMENT OF ENERGY  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 46

[Docket No. RM15-3-000]

Revisions to Part 46 Filing Requirements

(December 18, 2014)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise its regulations to eliminate the requirement to submit FERC-566 (Annual Report of a Utility's 20 Largest Customers) for regional transmission organizations (RTOs), independent system operators (ISOs), and exempt wholesale generators (EWGs). The Commission is also proposing to revise its regulations to eliminate the requirement to submit FERC-566 for public utilities that have not made any reportable sales under FERC-566 in any of the three preceding years. The Commission further proposes to eliminate the requirement for public utilities submitting FERC-566 to identify individual residential customers by name and address.

DATES: Comments are due [**Insert date 60 days after publication in the FEDERAL REGISTER**].

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.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: Those unable to file electronically may mail or hand-deliver 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:

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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NOTICE OF PROPOSED RULEMAKING

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NOTICE OF PROPOSED RULEMAKING

(December 18, 2014)

1. Section 305(c) of the Federal Power Act (FPA) requires, among other things, that, on or before January 31 of each calendar year, each public utility shall publish a list, pursuant to rules prescribed by the Commission, of any company, firm, or organization that is one of the 20 purchasers of electric energy which purchased (for purposes other than resale) one of the 20 largest annual amounts of electric energy sold by such public utility (or by any public utility which is part of the same holding company system) during any one of the three calendar years immediately preceding the filing date.<sup>1</sup>

2. The Commission implemented Congress' mandate in part 46 of the Commission's regulations.<sup>2</sup> Section 46.3 of the regulations thus provides, in relevant part, that on or before January 31 of each year, each public utility shall compile a list of purchasers of electric energy (other than for resale), and shall identify each purchaser by name and

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<sup>1</sup> 16 U.S.C. 825d(c) (2012).

<sup>2</sup> 18 CFR part 46 (2014).

principal business address, and shall submit the list to the Secretary and make the list publicly available. The list identifies each purchaser who, during any of the three preceding calendar years, purchased (for purposes other than resale) from a public utility one of the twenty largest amounts of electric energy by such public utility, and the public utility is required to notify each purchaser which has been identified on the list.<sup>3</sup>

3. On February 26, 2014, in compliance with the requirements of the Paperwork Reduction Act of 1995,<sup>4</sup> the Commission issued a request for comments on, among other things, the currently-approved information collection FERC-566 (Annual Report of a Utility's 20 Largest Customers). Specifically, the Commission sought comment on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.<sup>5</sup>

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<sup>3</sup> 18 CFR 46.3.

<sup>4</sup> 44 U.S.C. 3506 (c)(2)(A).

<sup>5</sup> See Commission Information Collection Activities (FERC-520, FERC-561, FERC-566); Comment Request; Extension, Docket No. IC14-9-000 (Feb. 26, 2014).

4. The Commission received four comments. With respect to the FERC-566, commenters recommended that the Commission eliminate the requirement to file FERC-566 for public utilities that do not make any reportable sales; that certain Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) should be exempted from the requirement to submit FERC-566; and that the Commission should exempt exempt wholesale generators (EWGs) from the FERC-566 filing requirement.<sup>6</sup>

5. On July 1, 2014, the Commission issued a further notice addressing the comments. Specifically, the Commission stated that it shared commenters' interest in identifying and implementing burden reductions to the benefit of filers as well as the Commission, but that commenters' suggestions raised issues that required additional study. The Commission stated that should it determine after further study to pursue changes to these information collections, those changes would be more appropriately addressed in a forum and through a process that is better suited to full public identification of and deliberation on possible proposed changes. The Commission noted that any changes to the Commission's regulations would need to be made through the Commission's formal rulemaking process.<sup>7</sup>

6. In this Notice of Proposed Rulemaking (NOPR), the Commission proposes to revise its regulations to reduce the regulatory burden of compliance on public utilities,

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<sup>6</sup> See Commission Information Collection Activities (FERC-520, FERC-561, FERC-566); Comment Request, Docket No. IC14-9-000, at 7-8 (July 1, 2014).

