

	2011 Fee lessor of ac- tual or cal- culated fee
CBOE Futures .....	\$173
Chicago Board of Trade .....	86,901
Chicago Climate Exchange .....	4,444
Chicago Mercantile Exchange ..	412,413
ICE Futures U.S. ....	102,659
Kansas City Board of Trade .....	52,294
Minneapolis Grain Exchange ...	52,172
New York Mercantile Exchange	274,838
North American Derivatives Ex- change .....	4,196
OneChicago .....	1,157
Subtotal .....	991,247
National Futures Association ....	790,141
Total .....	1,781,388

### III. Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds (See 31 U.S.C. 3720). For information about electronic payments, please contact Jennifer Fleming at (202) 418-5034 or [jfleming@cftc.gov](mailto:jfleming@cftc.gov), or see the CFTC Web site at [www.cftc.gov](http://www.cftc.gov), specifically, [www.cftc.gov/cftc/cftcelectronicpayments.htm](http://www.cftc.gov/cftc/cftcelectronicpayments.htm).

Issued in Washington, DC, on this 1st day of May, 2012, by the Commission.

**David Stawick,**

*Secretary of the Commission.*

[FR Doc. 2012-10898 Filed 5-4-12; 8:45 am]

#### BILLING CODE P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 35

[Docket No. RM11-17-000; Order No. 760]

### Enhancement of Electricity Market Surveillance and Analysis Through Ongoing Electronic Delivery of Data From Regional Transmission Organizations and Independent System Operators

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations to require each regional transmission organization (RTO) and independent system operator (ISO) to electronically deliver to the Commission, on an ongoing basis, data related to the markets that it

administers. Specifically, the Commission is amending its regulations to establish ongoing electronic delivery of data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, financial transmission rights, internal bilateral contracts, uplift, and interchange pricing. Such data will facilitate the Commission's development and evaluation of its policies and regulations and will enhance Commission efforts to detect anti-competitive or manipulative behavior, or ineffective market rules, thereby helping to ensure just and reasonable rates.

**DATES:** *Effective Date:* This rule will become effective July 6, 2012.

#### FOR FURTHER INFORMATION CONTACT:

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139 FERC ¶ 61,053

Before Commissioners: Jon Wellinghoff,  
Chairman; Philip D. Moeller, John R.  
Norris, and Cheryl A. LaFleur.

### Final Rule

*Issued April 19, 2012*

### I. Introduction

1. In this final rule, the Federal Energy Regulatory Commission

(Commission) is revising its regulations to require each regional transmission organization (RTO) and independent system operator (ISO) to electronically deliver to the Commission, on an ongoing basis, data related to the markets that it administers. The Commission, acting pursuant to sections 301(b) and 307(a) of the Federal Power

Act (FPA),<sup>1</sup> will amend its regulations to establish ongoing electronic delivery of data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, financial transmission rights (FTR), internal bilateral contracts, uplift, and interchange pricing. Such data will facilitate the Commission's

<sup>1</sup> 16 U.S.C. 825(b), 825f(a).

development and evaluation of its policies and regulations and will enhance Commission efforts to detect anti-competitive or manipulative behavior, or ineffective market rules, thereby helping to ensure just and reasonable rates.

## II. Background

2. Wholesale electricity markets have changed dramatically in recent years.<sup>2</sup> From an industry characterized by self-sufficient, vertically integrated utilities, where most utilities operated their own generation, transmission, and distribution facilities, to an industry that utilizes market-based rates and “open access” to transmission systems. The 1980s and early 1990s experienced an increased adoption of market-based ratemaking and wholesale power sales competition to promote efficiency and to lower wholesale power prices.<sup>3</sup> Further, the Commission found that the availability of transmission service can enhance competition in power markets, by increasing power supply options of buyers and power sales options of sellers, and can lead to lower rates for consumers.<sup>4</sup>

3. By the mid-1990s, the Commission concluded that, beyond the industry’s

voluntary efforts, additional measures were needed to address undue discrimination in transmission access. Accordingly, the Commission issued Order Nos. 888<sup>5</sup> and 889,<sup>6</sup> requiring “open access” transmission service. The Commission explained that such open access would “remove impediments to competition in the wholesale power marketplace and \* \* \* bring more efficient, lower cost power to the Nation’s electricity customers.”<sup>7</sup> Subsequently, the Commission issued Order No. 890<sup>8</sup> to further remedy undue discrimination and thereby remove barriers to competition.

4. In addition to addressing undue discrimination in transmission access, Order No. 888 encouraged the formation of ISOs, reasoning that “ISOs have great potential to assist us and the industry to help provide regional efficiencies, to facilitate economically efficient pricing, and, especially in the context of power pools, to remedy undue discrimination and mitigate market power.”<sup>9</sup> To date, the Commission has approved six RTOs and ISOs: PJM Interconnection, L.L.C. (PJM); New York Independent System Operator, Inc. (NYISO); Midwest Independent Transmission System Operator, Inc. (MISO); ISO New England Inc. (ISO-NE); California Independent System Operator Corporation (CAISO); and Southwest Power Pool, Inc. (SPP).

5. Recognizing the importance of information relating to market trading and market oversight, the Commission issued Order No. 2001<sup>10</sup> and Order No.

697,<sup>11</sup> establishing reporting requirements for entities selling under market-based rates. The information solicited by these orders has helped foster appropriate oversight of developing electricity markets, for “[i]nformation is the key to a viable electricity market and to preventing market manipulation.”<sup>12</sup> In addition, the Energy Policy Act of 2005 (EPA 2005)<sup>13</sup> gave the Commission expanded authority to address market manipulation,<sup>14</sup> including the ability to assess increased civil penalties.<sup>15</sup> EPA 2005 also provided increased criminal penalties.<sup>16</sup>

6. Independent market monitoring by RTO and ISO market monitoring units (MMU) is another important means to evaluate market developments and to identify and deter market abuses and manipulation. In Order No. 2000, the Commission identified market monitoring as a basic function of an RTO.<sup>17</sup> The Commission refined its approach to MMUs in a 2005 policy statement and in Order No. 719.<sup>18</sup> In the

<sup>2</sup> A more in-depth discussion of developments in wholesale electricity markets—which no commenter disputed—is provided in the Notice of Proposed Rulemaking (NOPR), which can be found at *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators*, Notice of Proposed Rulemaking, 76 FR 66211 (Oct. 26, 2011), FERC Stats. & Regs. ¶ 32,681 (2011).

<sup>3</sup> See, e.g., *Louisville Gas & Elec. Co.*, 62 FERC ¶ 61,016, at 61,143 & n.16, 61,149 (1993) (accepting non-traditional, market-based rates as consistent with primary regulatory goal of ensuring lowest reasonable cost energy to consumers, provided service is reliable and the seller demonstrates a lack of market power); *Pac. Gas & Elec. Co.*, 38 FERC ¶ 61,242, at 61,790 (1987) (accepting proposed competitive rates because “competition \* \* \* encourages utilities to make efficient decisions with a minimum of regulatory intervention [and, ultimately, consumers should benefit from lower prices as competition improves efficiency.”), *modified on other grounds*, 47 FERC ¶ 61,121 (1989), *modified*, 50 FERC ¶ 61,339 (1990), *modified sub nom. W. Sys. Power Pool*, 55 FERC ¶ 61,099, at 61,319 (addressing applicant’s failure to eliminate anticompetitive effects by mitigating market power), *granting stay*, 55 FERC ¶ 61,154, *reh’g granted in part*, 55 FERC ¶ 61,495 (1991), *modified*, 59 FERC ¶ 61,249 (1992); *Pub. Serv. Co. of N.M.*, 25 FERC ¶ 61,469, at 62,038 (1983) (averring that “competition penalizes a seller that is inefficient or has an unreasonable pricing strategy; consequently, consumers \* \* \* benefit because the improvements in efficiency lead to lower prices.”); see also *Heartland Energy Servs., Inc.*, 68 FERC ¶ 61,223 (1994) (reviewing early Commission decisions granting market-based rate authority).

<sup>4</sup> *Fla. Mun. Power Agency v. Fla. Power & Light Co.*, 65 FERC ¶ 61,125, at ¶ 61,615, *reh’g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh’g*, 74 FERC ¶ 61,006 (1996).

<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, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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).

<sup>6</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh’g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh’g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>7</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,634.

<sup>8</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 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>9</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,652; see also *id.* at 31,730–32.

<sup>10</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *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, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh’g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, 125 FERC ¶ 61,103 (2008).

<sup>11</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *aff’d sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. Oct. 13, 2011). In its decision upholding Order No. 697, the Ninth Circuit Court of Appeals noted that monitoring must be accompanied by enforcement because “[w]ithout enforcement, there is little reason to believe that sellers will police themselves.” *Montana Consumer Counsel*, 659 F.3d at 920 n.5.

<sup>12</sup> Charles H. Koch, Jr., *Collaborative Governance: Lessons for Europe from U.S. Electricity Restructuring*, 61 Admin. L. Rev. 71, 97 (2009).

<sup>13</sup> Public Law 109–58, 119 Stat. 594 (2005).

