

EEI Encourages the Commission to be Judicious in Adding New Reporting Requirements

As EEI noted in comments we filed on the Commission's Form 1, 1-F, and 3-Q notice of inquiry in Docket No. RM07-9 last year (NOI), EEI members already file large quantities of financial, operational, facility, and other information with the Commission and other federal and state agencies, including the Energy Information Administration (EIA), Environmental Protection Agency (EPA), Internal Revenue Service (IRS), Securities and Exchange Commission (SEC), and state utility commissions and regulatory agencies. These filings give a detailed picture of company finances and operations that other electricity providers do not provide publicly. There are few if any segments of the U.S. or world economy whose finances and activities are reported in as much detail or are subject to as much public scrutiny as shareholder-owned electric utilities.

The compilation, verification, and reporting of the information that EEI members file on the FERC Forms 1, 1-F, and 3-Q, other FERC forms and filings, and filings with other agencies involve substantial work and costs. Companies must invest substantial staff time, computer software and hardware, and other resources to provide this information. Often these filings are due in similar time frames, and when companies are busy closing their books, compounding the burden on company staff and accounting and reporting systems.

Recognizing that reporting does involve substantial costs, the Paperwork Reduction Act (PRA) requires federal agencies to strive to minimize the reporting burden and avoid duplicative reporting requirements. 44 U.S.C. §§ 3501 et seq. The PRA requires each agency to undertake a triennial review, in consultation with the Office of

Management and Budget (OMB) to demonstrate that information collections are as reasonable and streamlined as possible, and OMB typically wants justification for the collection of new information. As a result, during past triennial reviews, EEI has asked the Commission to review the Forms 1, 1-F, and 3-Q as well as other FERC forms to determine if all the information contained in the forms is truly needed and whether it is needed in as much detail. We reiterate that general request here and encourage the Commission to minimize the reporting burden to the maximum extent possible.

EEI Also Encourages the Commission to Address Concerns About Competitively Sensitive Information

As the Commission knows, federal and state legislative and regulatory initiatives in the past two decades have promoted competition in various parts of the electric sector, in particular as to the generation and wholesale sale of electricity. As a result, companies often face competition with others in these areas, raising concerns about the commercial sensitivity of some of the information the companies must report, especially when other electricity providers such as municipalities and rural cooperatives do not provide such information. Disclosing details about a company's costs and facility operating and performance statistics can disadvantage that company in competing with others, allowing competitors to compete with a reporting company based on the latter's performance and cost constraints, rather than having to strive to provide electricity at their own lowest cost. Similarly, disclosing information about fuel stocks and costs can disadvantage companies in negotiations with fuel suppliers.

The Freedom of Information Act (FOIA) provides a "b(4)" exemption from the release of such sensitive commercial information. 5 U.S.C. § 552(b)(4). EEI encourages

all federal agencies including the Commission to rely on this exemption to protect commercially sensitive information in discrete form, in the interest of promoting fair competition and the development of robust competitive markets.

In addition, as the Commission is well aware, the nation must take prudent steps to avoid facilitating harm to critical facilities, including electricity infrastructure. Information on facility location, design, importance, and security safeguards does not belong in the public domain, where terrorists can easily access it. The Commission has recognized this by establishing its Critical Energy Infrastructure Information (CEII) regulations, which aim to protect such information. Those regulations rely on various FOIA exemptions and are fully in keeping with efforts by the Department of Homeland Security to protect such information.

EEI urges the Commission and other federal agencies to aggregate sensitive commercial and security-related information so as to avoid harming individual companies or facilities. The information should be released in discrete form only to those with a clear, demonstrated need to know, and even then should be kept under appropriate confidentiality protections. The PRA requires federal agencies to ensure that confidentiality is maintained as such information is shared. For other recipients of confidential information, the Commission may need to rely on non-disclosure agreements, as it does for CEII.

Though the Commission has noted in the NOPR, at paragraph 62, that it does not plan to change its current policy of open-access to financial information provided by utilities, we encourage the Commission to reconsider its handling of commercially sensitive information in the financial forms, to ensure that information is not released in

discrete form at a plant or company level if such discrete information may harm companies, either in their competition with others or in their negotiations with suppliers. In particular, as we have requested in the past, we encourage the Commission not to release in discrete form individual generating plant costs and operating performance information, and instead to release such information only in aggregated form that avoids commercial harm.