<sup>7</sup> *Id.* at 8.

while meeting the statutory standards set forth in the FPA. Such modifications would enhance the quality, utility, and clarity of the information collected. Specifically, the Commission proposes to eliminate the requirement to submit FERC-566 for RTOs, ISOs, and EWGs. The Commission also proposes to eliminate the requirement to submit FERC-566 for public utilities that have not made any reportable sales in any of the three preceding years. The Commission further proposes to eliminate the requirements for public utilities submitting FERC-566 to identify individual residential customers by name and address.

**I. Discussion**

**A. RTOs and ISOs**

7. The Commission proposes to eliminate the requirement to submit FERC-566 for RTOs and ISOs. By their nature, RTOs and ISOs are focused primarily on sales of electric energy for resale. The statute expressly seeks to acquire information about purchasers of electric energy who purchased “for purposes other than for resale.”<sup>8</sup> Accordingly, the Commission proposes to revise the current regulation to eliminate the requirement to submit FERC-566 for RTOs and ISOs.

**B. EWGs**

8. Similarly, the Commission proposes to eliminate the requirement to submit FERC-566 for EWGs. The term exempt wholesale generator is defined as “any person engaged directly, or indirectly through one or more affiliates ... and exclusively in the business of

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<sup>8</sup> 16 U.S.C. 825(c)(2)(D).

owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.<sup>9</sup> Thus, by definition, EWGs do not have retail customers. As discussed above regarding RTOs and ISOs, the statute seeks to acquire information about purchasers of electric energy who purchased for purposes other than for resale. Because EWGs are defined as entities that only sell energy at wholesale, the Commission believes FERC-566 should not be required to be submitted by such entities.

**C. Public Utilities That Have Not Made Sales**

9. The Commission proposes to eliminate the requirement to submit FERC-566 for those public utilities that have not made any reportable sales in any of the three preceding years. Section 305(c) requires public utilities to publish a list of purchasers; it does not require a report of the absence of purchasers. Thus, the Commission proposes to eliminate the requirement to submit FERC-566 for those public utilities that have not made any reportable sales in any of the three preceding years.

**D. Identification Requirement**

10. The Commission proposes to eliminate the requirement for public utilities submitting FERC-566 to identify individual residential customers by name and address. Currently, section 46.3(d) requires that each public utility identify each purchaser on the list of the twenty largest purchasers by name and principal business address. However, it may not be necessary to have such detailed information about residential customers.

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<sup>9</sup> 18 CFR 336.1 (emphasis added).

Thus, the Commission proposes to allow public utilities to identify individual residential customers as “Residential Customer,” and provide only a zip code in lieu of an address.

## **II. Information Collection Statement**

11. The collection of information addressed in this Notice of Proposed Rulemaking is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.<sup>10</sup> OMB’s regulations require approval of certain information collection requirements imposed by agency rules.<sup>11</sup> Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

12. We solicit comments on the need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents’ burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

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<sup>10</sup> 44 U.S.C. 3507(d).

<sup>11</sup> 5 CFR 1320.11.

13. Public Reporting Burden: The burden and cost estimates below are based on the estimated reduction in burden for certain entities that would no longer have to file the annual report of twenty largest purchasers. The Commission estimates the annual report to require (on average) six hours to prepare and to file. The Commission estimates that there are six RTOs/ISOs and an additional 880 filers that report no purchasers. The latter category includes EWGs. The following table illustrates the burden reductions to be applied to the information collection:

<b>Respondent Category</b>	<b>Number of Respondents (1)</b>	<b>Annual Number of Responses per Respondent (2)</b>	<b>Total Number of Responses (1)*(2)=(3)</b>	<b>Reduction in Average Burden Hours &amp; Cost per Response<sup>12</sup> (4)</b>	<b>Total Reduction in Annual Burden Hours &amp; Total Annual Cost<sup>13</sup> (3)*(4)=(5)</b>
RTOs/ISOs	6	1	6	6 \$423	36 \$2,538
Filers with No Purchasers (including EWGs)	880	1	880	6 \$423	5,280 \$372,240
<b>Total Reduction</b>			<b>886</b>		<b>5,316 \$374,778</b>

Title: Annual Report of Twenty Largest Purchasers (FERC-566).

Action: Revision to existing collection.

OMB Control No: 1902-0114.

Respondents: Business or other for profit, and not for profit institutions.