<sup>14</sup> See, e.g., 16 U.S.C. 824v.

<sup>15</sup> See 16 U.S.C. 825o–1 (civil penalties).

<sup>16</sup> See 16 U.S.C. 825o (criminal penalties).

<sup>17</sup> Prior to this first generic consideration of MMUs in Order No. 2000, the Commission addressed market monitoring in connection with individual RTO and ISO proposals. See *Pac. Gas & Elec. Co.*, 77 FERC ¶ 61,265 (1996), *order on reh’g*, 81 FERC ¶ 61,122 (1997), *order on clarification*, 83 FERC ¶ 61,033 (1998) (requiring the ISO to file a detailed monitoring plan and listing minimum elements for such a plan); *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997) (requiring PJM Interconnection, L.L.C. to develop a market monitoring program to evaluate market power and market design flaws).

<sup>18</sup> *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 (2005) (Policy Statement); *Wholesale Competition in*

2005 Policy Statement, the Commission outlined tasks for MMUs to perform in order to enhance the competitive structure of RTO and ISO markets.<sup>19</sup> Subsequently, in Order No. 719, the Commission further clarified requirements for MMU functions, independence, and information sharing.<sup>20</sup>

7. While MMUs perform a vital and necessary function in market oversight,<sup>21</sup> they do not supplant the Commission's authority.<sup>22</sup> Rather, MMUs are designed to provide the Commission with an additional means of detecting market power abuses, market design flaws, and opportunities for improvements in market efficiency.<sup>23</sup>

### III. Discussion

#### A. Commission Authority and the Need for Market Data

##### 1. NOPR

8. The NOPR proposed to obtain ongoing delivery of RTO and ISO data pursuant to the Commission's authority under sections 301(b) and 307(a) of the FPA.<sup>24</sup> Section 301(b) provides that the Commission shall at all times have access to, and the right to inspect and examine, all accounts and records of public utilities; section 307(a) provides that the Commission has authority to investigate any facts, conditions, practices, or matters it may deem necessary or proper to determine whether any person, electric utility, transmitting utility, or other entity may have violated or might violate the FPA or the Commission's regulations, or to aid in the enforcement of the FPA or the Commission's regulations, or to obtain information about wholesale electric energy sales or the transmission of electric energy in interstate commerce.

9. In the NOPR, the Commission sought comment on its proposal to

revise its regulations to require each RTO and ISO to electronically deliver to the Commission, on an ongoing, non-public basis, data related to the markets that it administers;<sup>25</sup> namely, data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, FTRs, internal bilateral contracts, and interchange pricing.<sup>26</sup> The Commission explained that ongoing electronic delivery of data from each RTO and ISO would facilitate the Commission's development and evaluation of its policies and regulations and would enhance Commission efforts to detect anti-competitive or manipulative behavior, or ineffective market rules, thereby helping to ensure just and reasonable rates.

10. The NOPR also emphasized efforts by the Commission to streamline the collection of data it already has the authority to request from public utilities. The Commission noted that it currently requests data from individual RTOs and ISOs on an ad hoc basis. The Commission averred that such ad hoc requests may require more Commission and RTO and ISO resources than the proposed ongoing electronic delivery of this data using an automated process. Accordingly, the Commission proposed to require an automated ongoing data delivery process, in part, to minimize any burden on RTOs and ISOs.

11. In the NOPR, the Commission also addressed the relationship between the Commission and the MMUs. The Commission explained that the NOPR did not seek to displace or modify any of the existing market monitoring functions or any evaluations of market rules and designs performed by the MMUs; rather, the intent of the data collection is to help the Commission detect anti-competitive or manipulative behavior, inefficient market rules, and ensure just and reasonable rates.<sup>27</sup> The Commission acknowledged that MMUs perform a vital and necessary function in market oversight.<sup>28</sup> The Commission explained that, rather than supplant the Commission's authority,<sup>29</sup> MMUs are designed to provide the Commission with an additional means of detecting market power abuses, market design

flaws, and opportunities for improvements in market efficiency.<sup>30</sup>

##### 2. Comments

12. Commenters do not dispute the Commission's authority under sections 301(b) and 307(a) of the FPA to require ongoing delivery of data from each RTO and ISO. As PA PUC stated, the proposal to expand the categories of information that RTOs and ISOs have to make available to the Commission is a logical and necessary extension of the Commission's existing authority under sections 301 and 307 of the FPA.<sup>31</sup>

13. Most commenters agree that ongoing delivery of data from each RTO and ISO would assist the Commission in carrying out its monitoring functions.<sup>32</sup> For instance, Powerex states that:

The Commission correctly recognizes that as markets continue to evolve with increased levels of sophistication, the Commission must continue to evaluate the type of data necessary to ensure just and reasonable rates. Having ongoing, routine access to [RTO and ISO] data will provide greater transparency to the Commission on market activities and allow the Commission to perform systematic, comprehensive analysis to aid in monitoring market behavior and creating effective market rules and efficient market design.<sup>[33]</sup>

14. Several commenters agree that an ongoing, automated data delivery process may reduce administrative burdens on the RTOs and ISOs and the Commission when compared with ad hoc data requests.<sup>34</sup> The PA PUC states that it does not believe the rules expanding RTO and ISO reporting requirements will unnecessarily burden these organizations.<sup>35</sup>

15. In their joint comments, EEI/EPSCA state that they understand the Commission's desire to collect information to enhance its market monitoring and surveillance capabilities but question the need for ongoing data transfers to the Commission.<sup>36</sup> Specifically, EEI/EPSCA question why the Commission needs the additional information; whether the Commission is proposing to duplicate the function of RTO and ISO MMUs; the justification for imposing a burden on RTOs and ISOs and market participants; and why the Commission is collecting more information than what is contained in the Electric Quarterly Reports (EQR).<sup>37</sup>

*Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

<sup>19</sup> 2005 Policy Statement, 111 FERC ¶ 61,267 at P 2.

<sup>20</sup> Specifically, MMU functions consist of evaluating existing and proposed market rules, tariff provisions, and market design elements and recommending changes, if applicable; reviewing and reporting on the performance of wholesale markets; and identifying and notifying the Commission of behavior that may require investigation. *See* Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 354.

<sup>21</sup> *See, e.g.*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 314.

<sup>22</sup> Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,156–57.

<sup>23</sup> *Id.*

<sup>24</sup> 16 U.S.C. 825(b); 16 U.S.C. 825f(a).

<sup>25</sup> Appendix A lists commenters and their abbreviated names as used here.

<sup>26</sup> *See* NOPR, FERC Stats. & Regs. ¶ 32,681 at P 36; *see infra* § III.F (Data Requested) for the data in this final rule to be provided.

<sup>27</sup> *See* NOPR, FERC Stats. & Regs. ¶ 32,681 at PP 29 & 35.

<sup>28</sup> *Id.* PP 8–9 (citing Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 314).

<sup>29</sup> *Id.* P 9 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,156–57).

<sup>30</sup> *Id.*

<sup>31</sup> PA PUC at 2.

<sup>32</sup> SWP at 1–2; NYPSC at 3; PA PUC at 2–10; IRC at 1–2; Powerex § IV.A.; APPA at 6; ISO–NE at 3; EEI/EPSCA at 6; *see also* CAC/EPUC at 1 (expressing no protest against such delivery of data).

<sup>33</sup> Powerex § IV.A. (footnote omitted).

<sup>34</sup> *Id.* § IV.A.; ISO–NE at 3.

<sup>35</sup> PA PUC at 4.

<sup>36</sup> EEI/EPSCA at 6.

<sup>37</sup> *Id.*

### 3. Commission Determination

16. The Commission concludes that requiring each RTO and ISO to electronically deliver to the Commission on an ongoing, non-public basis, data related to the markets that each administers will help the Commission to carry out its statutory responsibilities, as explained below. The Commission finds that the revisions are consistent with the Commission's authority under sections 301(b) and 307(a) of the FPA. In addition, these reforms are expected to reduce administrative burdens on the RTOs and ISOs.

17. EEI/EPISA's joint comments touch on a range of issues regarding the ongoing delivery of data from the RTOs and ISOs. Specifically, they ask why the Commission needs the specified data and question whether such reporting will result in duplicative market monitoring. These datasets are necessary to the Commission's better ensuring that Commission jurisdictional rates are just and reasonable.<sup>38</sup> Ongoing electronic delivery of these particular datasets will help the Commission more effectively and accurately, and thus more efficiently, monitor and evaluate the activity in RTO and ISO markets. Such data will permit the Commission to improve its screening of participants' market activity for inappropriate conduct, making such conduct more difficult to mask.<sup>39</sup> In addition, the ongoing delivery of this data will provide a better picture of market activity and lessen the possibility that market monitoring and surveillance screens will result in error. Thus, electronic delivery of this data will permit the Commission to meet its statutory obligations in a more efficient manner.

18. The Commission's oversight capabilities, and associated data delivery requirements, must keep pace with market developments and evolve along with the markets. A part of the Commission's oversight of the wholesale electricity markets is the evaluation of existing market designs and the effectiveness of current market rules. The ongoing, electronic delivery of specific datasets will enable the Commission to more effectively carry out this function. This data will provide the Commission with empirical information that will augment its ability to assess the effectiveness of Commission-approved market rules and provide better tools to monitor the efficiency of existing market designs in producing just and reasonable rates.

