

produced in the United States. However, the TDMA does not apply to income attributable to the transmission and distribution of electricity, natural gas and water. When fully implemented, the TDMA will be the equivalent of reducing the effective federal corporate income tax rate on production activities from 35 percent to 32 percent.<sup>4</sup>

#### Discussion

3. The TDMA is a special deduction that reduces the amount of income tax due from energy sales. The TDMA will have ratemaking implications only for public utilities that make jurisdictional sales of electricity at stated cost-based rates and cost-based formula rates. Income taxes are a cost that is included in the determination of virtually all cost-based rates. Accordingly, we expect these public utilities to appropriately reflect the TDMA amounts in any future filings to change their cost-based stated rates and cost-based formula rates.

4. Additionally, some public utilities utilize cost-based formula rates that are designed to automatically track changes in costs. The Commission is concerned that certain of the formulas established to develop rates may not be structured in a way that will provide an adequate mechanism for tracking the TDMA amount. Accordingly, we direct these public utilities to separately identify the TDMA amounts in any future filings to change their cost-based formula rates.

5. Moreover, since the TDMA only affects rates for jurisdictional entities to the extent that the TDMA amounts are reflected in the cost of service, the TDMA will not have any ratemaking implications for jurisdictional entities to the extent that they engage in the sale of electricity at market-based rates.

6. The TDMA also does not have any ratemaking implications for jurisdictional pipelines. The TDMA applies only to income attributable to qualified production activities, and jurisdictional pipelines do not engage in production activities.

*The Commission orders:* Public utilities with cost-based stated rates or cost-based formula rates for electric energy sales should appropriately reflect the TDMA amounts in any future filing to change a stated cost-based rate or formula rate.

<sup>4</sup> For individuals, the reduction in the effective tax rate varies depending on the individual's tax bracket, but, in any case, the amount of the allowable TDMA cannot exceed 50 percent of the individual's W-2 wages of the employer for the taxable year. Act, section 102, section 199(b)(1) (2004).

By the Commission.

**Linda Mitry,**

*Deputy Secretary.*

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**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM05-16-000]

#### Generator Run Status Information

May 27, 2005.

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

**ACTION:** Notice of inquiry.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) seeks comments on whether the Commission should require jurisdictional generators to provide the Commission with confidential access to generator run status information.

**DATES:** Comments on this Notice of Inquiry are due on August 15, 2005.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the NOI for additional information on how to file comments.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

#### Notice of Inquiry

1. The Commission is seeking comments on the need for access to generator run status information from all public utility generators on a confidential basis. Generator run status includes information on the commitment, operating performance and capability of generating units connected to the interconnected transmission system. Confidential access to this information would allow the Commission to better oversee markets by ensuring that generation resources are represented accurately and would allow the Commission to promptly monitor and investigate market abuses and unduly discriminatory behavior thereby upholding the Commission's standards of conduct.

#### Background

2. With the issuance of Order No. 888, the Commission required public utilities that own, control or operate interstate transmission facilities to file open access transmission tariffs that offer others the same transmission service that they provide themselves. In doing this, the Commission opened wholesale power sales to greater competition.<sup>1</sup> Order No. 889, issued in tandem with Order No. 888, required transmission providers to establish or participate in an Open Access, Same-Time Information System (OASIS) and to comply with prescribed standards of conduct.<sup>2</sup>

3. The standards of conduct required, among other things, that companies separate their transmission operations from their power sales marketing/merchant functions. The standards of conduct were designed to prevent employees of a public utility, or any of its affiliates, engaged in the power sales

<sup>1</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12,274 (March 4, 1997), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2001 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>2</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, 61 FR 21,737 (1996), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, 62 FR 12,484 (1997), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,049 (1997), *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

marketing/merchant function from obtaining preferential access to transmission information not available to all customers at the same time through public posting on OASIS.

4. The Commission notes that, while OASIS provides information on transmission availability, no similar information is available for generation. The Commission's OASIS II Advanced Notice of Proposed Rulemaking (ANOPR), issued in July 2000, contemplated generator run status information requirements. The ANOPR asked for industry comment on whether generator run status information should be incorporated into OASIS Phase II and posted for public disclosure.<sup>3</sup> Most of the comments raised confidentiality concerns.

#### *Generator Run Status*

5. In the wake of Order Nos. 888 and 889, the number of companies that generate and sell power and the volume of wholesale trading have increased significantly. Markets have evolved to become more complex and fluid, and now involve the trading of both physical and financial products. This situation has resulted in increased opportunities for the strategic use of generation resources. The Commission monitors the markets to determine whether there is market manipulation.

6. The Commission collects transactional data on sales and purchases through the Electric Quarterly Reports, however, this data does not fully inform the Commission on the real-time operation of supply. By obtaining confidential access to generator run status information, the Commission can complete the picture, and see the electric energy system as a whole.

7. In order to understand the problem facing the Commission, it is necessary to define generator run status. Generator run status reporting would include information on the commitment, operating performance and capability of generating units connected to the interconnected electric transmission system. Generator run status information includes: (a) The status of breakers (open/closed); (b) generating unit megawatts (MW) and megavolt-ampere reactive (MVAR) capability based on generator-tested performance capability data; (c) MW and MVAR net output; (d) the status of automatic voltage control facilities; (e) unit dispatch levels; (f) unit outages or deratings, including the reasons for the

outages or deratings; (g) the date and time when the unit was taken out of service or derated and the estimated (and, later, the actual) date and time when the unit was expected back online following an outage or derating; and (h) generator-tested performance capability data.