EEI Supports Several Changes Proposed by the Commission to Help Streamline the Forms 1, 1-F, and 3-Q and Encourages the Commission to Consider Other Such Changes

EEI supports the Commission's proposals to raise threshold reporting levels, such as the threshold levels for grouping miscellaneous debits and liabilities on pages 232, 237, and 278, for grouping other deferred credits on page 269, and for listing research and development projects on pages 352 and 353, as discussed in paragraph 60 of the NOPR. These types of changes will help to avoid unnecessarily detailed reporting of information in the Forms 1, 1-F, and 3-Q. Given that typical utility finances involve income and expenses in the hundreds of millions of dollars, requiring reporting of amounts below such thresholds and balances provides information that is of relatively little use but imposes a significant burden. We appreciate the Commission taking these steps to reduce that burden, and we encourage the Commission to consider other opportunities for doing so.

EEI also supports the Commission's decision not to collect additional demand-side information in the Forms 1, 1-F, and 3-Q, as discussed in paragraph 37 of the NOPR, in particular given collection of such information in the FERC Forms 727 and 728.

We encourage the Commission to reconsider its plan to continue collecting the Form 3-Q, as discussed at paragraph 63 of the NOPR. As noted in our comments on the Form 1, 1-F, and 3-Q NOI, EEI questions whether the burden of completing the Form 3-Q is warranted when compared with its limited usefulness to consumers. Company staff spend a great deal of time and energy each quarter preparing and reviewing information for the Form 3-Q. But because each Form 3-Q covers only three months of data, it can have large seasonal variations, and each Form 3-Q by itself provides an incomplete look at a company. Regulation is done on an annual rather than quarterly basis. Within a company, the Form 1 is an important reference tool for a lot of information about company operations, while the Form 3-Q is seldom referenced.

The Commission Should Not Require Broad New Reporting of Information About Affiliate Transactions in the Forms 1, 1-F, and 3-Q

In the NOPR at paragraph 52, the Commission proposes to add a new page 429 to the Form 1, requiring companies to list affiliate transactions with a description, name of the company involved, account charged, and amount charged. However, a month after issuing the NOPR, the Commission issued new final rules on affiliate transactions, Order No. 707 in Docket No. RM07-15,¹ and blanket authorizations under FPA section 203, Order No. 708 in Docket No. RM-07-21,² and concluded that no such new reporting requirements are necessary at this time. EEI believes that the proposal in this NOPR to collect additional information on affiliate transactions is inconsistent with the position taken not to do so in those subsequent orders, and that the Commission has reached the correct conclusion in Orders No. 707 and 708 not to require additional reporting of

¹ 73 Fed. Reg. 11,013 (Feb. 29, 2008).

² 73 Fed. Reg. 11,003 (Feb. 29, 2008).

affiliate transactions at this time. We encourage the Commission to adopt the position taken in Orders No. 707 and 708 in this docket as well.

In the past two years, the Commission has put in place a series of new regulations and policies under FPA sections 203, 205, and 206, including Orders No. 707 and 708, to ensure that affiliate transactions are appropriately priced and that companies keep careful records of such transactions. Specifically, since enactment of the Energy Policy Act of 2005 (EPA 2005), the Commission has adopted an FPA section 203 supplemental policy statement,³ section 203 rules,⁴ Public Utility Holding Company Act of 2005 (PUHCA 2005) rules,⁵ and the recent affiliate transaction rules.⁶

These measures include affiliate transaction pricing, accounting, recordkeeping, and Commission review provisions that amply protect against inappropriate cross subsidization. Order No. 707 imposes pre-approval requirements for power sales between utilities with captive customers and their affiliates, and pricing constraints on non-power transactions, to ensure that rates are reasonable under FPA sections 205 and 206, supplementing similar prior Commission rules in the merger and market-based rate contexts. Together, these provisions amply protect against cross subsidy.