Thus, the ongoing delivery of the data sought in this final rule will inform the Commission's continuing evaluation of market rules, regulations, and the development of its policies.

19. Requiring this data does not displace the MMUs' existing efforts to evaluate market rules and market designs or modify any of their market monitoring functions. Nor does the Commission's analysis and monitoring efforts using the data specified in this final rule duplicate the MMUs' existing efforts. For example, because of the Commission's ability to look across all RTO and ISO markets, the Commission is in a unique position to perform cross-market analysis. This cross-market analysis will enhance the Commission's ongoing efforts to improve surveillance and monitoring of the markets and assess the performance of different market designs and rules.<sup>40</sup>

### B. Duplicative Requirements

#### 1. NOPR

20. The NOPR stated that the electronic delivery of the types of data proposed herein will help to maintain the Commission's access to RTO and ISO data on par with the types and levels of activity in those markets and will help to ensure that rates are just and reasonable.<sup>41</sup>

#### 2. Comments

21. Several commenters urge the Commission to avoid duplicative reporting, given other recent data collection requirements.<sup>42</sup>

22. Consistent with the mandate to avoid duplicative or unnecessarily burdensome regulation,<sup>43</sup> SWP urges the Commission to consider the impact of this additional data requirement. SWP posits that the EQR reporting requirements in Docket No. RM10–12 are duplicative and, in fact, the EQR data come from transactions that are already captured by other government

reports, RTO and ISO reports, and reports by non-jurisdictional entities' public utility counterparties.<sup>44</sup> SWP states that the instant proposal makes the EQR reporting requirements redundant and unwarranted, given the Commission's statutory and executive mandates for streamlining regulation, reducing regulatory burdens, and eliminating duplicative reporting requirements.<sup>45</sup>

23. In their joint comments, EEI/EPISA encourage the Commission to require RTOs and ISOs to report EQR information for sales conducted within their markets, whether or not the RTOs and ISOs are actual counterparties to the transactions.<sup>46</sup> They also suggest that the Commission hold RTOs and ISOs responsible for the accuracy of the information they provide, to avoid duplicative burden on market participants.<sup>47</sup> Consequently, EEI/EPISA suggest that the Commission explicitly clarify that market participants are no longer required to report in their own EQRs the information that RTOs and ISOs are required to report under the final rule, nor to report in other Commission forms information that will be provided by RTOs and ISOs under the final rule.<sup>48</sup>

### 3. Commission Determination

24. Despite some similarities in data provided by market participants in their EQRs, we find that the reporting requirements placed on RTOs and ISOs in this final rule facilitate, rather than compromise, the goals of streamlining regulation, reducing regulatory burdens, or eliminating duplicative reporting requirements.

25. First, the nature of the data, the frequency of its collection, and the data format differ between the data submitted in EQRs and the data sought here. Currently, market participants provide contractual and transactional data in their EQRs related to their jurisdictional sales and transmission service in a specified format that is

<sup>40</sup> *Id.* P 29.

<sup>41</sup> *Id.* P 13.

<sup>42</sup> SWP at 2 (referring to EQR requirements); EEI/EPISA at 8–9 (same); see also *Electricity market Transparency Provisions of Section 220 of the Federal Power Act*, FERC Stats & Regs., Proposed Rules ¶ 32,676 (Apr. 21, 2011).

<sup>43</sup> See *Plan for Retrospective Analysis of Existing Rules*, Docket No. AD12–6 (Nov. 8, 2011) ("The Commission voluntarily and routinely, albeit informally, reviews its regulations to ensure that they achieve their intended purpose and do not impose undue burdens on regulated entities or unnecessary costs on those entities or their customers. In addition, the Commission considers the spirit of these Executive Orders [mandating regulatory streamlining and avoidance of unnecessary regulatory burdens] when evaluating possible new regulations."), available at <http://www.ferc.gov/legal/maj-ord-reg/retro-analysis/ferc-eo-13579.pdf>.

<sup>44</sup> SWP at 2.

<sup>45</sup> *Id.*

<sup>46</sup> EEI/EPISA at 6.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 8. Additionally, EEI/EPISA suggest that there would be significant benefits associated with their proposal: if properly implemented, these changes would considerably reduce the burden for EQR filers and other RTOs and ISOs; would significantly reduce the size of most EQR Filings, largely resolving size-related upload problems that have occurred; a Commission EQR database consisting of only bilateral data would be much smaller and more manageable (the Commission could maintain a separate database of RTO and ISO market transactions or rely on information posted on RTO and ISO Web sites or servers); and, RTO and ISO sales data would be consistently, completely, and correctly reported. EEI/EPISA 8–9.

<sup>38</sup> See 16 U.S.C 824d, 824e.

<sup>39</sup> See NOPR, FERC Stats. & Regs. ¶ 32,681 at PP 30–31.

made available to the public. The Commission established the EQR reporting requirements in Order No. 2001<sup>49</sup> to help ensure the collection of information needed to perform the Commission's regulatory responsibilities over sales and transmission service, while making available data useful to the public and allowing public utilities to better fulfill their responsibility under FPA section 205(c) to have rates on file in a convenient form and place.<sup>50</sup> By contrast, this final rule initiates a process for collecting *non-public* data from the RTOs and ISOs relating to market participants' jurisdictional service in the RTO and ISO markets, which is more granular and diverse. RTOs and ISOs will deliver this data, pursuant to the Commission's authority under sections 301(b) and 307(a) of the FPA, in a format consistent with how the data is currently collected in each RTO and ISO system,<sup>51</sup> on an ongoing (rather than quarterly) basis to help the Commission stay informed of market developments and to help ensure just and reasonable rates through better market surveillance and evaluation of policies and regulations.

26. Second, this final rule streamlines the process through which RTOs and ISOs provide data to the Commission by requiring ongoing delivery of such data, instead of relying on periodic, ad hoc requests.

27. Third, no additional regulatory burden is placed on market participants through these requirements, as the data sought is already collected by the RTOs and ISOs and will not be separately collected by the Commission from individual market participants.

28. Accordingly, we find that RTOs' and ISOs' reporting requirements under this final rule do not duplicate market participants' EQR reporting requirements. Based on this finding, we will continue to require individual market participants to submit their EQRs.

29. With respect to certain commenters' concern about the burden on market participants of filing information in EQRs about sales in RTO

and ISO markets, we note that RTOs and ISOs may file EQRs on behalf of their members or participants if authorized to do so as their agent.<sup>52</sup> We also note that the Commission has worked with numerous RTOs and ISOs to produce settlement reports in a format that allows easy importation into the EQR software.

### C. Confidentiality of Data

#### 1. NOPR

30. In the NOPR, the Commission stated that much of the information it will receive is, by its nature, commercially sensitive.<sup>53</sup> Disclosure of such information could result in competitive harm to market participants and the market as a whole.<sup>54</sup> Accordingly, the Commission proposed that the data sought would not be made publicly available, except as may be directed by the Commission or a court with appropriate jurisdiction.<sup>55</sup>

31. The Commission stated in the NOPR that it will make publicly available the analysis derived from data that the Commission uses, for example, to support a proposed market rule change, except that the Commission will ensure that confidential information will remain non-public. The Commission also noted that it may direct its staff to issue a public report outside of a rulemaking proceeding with similar protections for confidential or otherwise protected information.

<sup>52</sup> See Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 336; Order No. 2001–E, 105 FERC ¶ 61,352 at P 12.

<sup>53</sup> In the past, the Commission has granted requests for privileged or confidential treatment of similar non-public data. See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,169, at P 15 (2010) (granting such treatment for data relating to specific generator or other equipment details, transmission system information, bidding strategies, generator reference levels, generator costs, guarantee payments, and the associated relevant time periods); see also *S. Cal. Edison Co.*, 135 FERC ¶ 61,201, at P 20 (2011); *Hydrogen Energy Cal. LLC*, 135 FERC ¶ 61,068, at P 25 (2011); *N.Y. Indep. Sys. Operator, Inc.*, 130 FERC ¶ 61,029, at P 3 (2010).

<sup>54</sup> The Freedom of Information Act (FOIA) allows persons to file requests to obtain data from the Commission. FOIA exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. 552(b)(4) (2006), amended by OPEN Government Act of 2007, Pub. L. 110–175, 121 Stat. 2524 (2007); accord 18 CFR 388.107(d). We would expect that commercially-sensitive data, like that described in the NOPR, which satisfy the requirements of exemption 4 would be protected from disclosure.

<sup>55</sup> Section 301(b) of the FPA, 16 U.S.C. 825(b), provides that no member, officer, or employee of the Commission may divulge any fact or information that may come to his knowledge during the course of examination of books or other accounts, except as may be directed by the Commission or by a court.