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<sup>12</sup> The estimates for cost per response are derived using the following formula: Burden Hours per Response \* \$70.50/hour = Cost per Response. The \$70.50/hour figure is based on the average salary plus benefits for a FERC employee. We assume that industry respondents earn at a similar rate.

<sup>13</sup> Total Annual Burden Hours \* \$70.50.

Frequency of Responses: Annually.

Necessity of the Information: The Commission is required by the Federal Power Act to collect information on public utilities' twenty largest retail purchasers. This information helps the Commission understand electric energy markets and transactions, in order to better safeguard public and private interests. Upon review, the Commission proposes that certain entities no longer need to make the annual filing.

Internal review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

14. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, e-mail: DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873].

15. Comments concerning the information collection proposed in this NOPR and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at the following e-mail address: oira\_submission@omb.eop.gov. Please reference the docket numbers of this Notice of Proposed Rulemaking (Docket No. RM15-3-000) in your submission.

### **III. Environmental Analysis**

16. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>14</sup> This action has been categorically excluded under section 380.4(a)(2)(ii), addressing the collection of information.<sup>15</sup>

### **IV. Regulatory Flexibility Act**

17. The Regulatory Flexibility Act of 1980 (RFA)<sup>16</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. This NOPR proposes to revise the Commission's regulations to reduce reporting burdens. Specifically, the Commission proposes to eliminate the requirement to submit FERC-566 for RTOs and ISOs, EWGs, and those public utilities that did not make retail sales in the preceding three years. The Commission is also simplifying the requirements for existing filers, as they will no longer have to identify individual residential customers by name and address.

18. The Commission estimates that, on average, each of the entities that will no longer have to file the FERC-566 will experience a reduction in cost of \$423 per year.

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<sup>14</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

<sup>15</sup> 18 CFR 380.4(a)(2)(ii).

<sup>16</sup> 5 U.S.C. 601-12.

19. Accordingly, the Commission certifies that this NOPR, if adopted, will not have a significant economic impact on a substantial number of small entities.

**V. Comment Procedures**

20. 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 **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**. Comments must refer to Docket No. RM15-3-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

21. 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.

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

23. 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.

**VI. Document Availability**

24. 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, NE, Room 2A, Washington DC 20426.

25. From the Commission'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.

26. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email 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).

List of subjects in 18 CFR Part 46

Electric utilities; Reporting and recordkeeping requirements

By direction of the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 46, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

**PART 46 – PUBLIC UTILITY FILING REQUIREMENTS AND FILING REQUIREMENTS FOR PERSONS HOLDING INTERLOCKING POSITIONS**

1. The authority citation for Part 46 continues to read as follows:

**Authority:** 16 U.S.C. 792-828c; 16 U.S.C. 2601-2645; 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 142.

2. Section 46.3 is revised as follows:

- a. Paragraph (a) is revised as drafted below;
- b. New paragraph (2) is added as drafted below;
- c. New paragraph (3) is added as drafted below;
- d. New paragraph (4) is added as drafted below;
- e. New paragraph (5) is added as drafted below.

**§ 46.3 Purchaser list.**

(a)(1) *Compilation and filing list.* On or before January 31 of each year, except as provided below, each public utility shall compile a list of the purchasers described in paragraph (b) of this section and shall identify each purchaser by name and principal business address. The public utility must submit the list to the Secretary of the Commission in accordance with filing procedures posted on the Commission's Web site at <http://www.ferc.gov> and make the list publicly available through its principal business office.

(2) Notwithstanding section (a)(1), public utilities that are defined as Regional Transmission Operators, as defined in § 35.34(b)(1) of this chapter, and public utilities

that are defined as Independent System Operators, as defined in § 35.46(d) of this chapter, are exempt from the requirement to file.

(3) Notwithstanding section (a)(1), public utilities that meet the criteria for exempt wholesale generators, as defined in § 366.1 of this chapter, and are certified as such pursuant to § 366.7 of this chapter, are exempt from the requirement to file.

(4) Notwithstanding section (a)(1), public utilities that have no reportable sales as defined in section (b) in any of the three preceding years are exempt from the requirement to file.

(5) Notwithstanding section (a)(1), individual residential customers on the list may be identified as “Residential Customer,” and with a zip code in lieu of an address.

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