In addition, under Orders No. 667, 669, and 684 and other Commission rules, companies retain sufficient information about their financial transactions to provide

³ 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. Par. 31,253 (2007); *order on clarification and reconsideration*, 122 FERC Par. 61,157 (Feb. 21, 2008).

⁴ Order No. 669, 71 Fed. Reg. 1,348 (Jan. 6, 2006), FERC Stats. & Regs. Par. 31,200 (2005); *order on reh'g* Order No. 669-A, 71 Fed. Reg. 28,422 (May 16, 2006), FERC Stats. & Regs. Par. 31,214 (2006), *order on reh'g*, Order No. 669-B, 71 Fed. Reg. 42,579 (July 27, 2006), FERC Stats. & Regs. Par. 31,225 (2006); and Order No. 708 at note 2 above.

⁵ Order No. 667, 70 Fed. Reg. 75,592 (Dec. 20, 2005), FERC Stats. & Regs. Par. 31,197 (2005), *order on reh'g*, Order No. 667-A, 71 Fed. Reg. 28,446 (May 16, 2006), FERC Stats. & Regs. Par. 31,213, *order on reh'g*, Order No. 667-B, 71 Fed. Reg. 42,750 (July 28, 2006), FERC Stats. & Regs. Par. 31,224 (2006), *order on reh'g*, Order No. 667-C, 72 Fed. Reg. 8,277 (Feb. 26, 2007), 118 FERC Par. 61,133 (2007), and Order No. 684, 117 FERC Par. 61,064 (Oct. 19, 2006).

⁶ Order No. 707 at note 1 above.

relevant information to the Commission and others as needed. Based on these records, utilities already provide information in their current Form 1 and other submittals to the Commission to ensure that their financial transactions with others are transparent. Companies provide the Commission with summary affiliate transaction information in the Notes to Financial Statements, when required by the Generally Accepted Accounting Principles (GAAP) that guide accounting and auditing practices. Similarly, on the FERC Form 60, companies disclose methods used to allocate centralized service company expenses within holding companies.

If the Commission or state commissions need more information from a given company about its affiliate transactions, the Commission and states have access to such information under PUHCA 2005, specifically through federal and state access to books and records provisions enacted as EAct 2005 sections 1264 and 1265. That is the appropriate vehicle for examining affiliate transactions, when warranted. Furthermore, if customers need additional information or have concerns about affiliate transactions, they can raise these issues as warranted in individual rate cases, the proper forum for doing so. If a customer needs additional information in order to determine whether rates appear to be just and reasonable, the customer should be able to request the information from the service provider or if necessary the Commission, within reason and taking into account whether the information is commercially sensitive.

Adding a requirement to report affiliate transactions to the Form 1 will not enhance these protections. A list of the transactions cannot be used as an accurate barometer as to whether the transactions are appropriately priced or involve cross subsidies.

For these reasons, EEI believes that the Commission reached the correct decision not to require additional reporting of affiliate transactions at this time in its recent Orders No. 707 and 708. In Order No. 707, the Commission concluded that:

[T]he current reporting regulations are adequate to ensure compliance with the proposed restrictions on affiliate transactions between franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities and their market-regulated power sales affiliates or non-utility affiliates. In addition to the information gathered through Form No. 1, the Commission already collects affiliate power sales information from franchised public utilities through [Electric Quarterly Reports (EQRs)] and market-based requirements. With regard to non-power goods and services, franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities are covered by the existing record retention requirements in Parts 125 and 225 of the Commission's regulations. Accordingly there is no need to impose additional reporting requirements to ensure compliance with the proposed regulations. However if the Commission finds that the existing requirements are inadequate, we will consider holding a technical conference to discuss what additional reporting requirements may be warranted.

Order No 707, par. 83.

Similarly, in Order No. 708, the Commission decided not to require additional reporting requirements at this time. The Commission noted that:

In the [underlying] Blanket Authorization NOPR, the Commission proposed not to impose additional reporting requirements because existing regulations require the submission of schedules and forms that are also provided to the SEC. While we agree ... additional reporting requirements might provide greater efficiency to the Commission, at this time we believe the potential reporting burden on public utilities outweighs the possible efficiency gains.

Order No. 708, par. 33.