#### 2. Comments

32. Several commenters note that some of the data the Commission is proposing to receive is commercially sensitive and should be protected from release.<sup>56</sup> Commenters also argue that it would be beneficial to publicly release some of the information the Commission is proposing to receive.<sup>57</sup> APPA notes, for instance, that the Commission could take a strong first step in improving market transparency by requiring RTOs and ISOs to publish bid information, including identification of bidders, within a reasonable timeframe.<sup>58</sup> Powerex notes that while some of the data, if released, would result in competitive harm, much of the information the Commission is seeking from the RTOs and ISOs is already publicly available. As such, Powerex argues that public release of certain data would support better investment decisions and better responses to price signals, and would create more confidence in the functioning of markets, which in turn would benefit the whole market and end-use consumers because better decisions result in lower risk premiums and lower costs for consumers.<sup>59</sup>

33. In their joint comments, EEI/EPSC raise concerns about the security of the data transferred to the Commission and the potential for information retained by the Commission to be discoverable under FOIA.<sup>60</sup> Specifically, EEI/EPSC state they are concerned about the Commission's ability to honor its commitment to keep the information non-public under the Commission's current rules and regulations. EEI/EPSC state that, prior to requiring RTOs and ISOs to report this information, the Commission should adopt rules that would ensure that this information is kept confidential and not disclosed.<sup>61</sup>

<sup>56</sup> See CAC/EPUC at 1–2; EEI/EPSC at 10; Powerex § IV.C.

<sup>57</sup> See Powerex § IV.C; APPA at 4.

<sup>58</sup> APPA at 4.

<sup>59</sup> Powerex § IV.C. Powerex notes that the following data should be made publicly available: (1) Market awards (both volumes and prices including all Exceptional and Out-of-market dispatches); (2) resource outputs (including actual delivery to/from interties); (3) Financial Transmission Rights, including Congestion Revenue Rights; (4) uplift costs per megawatt; and (5) make-whole and bid cost recovery payments. Powerex § IV.C.

<sup>60</sup> See EEI/EPSC at 9–11.

<sup>61</sup> EEI/EPSC at 11. EEI/EPSC's concern is that "the Commission may not be able to maintain the confidentiality of the information under FOIA. As a practical matter it can be difficult for any agency to ensure such confidentiality under FOIA with absolute certainty. As such, EEI and EPSC request that the Commission avoid collecting sensitive information, require any such information that is reported to be aggregated to minimize disclosure

<sup>49</sup> Order No. 2001, FERC Stats. & Regs. ¶ 31,127. In a recent Notice of Proposed Rulemaking, the Commission proposed to amend its EQR regulations to require market participants that are excluded from the Commission's jurisdiction under FPA section 205 and have more than a de minimis market presence to file EQRs with the Commission. See *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,676 (2011).

<sup>50</sup> Order No. 2001, FERC Stats. & Regs. 31,127 at P 31.

<sup>51</sup> See *infra* § III.D (Data Formatting).

EEL/EPISA also suggest that the Commission could allow RTOs and ISOs to post any non-confidential information on their Web sites or servers rather than having to deliver it to the Commission.<sup>62</sup>

### 3. Commission Determination

34. As the Commission stated in the NOPR, much of the information that the Commission expects to receive in this proposal is, by its nature, commercially sensitive.<sup>63</sup> While one may file a request to obtain data from the Commission,<sup>64</sup> FOIA exemption 4 protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.”<sup>65</sup> Accordingly, although the Commission cannot foreclose requests of information relating to ongoing electronic submissions of non-public data, we expect that all such data found to satisfy the requirements of exemption 4 would be protected from disclosure.

35. The Commission may, of course, make publicly available analyses derived from data that the Commission uses, but insofar as the law allows, the Commission will ensure that confidential information will remain non-public. The Commission’s doing these kinds of analyses and making them public is appropriate. Such analyses may be, among other things, in the form of a staff white paper or the initiation of a rulemaking proceeding, both of which are equally appropriate uses of the information collected.

36. The Commission recognizes that public release of certain data may support better investment decisions and better responses to price signals, as Powerex maintains, and also that portions of the information the Commission is seeking from the RTOs and ISOs already may be publicly available. However, the datasets the Commission will receive pursuant to this final rule are expected to contain in large measure the type of information covered under FOIA exemption 4, and would remain non-public.

concerns, and ensure the appropriate rules and regulations are enacted prior to requiring the reporting of confidential information.”

*Id.*

<sup>62</sup> EEL/EPISA at 4.

<sup>63</sup> See NOPR, FERC Stats. & Regs. ¶ 32,681 at P 45.

<sup>64</sup> See *id.* P 45 & n.48. We note that RTOs and ISOs also can specifically request privileged and confidential treatment by marking their documentation that accompanies the data delivery (see *infra* P 43 & n.75) pursuant to 5 U.S.C. 552, 18 CFR 1b.9, 1b.20, and 388.112.

<sup>65</sup> 5 U.S.C. 552(b)(4) (2006), amended by OPEN Government Act of 2007, Pub. L. 110–175, 121 Stat. 2524 (2007); accord 18 CFR 388.107(d).

### D. Data Formatting

#### 1. NOPR

37. The Commission proposed to require that any data electronically delivered to the Commission be in an XML format that is consistent for all RTOs and ISOs. The Commission stated that it was not proposing that each RTO and ISO materially modify the data prior to electronic delivery. The Commission sought comment on data formatting, noting that XML may not be the preferred format to use when electronically delivering RTO and ISO data.<sup>66</sup>

#### 2. Comments

38. Commenters generally support allowing each RTO and ISO to provide data in its current format with minimal modification, rather than in a format consistent for all RTOs and ISOs.<sup>67</sup> ISO-NE contends that a common format would require a significantly longer implementation timeframe.<sup>68</sup> NYPSC posits that unnecessary expenses due to converting the format (to one not currently used by the RTOs and ISOs) could be costly, leading to a negative impact on ratepayers.<sup>69</sup>

39. The IRC states that regional differences and the individual market designs of each RTO and ISO may lead to discrepancies when attempting to reconcile these different market rules and products into XML or another common format.<sup>70</sup> The IRC proposes that each RTO and ISO electronically deliver the requested data in a format that mirrors the format in each one’s system, with minimal transformation. The IRC further proposes that the data would be delivered to the Commission in a format acceptable to the Commission and that a guide explaining the data format and presentation would be provided.<sup>71</sup> Specifically, the IRC proposes to add the italicized language below to the text proposed in the NOPR:

Each Commission-approved regional transmission organization and independent system operator must electronically deliver to the Commission, on an ongoing basis *and in a form and manner consistent with its own collection of data* and in a form and manner acceptable to the Commission, data related to the markets that the regional transmission organizations or independent system operators administer.

<sup>66</sup> See NOPR, FERC Stats. & Regs. ¶ 32,681 at P 42.

<sup>67</sup> NYPSC at 4; IRC at 2–4; ISO-NE at 3; EEL/EPISA at 4.

<sup>68</sup> ISO-NE at 3.

<sup>69</sup> NYPSC at 4.

<sup>70</sup> IRC at 3.

<sup>71</sup> *Id.* at 4.

### 3. Commission Determination

40. Given the various data collection and storage methods used by RTOs and ISOs, we will allow data to be electronically delivered to the Commission in a format consistent with how the data is collected in each RTO and ISO system.<sup>72</sup> We agree with commenters that requiring data delivery in a consistent format for all RTOs and ISOs likely would be more costly and may result in data that fails to accurately capture the nuances of each market. Accordingly, the Commission will include the IRC’s proposed additions, reflected in the italicized language above, in the regulation adopted by this final rule.

41. We recognize that the current data format and storage procedures used by each RTO and ISO may require that they make certain adjustments before the datasets are electronically delivered to the Commission, which are expected to be minimal. These adjustments, if necessary, will secure dependable, ongoing delivery of the data while preserving the individual character of each RTO’s or ISO’s datasets. For example, data the Commission is requesting may be stored by an RTO or ISO in a manner such that a particular dataset contains additional details that are unnecessary for Commission analysis. Similarly, an RTO’s or ISO’s reported times may be stored in various time zones, both within each RTO or ISO and across the RTOs and ISOs. Adjusting such data to either reduce the volume of information delivered to the Commission or to reflect a uniform time zone, *inter alia*, will improve the Commission’s ability to understand and manage the data. Therefore, the Commission would expect that RTOs and ISOs will make certain minimal adjustments to the datasets from time to time, working with Commission staff.

42. As part of the determination not to require a consistent format for all RTOs and ISOs, we will direct that such data be delivered in one of two file types; namely, Comma Separated Value (i.e., CSV) or Tab Delimited.<sup>73</sup> These file types have been listed in order of Commission preference; they are commonly used file types and provide sufficient flexibility to allow for divergent formatting schemes among the RTOs and ISOs. Each RTO and ISO

<sup>72</sup> We consider format to include the structure of the data (i.e., the data tables, columns, rows, and fields), as well as details relating to the data specifications for each field (i.e., string, numeric, etc.).

