

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

FERC Form No. 580) **Docket No. IC07-580**
Interrogatory on Fuel and Energy Purchase Practices)

**COMMENTS OF
ENTERGY SERVICES, INC.**

On December 7, 2006, the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued a Notice soliciting public comment on a proposed three-year extension of the current expiration date of FERC Form No. 580 “Interrogatory on Fuel and Energy Purchase Practices.” In the Notice, the Commission sought comments on four items:

- (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) ways to enhance the quality, utility and clarity of the information to be collected; and
- (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g. permitting electronic submission of responses.

Entergy Services, Inc., on behalf of the Entergy Operating Companies¹ (collectively, “Entergy”) hereby submits these Comments in response to the Notice. Entergy appreciates the opportunity to submit these comments.

¹ The Entergy Operating Companies include Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

I. COMMENTS

A. Form 580 is Not Necessary for the Proper Functions of the Commission

The Commission seeks comments on whether the proposed collection of information in Form 580 is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility. Entergy believes that the information is not necessary for the Commission to perform its functions. For this reason, the filing of Form 580 by electric utilities should be eliminated. As described in detail below, there are four main reasons why Form 580 is no longer necessary:

- The implementing legislation that gave rise to the Form 580 has accomplished its primary goals, and therefore Form 580 is no longer necessary;
- Since only a fraction of all electric utilities are required to submit the report, the sum of the data gathered is of very limited practical use in terms of identifying industry-wide trends or practices;
- With respect to the Commission's oversight of individual utilities' wholesale fuel adjustment clauses, Form 580 has limited practical use since it only includes long-term fossil fuel contracts, and only high-level data regarding purchases; and
- Much of the information submitted in Form 580 is duplicative of data provided in other FERC reports.

1. Form 580 and Implementing Legislation

Form 580 was initially implemented in response to the Public Utility Regulatory Policies Act ("PURPA") of 1978. Among its principal objectives, PURPA was intended to encourage conservation and the efficient use of energy resources, and encourage the development of alternative power supplies to displace the inefficient use of oil and natural gas by electric utilities. Subsequent to, and as a result of the implementation of PURPA, non-utility generators that met certain criteria (Qualifying Facilities, or QFs) established by FERC entered the wholesale market. To encourage the growth of QFs, regulated electric utility companies were

required to purchase power from QFs at the utilities' avoided cost, to provide back-up power to QFs, and to interconnect with QFs.

Pursuant to PURPA, FERC was mandated to conduct reviews of utility fuel and energy purchase practices of jurisdictional utilities. One of the principal objectives of PURPA was to encourage the development of alternative power supplies by requiring electric utilities to purchase power from QFs at the utilities' avoided cost. In order to meet its oversight responsibilities, the FERC implemented the Form 580 beginning in 1979.

In 1992, the wholesale electric market was opened further by the Energy Policy Act (EPACT), which created a new category of independent generators (EWGs) that were exempt from PUHCA (Public Utility Holding Company Act of 1935) regulation. Unlike QFs, EWGs are not required to meet PURPA's cogeneration or renewable fuels limitations. In addition, utilities are not required to purchase power from EWGs.

In terms of megawatt generation, PURPA and EPACT have had their intended effect. In 1994, electric utilities supplied approximately 90 percent (2.9 million Gwh) of all the megawatt hours generated in the U.S. By contrast, generation by IPPs was less than 2 percent (0.5 Gwh) of total U.S. generation in 1994. In 2005, however, electric utility generation fell to approximately 63 percent (2.6 Gwh), and IPP generation rose to approximately 29 percent (1.2 Gwh) of total U.S. generation.²

Clearly, the implementing legislation that gave rise to Form 580 has accomplished its primary goals. Furthermore, the regulatory process at both the federal and state levels is well-established. In addition, in any Commission investigation of any subject utility's wholesale fuel adjustment clause, or its compliance with PURPA, the Commission would obtain, through discovery, a broader amount of information both in scope and depth than is reported in Form

² See EIA Electric Power Annual for 2005, Table 1.1.

580. The Form 580 Report is no longer necessary to ensure the implementation of PURPA or the EPACT, and it should therefore be eliminated.

2. Form 580 Data is of Limited Practical Use in Determining Industry-Wide Trends or Practices

Electric utilities that are not subject to FERC jurisdiction are not required to file Form 580. Entities that are not required to file Form 580 include: (1) federally owned electric utilities, such as TVA; (2) publicly owned utilities that do not engage in interstate transmission or generation of wholesale electric power, such as utilities in ERCOT; (3) municipal utilities and cooperatives that do not engage in interstate transmission or generation of wholesale electric power.³

In addition, even among those utilities that are subject to FERC oversight, the filing requirements stipulate that only those FERC jurisdictional utilities having at least one steam-electric generating station of 50 MW or greater capacity, and that have a wholesale Fuel Cost and Purchase Power Adjustment Clause are required to file a detailed Form 580. Since most FERC jurisdictional utilities do not meet both of these requirements, they are required to file only an “informational” report that does not include any data pertaining to fossil fuel contracts, or purchases from QFs and/or IPPs. The number of electric utilities that meet both of these filing requirements has steadily declined since the Report was first implemented in 1979. The EIA has estimated that the because of its relatively limited scope, the FERC Form 580 for 1997 excluded approximately 57 percent of the quantities of coal consumed and transported to U.S. electric utilities.⁴ According to the EIA Report, approximately 135 utilities were required to file

³ Appendix A of the “Energy Policy Act Transportation Rate Study: Final Report on Coal Transportation – October 2000”, prepared by the Energy Information Administration. (http://www.eia.doe.gov/cneaf/coal/coal_trans/toc.html#contents).