Therefore, consistent with Orders No. 707 and 708, EEI encourages the Commission not to impose an additional Form 1 reporting requirement as to affiliate transactions. We recommend that the Commission delete the proposed new page 429.

At a minimum, if the Commission disagrees with our recommendation not to require affiliate transactions to be reported in the Form 1, the Commission should provide a more detailed explanation of why the new information is necessary, especially given its contrary conclusion in Orders No. 707 and 708. While the Commission notes that one state commission has said such information would be helpful, that does not explain the need for a burdensome new reporting requirement or identify the problem such a requirement is meant to address.

Further, if the Commission does require reporting of affiliate transactions, the Commission should minimize the reporting burden as follows: (1) do not require reporting of power transactions, which are covered by FERC Accounts 555 and 556 and the EQRs; (2) exclude reporting of transactions covered in other forms, such as centralized service company transactions reported in the Form 60; (3) exclude reporting of transactions reported to states, and instead allow a note indicating where the information is available; (4) exclude reporting of payments considered by the SEC under the Public Utility Holding Company Act of 1935 to be “convenience payments” (where one company pays an invoice on behalf of an affiliated company and then gets reimbursed by the affiliate) and pass-through payments (such as when a company acts as a subcontractor to an affiliated company, provides services to a third party, and receives payment for the services via the affiliated company); (5) allow companies to group the transactions by type of service rather than having to report each individual transaction; and (6) require reporting of a service type only over a reasonable threshold of materiality that will avoid unnecessary detail (we recommend a threshold of \$500,000 or \$1 million).

The Commission Should Not Require Reporting in the Forms 1, 1-F, and 3-Q of Changes to Inputs to Formula Rates

In the NOPR at paragraph 46, the Commission proposes to require Form 1 filers to provide a footnote explaining any changes in inputs to formula rates that deviate from what is currently shown in the Form 1, but only if the utilities with formula rates have not made informational filings with the Commission. At the same time, the Commission asks whether it makes sense to require this information through some other means.

While EEI understands the concerns that appear to be leading the Commission to consider asking for more information about inputs to formula rates, we encourage the Commission not to do so through footnotes in the Form 1. Two of our members have indicated that they are customers taking service under formula rates from companies that are not subject to state retail rate regulation, and those two EEI members have had difficulty getting information about the inputs to the formula rates they are being charged, including backup information explaining in detail why the service providers' general and administrative costs and other portions of the inputs to the rates have increased and are projected to increase rather dramatically. Those members also have noted that without such information, they have a difficult time filing a section 206 complaint with the Commission to have the Commission examine whether the rates are just and reasonable.

However, EEI does not believe that adding footnotes to Form 1 is the appropriate solution, for a number of reasons. Instead, we encourage the Commission to clarify that companies providing service under formula rates have a responsibility to provide information to customers taking service under the rates about inputs to the rates, including underlying costs and cost increases, in sufficient detail to enable the customers to understand the basis for their rates. Most formula rate tariffs already contain

provisions for such explanation of the rates, and the Commission could simply ensure that all customers under formula rates have access to such information on request. At the same time, as the Commission has proposed in paragraph 46, in those instances where utilities having formula rates have made informational filings with the Commission, those filings should suffice.

Form 1 is not the appropriate vehicle to address this issue. To begin with, the proposed new footnote requirement is unclear. EEI assumes that the Commission is asking for a footnote in the Form 1 when a formula rate tariff calls for specific Form 1 data to be used as inputs to the formula rate but the data actually input differ from what is shown on the Form 1. By contrast, we assume that the Commission is not asking for a footnote to discuss why input data, such as fuel costs, change over time. Requiring companies to address how and why the input data change over time in the Form 1 would be impractical and would undercut the purpose of formula rates to accommodate such changes over time, in keeping with the terms of the formula rate tariffs.

Even as to departures from Form 1 data when those data are called for as inputs to formula rates, the Form 1 is a financial report, not a ratemaking document. As such, it is not an appropriate place to explain such departures. Formula rates differ from utility to utility and from rate to rate, making it difficult to address inputs to the rates in a footnote to the Form 1 and to design a standardized footnote format that would benefit all users of the form. For example, it is unclear how utilities could reasonably be expected to explain in a footnote differences between Uniform System of Account requirements reflected in the Form 1 and contractual terms embedded in Commission-approved formula rates, such

as rate base input items on a 13-month average according to contract terms or special adjustments required by a state commission.