<sup>73</sup> RTOs and ISOs, working with Commission staff, may switch to one of the other two file types. Moreover, in the future another file type may be determined to be more practicable or desirable.

must use the file type it selects on a consistent basis, that is, without altering the file type with each data transfer. Accordingly, we will not accept data delivered in XML, because its use may be more appropriate in situations where the formatting is consistent.<sup>74</sup>

43. Further, we agree with the IRC that documentation defining each field in the datasets provided by the RTOs and ISOs would assist the Commission in its analysis of the electronic data.<sup>75</sup> Accordingly, we will require each RTO and ISO to provide such documentation, given that correctly interpreting and understanding the data is a prerequisite to any analytic effort. Moreover, the Commission directs that such documentation be provided initially no later than 30 days prior to the first day of the ongoing delivery for each dataset.

44. Finally, to allow the Commission to stay abreast of any change in how data described in this final rule is collected, we direct each RTO and ISO to notify Commission staff in writing of any such change, 90 days prior to such a change or as soon as practicable once such a change is known. Such a change may necessitate the submission of updated documentation. Notifications of forthcoming changes, and updated documentation when appropriate, will allow the Commission to anticipate and make necessary adjustments to its own management and storage of RTO and ISO data, especially given that the data will not be received in a single consistent format across the RTOs and ISOs.

#### E. Web-Based Delivery

##### 1. NOPR

45. Due to the commercially-sensitive nature of the requested market data, the Commission proposed that each RTO and ISO use a secure data delivery method to provide data to the Commission. Specifically, the Commission proposed that RTO and ISO market data be electronically delivered using the Secure File Transfer Protocol (SFTP) and that access to the server where the data is electronically delivered only be granted to each

applicable RTO and ISO and to the Commission.

##### 2. Comments

46. ISO-NE and the IRC do not anticipate problems associated with using SFTP to transfer encrypted market data to the Commission; they expect this method to be straightforward.<sup>76</sup> Both commenters state that the Commission should allow flexibility with respect to whether each RTO or ISO or the Commission hosts the exchange server.<sup>77</sup> For this purpose, the IRC urges the Commission to define “deliver” in this context as either “transmission to the Commission” or as “making available to the Commission for retrieval.”<sup>78</sup> The IRC suggests that other delivery mechanisms may be more technically attractive and, if the Commission finds this to be the case, requests that the Commission accommodate the other delivery mechanisms that are acceptable.<sup>79</sup> Finally, as noted above, in lieu of delivery to the Commission, EEI/EPSCA suggest that the Commission could allow RTOs and ISOs to post any non-confidential information on their Web sites or servers.<sup>80</sup> In the event the Commission requires data to be delivered, EEI/EPSCA suggest that the data be aggregated such that any disclosure will not cause commercial impacts.<sup>81</sup>

##### 3. Commission Determination

47. We adopt the proposal outlined in the NOPR which requires RTO and ISO market data to be electronically delivered using SFTP.<sup>82</sup> Access to the server where the data is electronically delivered will only be granted to each applicable RTO and ISO and to the Commission.<sup>83</sup> We define “deliver” in this final rule to mean “transmission to the Commission.”

48. The Commission rejects EEI/EPSCA’s suggestions that the Commission allow RTOs and ISOs to post only non-confidential information on their Web sites or to require the delivery of aggregated data to satisfy the requirement for ongoing delivery to the Commission. Commission use of such postings of non-confidential information

or delivery of aggregated information would do little to further the Commission’s market surveillance and its evaluation of policies and regulations. And as discussed in greater detail above, data that is electronically delivered pursuant to this final rule likely would be considered non-public.<sup>84</sup>

#### F. Data Requested

##### 1. NOPR

49. In the NOPR, the Commission proposed to require ongoing electronic delivery of the data (e.g., the information to be included in the datasets) described below:

1. Supply offers and demand bids for energy and ancillary services—Data on supply offers and demand bids submitted to RTO and ISO markets. This dataset would include all offers and bids for energy and ancillary services. This dataset would also include offers and bids submitted for interchange transactions, as well as those submitted without economic consideration, i.e., self-schedules.

2. Virtual offers and bids—Data on virtual supply offers and virtual demand bids submitted to RTO and ISO markets.

3. Energy/ancillary service awards—Data on market awards for energy and ancillary services. This dataset would include the quantity and price of all market awards for energy and ancillary services. The dataset would also identify resources that are self-scheduled.

4. Capacity market offers, designations, and prices—For RTOs and ISOs with centralized capacity markets, data on capacity offers as well as capacity market outcomes or designations. This data would include the identity of capacity resources, the amount of procured capacity, and the applicable capacity market price.

5. Resource output—Data on resource output data used in market settlements. This dataset would include details used in market settlements, including RTO and ISO dispatch instructions (i.e., the output that a dispatched resource is expected to produce in real-time) for energy or ancillary services, or whether resources are operating at self-scheduled output levels, and measured output levels.

6. Marginal cost estimates—Data on marginal cost estimates; such estimates are typically generated for the potential replacement of supply offers in market power mitigation procedures. This dataset would include all marginal cost estimates that have been developed, and

<sup>74</sup> As the IRC noted, XML may be appropriate when presenting data that is based on a common format (IRC at 3). The use of XML is unsuitable for this data collection when common formatting does not exist.

<sup>75</sup> We consider documentation defining each field to consist of a data dictionary, entity relationship model, and file transfer record layout. This documentation would provide details about data such as meaning, relationships to other data, origin, usage, and format, as well as details defining the method for identifying new record submissions and record corrections (i.e., an addition to, change in, or deletion of previously delivered data).

<sup>76</sup> ISO-NE at 5–6; IRC at 4–5.

<sup>77</sup> ISO-NE at 5–6; IRC at 4–5.

<sup>78</sup> IRC at 5.

<sup>79</sup> *Id.* at 4.

<sup>80</sup> EEI/EPSCA at 4.

<sup>81</sup> *Id.* at 10.

<sup>82</sup> In the future, another delivery method may be determined to be more practicable or desirable.

<sup>83</sup> If the RTO or ISO elects to have the MMU deliver data to the Commission, the MMU also should be granted access to the server where data is delivered. *See infra* P 61.

<sup>84</sup> *See supra* § III.C. (Confidentiality of Data).



not just those estimates that were used to generate mitigated supply offers. The Commission is seeking only the resulting marginal cost estimates themselves, however, and not the inputs that allow for calculation of those estimates. Further, the Commission is not seeking other operating information regarding individual generators' actual costs, revenues, or profits.

7. Day-ahead shift factors—Data on shift factors calculated for use in the day-ahead market. This would include generation shift factors, which are factors to be applied to a generator's expected change in output to determine the amount of flow contribution that that change in output will impose on an identified transmission facility or flowgate, and load shift factors, which are factors to be applied to a load's expected change in demand to determine the amount of flow contribution that that change in demand will impose on an identified transmission facility or flowgate. This dataset would not be limited to binding constraints, but should also include all shift factors calculated to address non-binding constraints.

8. FTR data—Data on FTR transactions that may not be publicly posted in all RTO and ISO markets. Specifically, RTOs and ISOs must provide data detailing how all FTRs and allocated rights were acquired, either through RTO and ISO allocation or auction procedures; data detailing whether the acquired allocation positions were converted from positions that collect auction revenue into positions that collect congestion revenue; and data detailing secondary market transactions to the extent that they are available to the RTO and ISO.

9. Internal Bilateral Contracts—Data on the settlement of internal bilateral contracts for energy.

10. Pricing data for interchange transactions—Data on pricing information for scheduled interchanges including eTag IDs, when applicable, in addition to other interchange pricing details and transaction identification. Scheduled interchanges include any transaction between two or more Balancing Authority Areas.

50. The Commission also proposed that descriptive information, such as market participant names, unique identifiers, pricing points, and other information that the Commission considers necessary and appropriate to understand and analyze the data described in the NOPR would be included in the delivery of these datasets. The Commission noted that much of the data discussed in the NOPR are already collected and stored by the

RTOs and ISOs in order to administer their markets.<sup>85</sup> And to the extent that an RTO or ISO does not already collect specific data, the Commission proposed not to require either the collection of such data from market participants or its electronic delivery to the Commission.

51. Finally, the Commission proposed to direct each RTO and ISO to submit a compliance filing within 45 days after the effective date of any final rule in this proceeding, amending its open access transmission tariff to reflect the requirement for the ongoing electronic delivery of data.

## 2. Comments

52. Most commenters support the Commission's proposal to require each RTO and ISO to electronically deliver data described in the NOPR as a means to more effectively carry out Commission functions.<sup>86</sup>

53. Several commenters encouraged the Commission to consider requesting additional data.<sup>87</sup> For example, Powerex believes that the following data would aid the Commission in enhancing its market surveillance:<sup>88</sup> (1) Market awards, both in terms of volumes and prices, including all exceptional and out-of-market dispatches; (2) uplift costs per megawatt; and (3) make-whole payments/bid costs recovery payments.