⁴ *See id.*

Form 580 in 1993. Filing information found in the FERC Online eLibrary website indicates that approximately 100 utilities filed a Form 580 for the 2004-2005 period. Of these, approximately 60 percent filed only informational reports, with the remaining utilities filed the full detailed report. Because of the relatively small number of utilities that are required to file detailed information relating to their fossil fuel contracts or QF/IPP purchases, the information that is collected is of limited or no use in identifying industry trends or practices, or in formulating public policy.

3. Form 580 Only Includes Long-Term Fossil Fuel Contracts and Only High-Level Data Regarding Purchases

Even among the relatively small number of electric utilities that must file a detailed Form 580, the data supplied with respect to fossil fuel contracts may represent only a small percentage of all fossil fuel purchases made by the utility. The reason for this is that the Form 580 filing requirements stipulate that only information pertaining to fossil fuel contracts of one year or longer needs to be reported. This means that fossil fuel purchases made by the utilities in the spot market (less than one year term) are not reported in the Form 580.

At the time Form 580 was first implemented, the natural gas pipeline and commodity markets were fully regulated. Electric utilities that relied on natural gas as a boiler fuel purchased their fuel supplies almost exclusively under long-term contracts. Consequently, most, if not all, of the reporting utilities' fossil fuel purchases at that time were included in the Form 580 filing. Since that time, however, a spot market has developed due to the deregulation of the interstate gas pipelines (FERC Order 436 in 1985) and natural gas commodity (FERC Order 636 in 1992). The result of this fundamental change in the natural gas market is that the percentage of gas purchased by electric utilities under long-term contracts has declined. As pre-existing long-term gas contracts expire, many utilities are replacing them with contract purchases in the

short-term market. This phenomenon is also true, but to a much smaller degree, with respect to utility coal purchases. Although it is not the case with natural gas, long-term coal contracts continue to dominate the portfolios of coal-burning electric utilities. However, for both economic and operational reasons, many utilities are supplementing their long-term contract supplies with significant levels of purchases in the short-term or spot coal market.

With respect to the reporting utility's power purchases, only purchases made under contracts with QFs and/or IPPs are reported in Form 580. Other power purchases are not included in the Report. Furthermore, Form 580 is filed biannually, eight months after the end of the second reporting year. This means that, in terms of giving the Commission any kind of near-real-time opportunity to see what may or may not be happening with respect to the "efficient use of resources," Form 580 is virtually useless. In addition, the reported information in Form 580 is aggregated on a yearly basis.

4. Comparison of Form 580 and Form 423

The deficiencies of the Form 580 discussed above are largely eliminated in Form 423. Although Form 580 includes a small amount of information that is not included in Form 423, for the most part Form 423 includes most of the quantitative information pertaining to the reporting utilities' fossil fuel contracts. There are, however, some important differences. First, Form 423 includes all fossil fuel purchases, not merely those that were made under long-term contracts. Second, Form 423 is filed on a monthly basis, meaning that the information is timelier and more detailed. Third, the Form 423 Report is not limited to utilities that have a wholesale Fuel Cost and Purchase Power Adjustment Clause. This means that the data gathered represents all FERC jurisdictional utility companies having at least one steam-electric generating station of 50 MW or greater capacity. Because of the deficiencies cited, and because the information reported in

Form 580 is largely duplicative of what is provided in Form 423, Entergy recommends that the Commission eliminate Form 580.

B. Accuracy of Burden Estimate

The Commission estimates that the average burden hours per response is approximately 63 hours. Entergy believes that this estimate is reasonably close. There are a number of different factors that can significantly affect the amount of time required to prepare Form 580. Because of the large and varied amount of information that must be provided for long-term fossil fuel contracts, the number of long-term contracts that the reporting utility has will be one of the primary drivers of time requirements. Entergy submits that the majority of time devoted to preparing its Form 580 for 2004-2005 was due to gathering fossil contract data.

C. Ways to Minimize the Burden

As noted above, much of the information contained in Form 580 is duplicative of other filings required by the Commission. Entergy recommends that the Commission undertake a review of the information provided in Form 580 to determine what, if any, is not required to carry out its oversight responsibilities, and what information is already reported in other filings (*e.g.*, Form 423). Rather than continuing to duplicate work, both by the reporting utilities and by the Commission, Entergy asserts that the Form 580 data should be subsumed into the Form 423 filing, with the goal of eliminating Form 580 altogether.

II. CONCLUSION

Entergy thanks the Commission for the opportunity to participate in this proceeding and respectfully requests that it give due consideration to comments submitted herein.

Respectfully submitted,

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