Also, as one would expect, at least some companies do not complete their formula rate calculations that rely on Form 1 data until after the Form 1 is completed, so it would be difficult for them to provide a footnote about departures from the Form 1 data prior to filing the Form 1. Furthermore, it is unclear how companies that file combined formula rates for multiple operating companies or gas and electric companies would prepare a footnote explaining such departures, given that a single Form 1 may not reflect the combined company inputs to the formula rate.

Companies already document their formula rate inputs and calculations in their rate-related work papers, which are available to the Commission and generally also are available to customers taking service under the formula rate tariffs. The Commission should not require further formula rate documentation in the Form 1, but instead should require companies providing service under formula rates to make additional information available to customers as needed on request, if such information is not already being provided via informational filings.

Therefore, EEI encourages the Commission not to add a requirement to the Form 1 to explain departures from Form 1 information used as inputs to formula rates. As long as companies maintain sufficient records to document the changes made to those inputs and adhere to the approved formula rate tariffs, and provide that information to the Commission and affected customers on request or via informational filings, the companies should not be required to add footnotes to the Form 1 explaining the changes.

If the Commission does impose a formula rate footnote requirement in Form 1, the Commission should: (1) clarify that the footnote is necessary only to explain departures from Form 1 data when a formula rate tariff calls for specific Form 1 data as inputs and different input data are used; (2) clarify that the footnote requirement applies only to cost-based rates, not market-based rates; (3) specify that if a seller files informational filings containing information about inputs to its formula rates, a footnote is not required; (4) specify that if customers have audit rights under a formula rate tariff, a footnote is not required; (5) specify that if a company has explained departures from FERC Form 1 data as inputs to a formula rate elsewhere in information available to the Commission and customers on request, it is not required to do so again in the Form 1; (6) specify that if the footnote cannot be added before the Form 1 is filed, it can be added at the next reporting cycle; and (7) address how the footnote should be prepared when multiple operating companies or gas and electric companies are involved and not all of those companies are reflected in a given Form 1.

The Commission Should Address the Technical Suggestions EEI Provided in Our Comments on the NOI

As noted in Appendix C to the NOPR, in our comments on the NOI, EEI recommended a number of changes to the Forms 1, 1-F, and 3-Q and the software used to file them. We encourage the Commission to address those suggestions as it revisits the forms in this NOPR, including the following changes:

- The ability to load data more cleanly into the software, including Excel data;
- The ability to copy and paste information from Word and other native-format documents without losing formatting such as underlines, paragraphs, and headers;
- The ability to print preview for Notes to Financials and Important Changes pages;

- Corrections to the “total amount” functions in the software, in particular on pages 224, 320-323, 336, 354-355;
- Corrections to improper page references, in particular on pages with footnotes;
- Corrections to the software’s cross-checking function; and
- Corrections to text on various pages of the forms, as noted in our comments on the NOI.

In addition, EEI encourages the Commission to make a number of other improvements, clarifications, and corrections to the forms and software as follows:

- General – Standardize the number formats used to represent credits throughout the form. For example, on page 119, column c, the format is -50,500, while in column d the format is (50,500).
- Pages 120-121 – When footnotes are added to columns b or c, the “b” and “c” do not print on the footnotes page to identify which column is involved. This should be corrected.
- Pages 122a-122b
 - Revise the instructions to incorporate verbal guidance from FERC staff that these schedules are to be presented on a year-to-date basis.
 - Adjust the row heights on the two pages so they are the same, making information easier to follow.
- Page 231 – Revise the instructions to incorporate verbal guidance from FERC staff that this schedule is to be presented on a year-to-date basis.
- Page 300 – Clarify that the requirement for additional details on page 300 proposed in NOPR paragraph 57 applies only to FERC account 456, Other Electric Operating Revenues. Also, specify whether the requirement applies to account 457.2, Miscellaneous Revenues used by RTOs and ISOs. Furthermore, set a threshold of \$500,000 or 10% of the balance in the FERC account, whichever is greater.
- Pages 329-330 – The page title should reference account 456.1, not 456.
- Pages 352-353 – Correct the printing parameters so that the dollars for line 47 print on the same page as the description for that line.