54. APPA considers it a substantial shortcoming in the Commission proposal to seek only estimated marginal cost data and not information regarding individual generators' actual costs, revenues, and profits.<sup>89</sup> APPA argues that, without looking at the underlying generator-seller cost data, the Commission cannot "determine whether the average prices charged by a seller are comparable to the average prices that would be charged in a competitive market where no sellers were able to exercise market power."<sup>90</sup>

55. Several commenters support the Commission's intent to require only data that is collected or stored by each RTO or ISO to be delivered to the Commission.<sup>91</sup> In that vein, ISO-NE and the IRC state that, in certain cases, data requested in the NOPR is either not

produced or retained by the RTO or ISO.<sup>92</sup> The IRC notes that for some RTOs and ISOs, such as the MISO, the data may be developed by the MMU.<sup>93</sup> In particular, the IRC notes that certain requested data serving as the basis for market power mitigation may be calculated by the MMU but not transmitted to the RTO or ISO and therefore cannot be supplied by the RTO or ISO. The IRC points out that, in other cases, certain inputs that are not critical to the clearing of the market routinely are not retained.<sup>94</sup> Likewise, ISO-NE states that it does not retain either shift factors calculated to address non-binding constraints or data "flags" that identify which of the alternative market mitigation methods would be used to calculate a reference level at the segment level (as opposed to the block level).<sup>95</sup> ISO-NE also states that it no longer administers a secondary FTR market, so it would not be in a position to deliver this data to the Commission.<sup>96</sup>

56. In order to reflect situations where the Commission is requesting data that is either not produced or retained by the RTO or ISO, the IRC requests that the Commission clarify in the final rule that no RTO or ISO will be required to deliver such data.<sup>97</sup> Specifically, the IRC requests that the Commission clarify that the data to be supplied is that which is used to settle or clear the relevant market and that the Commission need not be provided data—such as non-binding shift factors—that do not influence market outcomes. The IRC further requests that the Commission clarify that it is not directing the RTOs and ISOs to begin tracking incremental changes to the data that they do not currently track.<sup>98</sup>

## 3. Commission Determination

57. The Commission will adopt the proposal in the NOPR to require ongoing electronic delivery of data related to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, FTRs, internal bilateral contracts, and interchange pricing. In addition, the Commission will require each RTO and ISO to provide data on uplift charges and credits. The Commission concludes that the data specified in this final rule will facilitate the Commission's

<sup>85</sup> NOPR, FERC Stats. & Regs. ¶ 32,681 at P 14.

<sup>86</sup> SWP at 1–2; NYPPSC at 3; PA PUC at 2–10; IRC at 1–2; Powerex § IV.A.; APPA at 6; ISO-NE at 2–3.

<sup>87</sup> Powerex § IV.B.; APPA at 4.

<sup>88</sup> Powerex contends that this data should be made publicly available in order to increase market transparency. Powerex § IV.B., .C.; see also *supra* § III.C. (Confidentiality of Data).

<sup>89</sup> APPA at 4.

<sup>90</sup> *Id.* at 5–6 (quoting *Lockyer ex rel State of California v. FERC*, 383 F.3d 1006, 1012–13 (9th Cir. 2004), and *Mont Consumer Counsel v. FERC*, 659 F.3d 910, 919 (9th Cir. 2011)).

<sup>91</sup> PA PUC at 3; EEI/EPSCA at 4.

<sup>92</sup> ISO-NE at 4; IRC at 5–6.

<sup>93</sup> IRC at 5.

<sup>94</sup> One example is preliminary entries of bids that are subsequently modified by market participants prior to the submission of a final bid and prior to the market close. IRC at 5.

<sup>95</sup> ISO-NE at 4.

<sup>96</sup> *Id.* at 4–5.

<sup>97</sup> IRC at 6.

<sup>98</sup> *Id.*



development and evaluation of its policies and regulations and will enhance Commission efforts to detect anti-competitive or manipulative behavior, or ineffective market rules, thereby helping to ensure just and reasonable rates. Accordingly, we require each RTO and ISO to electronically deliver to the Commission, on an ongoing basis, the data described in this final rule to the extent that each RTO or ISO already collects such data.<sup>99</sup> We also direct each RTO and ISO to submit a compliance filing within 45 days of the effective date of this final rule, amending its open access transmission tariff to reflect the requirement for the ongoing electronic delivery of data. In response to the comments received on the NOPR, we provide the following clarifications.

58. First, we agree with Powerex that uplift charges and credits should be included in this final rule.<sup>100</sup> Upon further consideration, we find this data is important to furthering Commission goals of facilitating market surveillance and the evaluation of policies and regulations. As an example, uplift data may be used to identify instances where bidding strategies might merit examination or investigation. Uplift data may also be used to identify market designs that result in excess uplift charges. Accordingly, we will require RTOs and ISOs to report, consistent with the reporting structures outlined in this final rule, uplift charges and credits to market participants. This dataset would include details used in market settlements concerning uplift charges and credits as well as identification of each relevant market participant and resource.

59. However, we reject Powerex's request to make certain uplift data, along with other data covered by this rule, publicly available. This data may reveal individual market participant bidding strategies and other commercially-sensitive information. Consistent with our discussion earlier in this final rule, we expect that all data that satisfy the requirements of FOIA exemption 4 would be protected from public disclosure.

60. Second, we agree with the IRC and ISO-NE that there are some data elements not critical to the formation of

market outcomes that will not need to be delivered under this final rule. Specifically, the Commission is not requesting the delivery of preliminary entries of bids that are subsequently modified by market participants prior to their submission of a final bid and prior to market closure. In addition, the Commission is seeking shift factor data related to active or binding constraints, not shift factor data associated with non-binding constraints or non-active constraints that is not retained by the RTO or ISO. Also, in response to ISO-NE's comment that it should not be required to deliver information about secondary FTR markets that it no longer administers, we clarify that the Commission does not require delivery of data on secondary markets that are not administered by the RTOs and ISOs or when secondary market transaction data are not provided to the RTO or ISO by market participants.

61. Third, to the extent the RTO or ISO relies on its MMU to produce or retain some of the requested data, we direct the RTO or ISO either to: (1) Request such data from its MMU, so that the RTO or ISO can deliver it to the Commission; or (2) request its MMU to deliver such data directly to the Commission. For instance, IRC indicates that MISO relies on its MMU to calculate certain requested data that form the basis for market power mitigation that is not delivered to the MISO. Market power mitigation data are critical to the proper functioning of RTO and ISO markets and important for facilitating market surveillance and evaluation of Commission policies and regulations. Therefore, in this example, the Commission expects MISO either to direct its MMU to provide MISO with such data so that MISO can then deliver it to the Commission, or MISO can direct its MMU to provide such data to the Commission.

62. With respect to tracking and documenting what the IRC terms as "incremental changes" to the data, we clarify that we may require documentation concerning any change in how the data described in this final rule are collected by each RTO and ISO.<sup>101</sup> Such documentation will help the Commission understand and appropriately utilize the data that the RTOs and ISOs are delivering to the Commission. Therefore, we will direct each RTO and ISO to notify Commission staff in writing of any such change as it pertains to data described in this final rule. Commission staff will determine whether the identified change requires

the submission of updated documentation.

63. Finally, we disagree with APPA that the Commission should seek not only estimated marginal cost data but also individual generators' actual costs, revenues, and profits. In this final rule, the Commission is undertaking a data collection from the RTOs and ISOs that will enable it to better fulfill its statutory responsibilities. In contrast, information on individual generators' actual costs, revenues, and profits is not currently collected by RTOs and ISOs and to obtain such information would require its collection from market participants. At this time, the Commission will not undertake a separate data collection effort from market participants, as proposed by APPA; that is beyond the scope of this proceeding. Furthermore, to the extent the Commission is concerned that a particular seller may be exercising market power, it may seek additional data from that seller, including some or all of the data specified by APPA.

#### *G. Implementation Timeline and Phasing*

##### *1. NOPR*

64. The Commission invited comments with respect to the timeframe for electronic delivery of the data to the Commission. The Commission also invited comments on whether the requirements of the final rule should be implemented in phases and, if so, what a potential phased approach should entail.

##### *2. Comments*

65. Both ISO-NE and the IRC support phased implementation.<sup>102</sup> ISO-NE maintains that full implementation of ongoing electronic delivery of data could be accomplished in about six months following the issuance of the final rule.<sup>103</sup> ISO-NE proposes that phased implementation could involve the following steps: (1) Establish the initial systems needed and transfer methodology; (2) begin with an individual dataset and deliver it to the Commission after three months; and (3) expand functionality incrementally to deliver all requested data sets within six months.<sup>104</sup>

66. The IRC and EEI/EPSCA proffer that a twelve-month timeframe would be appropriate.<sup>105</sup>

67. The IRC supports an initial, three-month delivery timeframe for a first, individual dataset but proposes all

<sup>99</sup> In the event an RTO or ISO begins to collect certain datasets described in this final rule not currently collected, that RTO or ISO thereafter would be expected to deliver such data to the Commission on an ongoing basis.

<sup>100</sup> We note that make-whole payments, bid cost recovery payments and details on some exceptional or out of market dispatches would be captured in the datasets electronically delivered to the Commission per the requirements of this final rule.

<sup>101</sup> See *supra* PP 43–44.

<sup>102</sup> ISO-NE at 6; IRC at 9.

<sup>103</sup> ISO-NE at 6.

<sup>104</sup> *Id.*

<sup>105</sup> IRC at 9; EEI/EPSCA at 12.

requested data would be available to the Commission after twelve months of the final rule's effective date.<sup>106</sup> Further, recognizing that there will be a defined deadline, the IRC proposes that "individual [RTOs and ISOs] could work with Commission staff to define a set of deliverable dates for tiers (which need not be defined in the final rule)." <sup>107</sup>

### 3. Commission Determination

68. In response to the requests for additional time to implement the ongoing electronic delivery, the Commission will direct that electronic delivery of all the datasets be fully implemented 210 days after the effective date of this final rule, which is 60 days after publication in the **Federal Register**. Moreover, we adopt the proposal to implement delivery on a "phased" approach, a suggestion supported by the IRC and ISO-NE. Phased initial delivery will allow the Commission and each RTO and ISO to address data transfer issues more effectively.

69. Accordingly, we will direct that all RTOs and ISOs implement the ongoing electronic delivery of at least one dataset no later than 45 days after the effective date of this final rule. Unless otherwise determined on a case-by-case basis, this initial delivery would include at least all data relating to supply offers for energy, as discussed and defined in the NOPR.

70. We will direct that ongoing, electronic delivery of the remaining datasets be phased in gradually, with delivery of all datasets occurring no later than 210 days after the effective date of this final rule. Descriptive information necessary to understand each dataset, such as market participant names, unique identifiers, pricing points, and other information the Commission considers necessary and appropriate to analyze each dataset, should be provided at the same time initial delivery of each applicable dataset begins.

71. Unless otherwise determined on a case-by-case basis, following the initial delivery of (at least) the data relating to supply offers for energy, in the second phase we will direct that the following datasets be delivered electronically no later than 90 days after the effective date of this final rule: Virtual offers and bids; and demand bids for energy.

72. Unless otherwise determined on a case-by-case basis, in the third phase we will direct that the following datasets be delivered no later than 150 days after

the effective date of this final rule: Marginal cost estimates; energy and ancillary service awards; resource output; internal bilateral contracts; and uplift data.

73. Finally, unless otherwise determined on a case-by-case basis, in the fourth and final phase that ends 210 days after the effective date of this final rule, we will direct that all remaining datasets be delivered, namely: Day-ahead shift factors; supply offer and demand bids for ancillary services; capacity market offers, designations and prices; pricing data for interchange transactions; and FTR data.

### H. Ongoing Electronic Delivery

#### 1. NOPR

74. The Commission proposed that RTOs and ISOs be required to electronically deliver the requested data to the Commission within seven days after each RTO or ISO creates the datasets in a daily market run or otherwise. For data that are updated less frequently than every day, including capacity market results, estimated marginal costs, and FTR data, each RTO or ISO would be expected to electronically deliver such data within seven days after it is created or updated by the RTO or ISO. The Commission also proposed that, in the event an RTO or ISO makes later corrections to the data (i.e., after the original data has been delivered to the Commission), the RTO or ISO would be expected to electronically deliver the corrected data to the Commission within seven days after the correction has been made. The Commission invited comments with respect to the timeframe in which the data described in this NOPR should be electronically delivered to the Commission.

#### 2. Comments

75. The IRC believes that the seven-day requirement would be workable, provided that the RTO or ISO with corrected data can deliver the data to the Commission in a format consistent with the manner in which each RTO or ISO stores the data, with minimal modifications.<sup>108</sup>

76. The IRC interprets the Commission's intent as focused on obtaining data quickly and efficiently, rather than erecting a new compliance program. Towards this end, the IRC requests that the Commission clarify in the final rule that an RTO or ISO will not face compliance penalties in the event that data is not delivered in the specified timeframe, provided that the

RTO or ISO is making its best efforts to comply with the rule and provided that the RTO or ISO gives timely notice to the Commission when the RTO or ISO becomes aware that there may be a delay in the delivery of data or some impact on the accuracy or completeness of the data.<sup>109</sup>

77. Further, the IRC states that the possibility exists that RTOs and ISOs will, on occasion, inadvertently produce or deliver inaccurate, incomplete, or imperfectly formatted data.<sup>110</sup> The IRC requests that the Commission expressly state in the final rule that, unless an error or omission was made to mislead the Commission, the submittal of inaccurate, incomplete, or imperfectly formatted data should not result in a violation of the Commission's regulations or a violation of the RTO's or ISO's tariff.<sup>111</sup>

### 3. Commission Determination

78. The Commission will require each RTO and ISO to electronically deliver the specified data to the Commission in a format consistent with the manner in which each RTO and ISO collects this data.<sup>112</sup> The Commission will adopt the proposal in the NOPR that RTOs and ISOs electronically deliver data to the Commission within seven days after each RTO and ISO creates the datasets in a market run or other procedure.<sup>113</sup> For data that are updated less frequently than every day, including capacity market results, estimated marginal costs, and FTR data, each RTO and ISO must electronically deliver that data within seven days after it is created or updated by the RTO or ISO. Each RTO and ISO is required to deliver all data consistent with timelines described elsewhere in this final rule. With respect to any corrections made to the data (i.e., after they have been delivered to the Commission), the RTO or ISO will be expected to electronically deliver the corrected data to the Commission within seven days after the correction has been made and identify whether that correction is adding to, changing, or deleting data previously delivered.<sup>114</sup>

79. We cannot make a blanket statement, as requested by the IRC, that the submission of inaccurate, incomplete, or imperfectly formatted data will not result in a violation of the Commission's regulations or the RTO and ISO tariff. However, as a general matter, the Commission does not intend

<sup>109</sup> *Id.* at 7.

<sup>110</sup> *Id.* at 10.

<sup>111</sup> *Id.*

<sup>112</sup> See *supra* § III.D (Data Formatting).

<sup>113</sup> NOPR, FERC Stats. & Regs. ¶ 32,681 at P 38.

<sup>114</sup> See *supra* note 75.

<sup>106</sup> IRC at 9.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 6.

to penalize RTOs and ISOs for infrequent, minor errors in data reporting. Moreover, as stated in the Revised Policy Statement on Enforcement, the Commission’s Enforcement staff “frequently exercises prosecutorial discretion to resolve minor infractions with voluntary compliance measures rather than with penalties.”<sup>115</sup>

*I. Future Specifications and Modifications of the Data and the Process for Delivery*

1. NOPR

80. The Commission stated that the data it is proposing to receive would be limited to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, FTRs, internal bilateral contracts, and interchange pricing. The Commission also stated that these datasets would include descriptive information such as market participant names, unique identifiers, pricing points, and other information the Commission considers necessary and appropriate to understand and analyze the data described in this NOPR. However, the Commission recognized that markets are not static and, as markets continue to evolve, the Commission may initiate a new rulemaking proceeding in the future to reassess the data necessary for its market monitoring and surveillance efforts and for its policy and decision-making needs.

2. Comments

81. The IRC states that the proposed regulation itself does not specify the data that the RTOs and ISOs will be required to deliver, nor does the regulation specify any process by which the Commission may alter the obligations to provide data.<sup>116</sup> The IRC

further states that, because the RTOs and ISOs need time to make modifications to the processes they employ in response to a change in the data delivery obligations, the Commission should specify the process it will use to modify the required data, data format, and/or the delivery mechanism.<sup>117</sup>

3. Commission Determination

82. The regulatory text adopted by this final rule sets forth the obligation for RTOs and ISOs to provide data to the Commission. The narrative preamble to that regulatory text, i.e., the final rule, provides additional, specific information about the datasets and details about the electronic delivery formatting, procedures, and security measures.

83. As to future changes in reporting, the Commission anticipates that changes in the datasets to be provided will be made through a rulemaking proceeding.

*J. Technical Conference*

1. Comments

84. In their joint comments, EEI/EPSCA encourage the Commission to convene one or more technical conferences to address concerns related to this rulemaking and other Commission data collection efforts.<sup>118</sup>

2. Commission Determination

85. We deny EEI/EPSCA’s request to hold a technical conference. EEI/EPSCA have not raised any issues that have not been adequately addressed in the rulemakings and that would otherwise require a technical conference.

**IV. Information Collection Statement**

86. The collections of information contained in this final rule are being submitted to the Office of Management and Budget (OMB) for review under

section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Upon approval of a collection 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 if the collections of information do not display a valid OMB control number.

87. The final rule does not require market participants other than the RTOs and ISOs to report information to the Commission.

88. The Commission did not receive any comments regarding the burden estimates in the proposed rule and uses the same estimates here.

89. In this final rule, the Commission did deviate from the proposed rule in several instances. Specifically, the Commission included an additional dataset, uplift, in this final rule. Any increase in burden associated with the inclusion of uplift data, however, should be offset by the decision in this final rule not to require consistent formatting by the RTOs and ISOs.

90. In addition, in this final rule, the Commission also clarifies that, in very limited instances, individual datasets that the Commission is requesting may be produced or retained by the MMUs. The Commission directed each RTO and ISO either to: (1) Request such data from its MMU, so that the RTO or ISO can deliver such data to the Commission; or (2) request its MMU to deliver such data directly to the Commission. Any burden associated with the delivery of such data is counted as burden on the RTO or ISO, as each RTO or ISO is responsible for such delivery to the Commission, and not the MMU.