- Page 398 – Clarify whether a standard unit of measure should be applied to Number of Units Sold in column e, and if not how dissimilar units of measure are to be totaled on line 8.
- Pages 426-427 – Have FOSS calculate totals for column f by Substation Classification.
- Various pages – Ensure that all data, descriptions, and amounts roll over from one period to the next, to avoid companies having to re-enter the data.

The Commission Should Provide Adequate Transition Time to Any New Reporting Requirements it Does Adopt

To the extent the Commission does add new reporting requirements to the Forms 1, 1-F, or 3-Q, EEI encourages the Commission to provide companies with at least 6 months lead time to begin reporting the new information and, ideally, to have the new requirements take effect at the start of the calendar year. As financial forms, these forms are subject to accounting, recordkeeping, and auditing protocols to ensure their accuracy. Companies that file the forms need adequate time to ensure that the companies can accurately compile and verify the information. Thus, if the Commission issues an order in this docket by July 2008 requiring the reporting of any new information, we would ask the Commission to have the new reporting requirements take effect January 1, 2009, as the Commission has proposed in paragraph 1 of the NOPR. But if the order is issued later than that, the effective date should be adjusted accordingly.

In addition, EEI requests that the Commission not require comparative reporting of any new information the Commission may require companies to report until the new information has been collected long enough to be available for comparison purposes. Thus, if the Commission should require collection of new information in the Form 1

starting January 1, 2009, the first comparison of that information in the Form 1 should take place starting with the following year 2010.

The Commission Should Provide an Ongoing Modification of the Audited Statement Deadline for Companies With Non-Calendar Fiscal Years

In NOPR paragraphs 55-56, the Commission says that companies that have a fiscal year different than the calendar year will continue to be required to file an annual Form 1 each April, but may file a second set of financial statements following the end of their fiscal years, with those statements to be independently audited and accompanied by a CPA Certification as required by the Commission's regulations. However, the Commission also says that it "has, upon request, granted individual waivers of the CPA Certification requirement for Form 1 and 1-F filers so long as the certification accompanies the fiscal year-end financial information" filed later.

EEI encourages the Commission to clarify that, with adoption of the proposed amendment to 18 C.F.R. section 41.11 included in the NOPR, companies will no longer need to seek such waivers, or if companies must continue to seek the waivers they need do so only once and the waivers will then apply in perpetuity barring a subsequent filing by the company or notice by the Commission. This would avoid companies having to file and the Commission having to process such waivers each year.

The Commission's Estimated Annual Burden of the Proposed New Reporting Requirements Appears to be Far Too Low

In NOPR paragraph 66, the Commission estimates that the proposed new affiliate transaction and other information will take respondents 14 hours to collect and report. However, EEI members have estimated that the proposed affiliate transaction schedule

alone would require on the order of one to three hundred hours per company to compile in the proposed format.

Conclusion, Contact Information

EEI appreciates the opportunity to provide these comments. In general, we believe that the Forms 1, 1-F, and 3-Q already collect more than ample information and should not be amended to collect information as to affiliate transactions and formula rate inputs. However, if the Commission decides to collect such information, we recommend that the Commission adopt several clarifications and suggestions aimed at minimizing redundancy and unnecessary reporting burden. We support the Commission's proposals to raise thresholds and balance levels as a way to reduce the reporting burden, and we support the Commission's decisions not to collect additional demand side information in the forms. We encourage the Commission to reconsider whether to continue collecting the Form 3-Q, given that it is very time consuming and appears to be of very limited value, and we recommend aggregating commercially sensitive information to avoid harm to companies. We also encourage the Commission to make a number of technical corrections in the financial forms and software, as discussed in our comments on the NOI.

If the Commission needs additional information or has any questions, please contact me, Henri Bartholomot at 202/ 508-5622, or David Stringfellow at 202/ 508-5494.

Respectfully submitted,

- signature -

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March 14, 2008