91. The burden imposed by this rule on the RTOs and ISOs is captured through the estimates below.

Data collection, FERC–921	Number of respondents	Implementing burden		Annual recurring operating burden		Average annual burden (implementation cost averaged over 3 yrs.)	
		Burden hrs. per respondent	Cost per respondent	Burden hrs. per respondent	Cost per respondent	Burden hrs. for all respondents	Cost for all respondents
Compliance filing .....	6	7	\$1,750	.....	.....	14	\$3,500
Web-Based Delivery .....	6	1,040	\$100,864	40	\$3,879	2,320	225,003
Grand Total, Average Annual Estimates .....	6	.....	.....	.....	.....	2,334	228,503

92. The Commission recognizes that there will be an initial implementation

burden associated with providing the Commission with RTO and ISO data.

This includes submitting a compliance filing to the Commission, which the

<sup>115</sup> *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156, at P 9 (2008).

<sup>116</sup> IRC at 11.  
<sup>117</sup> *Id.*

<sup>118</sup> EEI/EPSCA at 12.

Commission estimates as a burden of 7 hours per RTO and ISO, and implementing a process to automatically upload data to an SFTP site for Commission use (including development, testing and production). The Commission estimates a burden of 1,040 hours per RTO and ISO for the development, testing and production of an automated process to provide the Commission with the data required in this final rule. In this regard, though, RTO and ISO markets have already developed capabilities necessary to handle RTO and ISO data in an automated manner. For instance, through their Open Access Same-time Information Systems (OASIS), RTOs and ISOs already make certain market data publicly available using automated procedures. Likewise, some RTOs and ISOs have developed procedures similar to those contained in this final rule to deliver data to their MMUs.

93. For the recurring effort involved in electronically delivering RTO and ISO data to the Commission, the Commission anticipates that the additional burden associated with this rule will be minimal. Any recurring burden would be associated with addressing updates to RTO and ISO data as the data that they process changes and due to occasional errors in the data handling or data upload process.

**Information Collection Costs:** The Commission has estimated the cost of compliance per RTO and ISO to be \$102,614 in the initial year of implementation and \$3,879 in subsequent years. The Commission expects that the compliance filing will be completed by RTO and ISO legal staff and has estimated an hourly rate at \$250/hour. The Commission estimates that a variety of staff, including legal, database administrators and IT and information security specialists, will be required to electronically deliver to the Commission the RTO and ISO data identified in this final rule. The Commission has estimated the average hourly cost for this task to be \$96.98/hour (including legal staff at \$250/hour, information systems manager at \$105.35/hour, database administrator at \$55.61/hour, and information security analyst at \$57.67/hour).<sup>119</sup>

<sup>119</sup> Hourly average wage is an average and was calculated using Bureau of Labor Statistics (BLS), Occupational Employment Statistics data for May 2010 (at <http://www.bls.gov/oes/>) for the database administrator and information security analysts. The average hourly figure for legal staff and information systems manager is a composite from BLS and other resources. The following weightings were applied to estimate the average hourly cost: legal staff (1/6), information systems manager (1/6), database administrator (1/3), and information security analyst (1/3).

**Title:** FERC–921,<sup>120</sup> Enhancement of Electricity Market Surveillance and Analysis.

**Action:** New Collection.

**OMB Control No.:** 1902–0257.

**Respondents for this Rulemaking:** RTOs and ISOs.

**Frequency of Information:** Initial implementation, compliance filing, and automated daily updates.

**Necessity of Information:** As wholesale electricity markets continue to develop and evolve, new opportunities arise for anti-competitive or manipulative behavior. The Commission's market monitoring and surveillance capabilities and associated data requirements must keep pace with market developments and evolve along with the markets. The data requirement set forth in this final rule will allow the Commission to more effectively identify and address such behavior; to identify ineffective market rules; to better inform Commission policies and regulations; and thus to help ensure just and reasonable rates.

**Internal Review:** The Commission has made a preliminary determination that the revisions are necessary to keep pace with ever-changing possibilities for anti-competitive or manipulative behavior and to better inform Commission policies and regulations, and thus to ensure that rates are just and reasonable. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

94. 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, email: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), phone: (202) 502–8663, fax: (202) 273–0873].

95. Comments concerning the information collections required in this Final Rule and the associated burden estimates should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Please reference FERC–921 and the

<sup>120</sup> OATT compliance filings (like the one-time compliance filing here) are normally included under FERC–516 (OMB Control No. 1902–0096). However, the reporting requirements (including the compliance filing) contained in this final rule in Docket No. RM11–17 will be covered by the FERC–921.

docket number of this rulemaking (Docket No. RM11–17–000) in your submission.

## V. Environmental Analysis

96. 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>121</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>122</sup> The actions proposed here fall within a categorical exclusion in the Commission's regulations, i.e., they involve information gathering, analysis, and dissemination.<sup>123</sup> Therefore, environmental analysis is unnecessary and has not been performed.

## VI. Regulatory Flexibility Act

97. The Regulatory Flexibility Act of 1980 (RFA)<sup>124</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards is responsible for the definition of a small business.<sup>125</sup> The SBA has established a size standard for utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.<sup>126</sup> RTOs and ISOs are not small entities, and they are the only entities impacted directly by this final rule.<sup>127</sup>

98. CAISO is a nonprofit organization with over 54,000 megawatts of capacity and over 25,000 circuit miles of transmission lines.

99. NYISO is a nonprofit organization that oversees wholesale electricity

<sup>121</sup> *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>122</sup> 18 CFR 380.4.

<sup>123</sup> See 18 CFR 380.4(a)(5).

<sup>124</sup> 5 U.S.C. 601–612.

<sup>125</sup> 13 CFR 121.101.

<sup>126</sup> 13 CFR 121.201 (Sector 22, Utilities).

<sup>127</sup> As noted in the final rule, an MMU may be directed by the RTO or ISO to provide data to the RTO or ISO, or directly to the Commission. Any impact on the MMU is considered part of the impact on RTOs and ISOs and does not affect the analysis performed in this section.

markets serving 19.2 million customers. NYISO manages a nearly 11,000-mile network of high-voltage transmission lines.

100. PJM is comprised of more than 700 members including power generators, transmission owners, electricity distributors, power marketers, and large industrial customers and serves 13 states and the District of Columbia.

101. SPP is comprised of 63 members serving 6.2 million households in nine states and has 48,930 miles of transmission lines.

102. MISO is a nonprofit organization with over 145,000 megawatts of installed generation. MISO has over 57,600 miles of transmission lines and serves 13 states and one Canadian province.

103. ISO-NE is a regional transmission organization serving six states in New England. The system is comprised of more than 8,000 miles of high-voltage transmission lines and over 300 generators.

104. The Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required.

## VII. Document Availability

105. 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.

106. 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.

107. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC 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. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

## VIII. Effective Date and Congressional Notification

108. These regulations are effective July 6, 2012. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

### List of Subjects in 18 CFR Part 35

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

By the Commission.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18, Code of Federal Regulations, as follows.

### PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. 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.

■ 2. In § 35.28, paragraphs (g)(4) through (g)(7) are redesignated as paragraphs (g)(5) through (g)(8) and a new paragraph (g)(4) is added to read as follows:

#### § 35.28. Non-discriminatory open access transmission tariff.

\* \* \* \* \*

(g) \* \* \*

(4) *Electronic delivery of data.* Each Commission-approved regional transmission organization and independent system operator must electronically deliver to the Commission, on an ongoing basis and in a form and manner consistent with its own collection of data and in a form and manner acceptable to the Commission, data related to the markets that the regional transmission organization or independent system operator administers.

\* \* \* \* \*

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

### Appendix A

#### Commenters on the NOPR

American Public Power Association (APPA)  
California Department of Water Resources State Water Project (SWP)  
Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC)

Edison Electric Institute and the Electric Power Supply Association (EEI/EPSCA)  
ISO New England Inc. (ISO-NE)  
ISO/RTO Council (IRC)  
New York Public Service Commission (NYPSC)  
Pennsylvania Public Utility Commission (PA PUC)  
Powerex Corp. (Powerex)

[FR Doc. 2012-9847 Filed 5-4-12; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 40

[Docket No. RM11-18-000; Order No. 762]

#### Transmission Planning Reliability Standards

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** Under section 215 of the Federal Power Act, the Federal Energy Regulatory Commission remands proposed Transmission Planning (TPL) Reliability Standard TPL-002-0b, submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. The proposed Reliability Standard includes a provision that allows for planned load shed in a single contingency provided that the plan is documented and alternatives are considered and vetted in an open and transparent process. The Commission finds that this provision is vague, unenforceable and not responsive to the previous Commission directives on this matter. Accordingly, the Final Rule remands NERC's proposal as unjust, unreasonable, unduly discriminatory or preferential, and not in the public interest.

**DATES:** This rule will become effective July 6, 2012.

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

- **Agency Web Site:** <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:** Commenters unable to file comments electronically must mail or hand deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.