8. Generator run status information can help the Commission to identify the selective withholding of generation and the misrepresentation of generating capacity to influence market prices. During the Western energy crisis the potential was demonstrated for market participants to use generation resources to thwart competition. Between January 2000 and June 2001, market participants in the California ISO sold ancillary services in the day-ahead market, even though they did not have the required resources to provide the ancillary services. Market participants also sold non-firm energy as firm energy without possessing the dedicated resources necessary to supply firm energy.<sup>4</sup>

9. The Commission also recognizes the potential for control area operators and scheduling authorities with their own generation or with generation affiliates to dispatch their units to the prejudice of other lower-priced generation. Although public utilities usually dispatch generating units based on the application of an algorithm to system conditions and constraints, the algorithm cannot take all conditions into consideration. A system operator may dispatch generation out-of-merit<sup>5</sup> due to changing forecasts or sudden, extraneous events in current operating conditions such as generator or transmission system forced outages. This leaves open the opportunity to dispatch their own or their affiliate's higher-cost generating units, rather than dispatching a competitor's lower cost generating units.

10. The Commission recognizes the potential impact of improper generator dispatch upon transmission system capability and appreciates that changes in generator run status may affect third parties due to reduced transfer capability. Reduced transfer capability diminishes the capacity for market participants to move power. Generator run status information can allow the Commission to monitor the effects of

generator operations on transmission system performance.

11. Access to confidential generator run status information would, for example, allow the Commission to: (a) Ensure the accurate representation of generating capacity; (b) identify patterns of strategic behavior; (c) monitor for undue discrimination or preference in the dispatch of generation resources; and (d) better assess the validity of complaints. Currently, the Commission can obtain the data necessary to accomplish these goals through individual data requests and by subpoena in formal investigations. This necessarily occurs long after the events at issue. More timely access to this information will permit the Commission, among other things, to more promptly address misuse and misrepresentation of generator availability to influence market behavior.

#### *Considerations in Collecting Generator Run Status Information*

12. In response to the OASIS II ANOPR, the North American Electric Reliability Council's (NERC) Electronic Scheduling Collaborative (ESC) noted that an overwhelming majority of ESC members opposed disclosure of generator run status information. With deference to minority opinion, the ESC filed two alternative position papers on generator run status, one in favor of disclosure and the other against.<sup>6</sup>

13. Those favoring the disclosure of generator run status information maintained that disclosure of generator run status information would provide appropriate market signals and create disincentives for market participants to improperly withhold capacity from the market, while providing essential information to directly measure the exercise of horizontal market power. The position paper supporting disclosure of generator run status explained:

Generator run status is a critical element of information used by many entities to ensure the operating security of the interconnected electric system. It should also be a component of the information base made available to all participants in the bulk power market to ensure appropriate market responses to real-time operating conditions, to provide the transparency needed for economically efficient markets, and to add discipline and market power mitigation

<sup>4</sup> See, e.g., *American Electric Power Service Corporation*, 103 FERC ¶ 61,345 at P51-55 (2003), *reh'g denied*, 106 FERC ¶ 61,020 (2004). See also, *Final Report on Price Manipulation in Western Markets: Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, Docket No. PA02-2-000 (March 2003) (Final Report).

<sup>5</sup> Out-of-merit dispatch is a dispatch sequence in which the least cost generator is not dispatched to supply the next increment of system load.

<sup>6</sup> *Response of the Electronic Scheduling Collaborative* (Docket No. RM00-10-000 July 14, 2000).

<sup>3</sup> *Open Access Same-Time Information System Phase II*, 92 FERC ¶ 61,047 (2000). The Commission has not yet implemented OASIS Phase II.

through analysis of data to reveal patterns of strategic behavior.<sup>7</sup>

14. The position paper opposing the disclosure of generator run status information contended that generator run status information is proprietary, commercially sensitive information. It argued that a generating facility is the private property of its owners and that such information is proprietary. It also asserted that disclosure of such information to the market could devalue the asset and "essentially represents a confiscation of a portion of the asset itself."<sup>8</sup> Those objecting to the disclosure of generator run status information further contended that making generator run status information generally available would allow some participants in the market to gain an unfair advantage over others.

15. The Commission is persuaded that certain information pertaining to generator characteristics and operation is proprietary and commercially sensitive. However, the Commission also believes that knowledge by market participants of current market conditions is vital to achieve a fully competitive, and least-cost market. Therefore, the Commission is soliciting responses relating to the confidential treatment of the information versus the release of certain generator run status data elements that could be made available to the marketplace to satisfy these objectives without compromising the legitimate competitive position of generators, and which information should be kept confidential. The Commission intends to respect commercially sensitive information by collecting and maintaining commercially sensitive information on a confidential basis.

#### Comments Requested

16. The Commission encourages comments regarding the topics above. In addition, the Commission seeks responses to the following specific questions:

a. Which data elements of generator run status, listed previously, should the Commission collect or have access to? In addition, please comment, among other things, on whether the Commission should collect: (1) Generator logs for all 8,760 hours of the year; (2) balancing authority operating logs; (3) raw data as provided to NERC

for its GADS database; (4) capability performance testing results; and (5) equivalent demand forced outage rate (EFORD) data.

b. Should the Commission collect this generator run status information on a regular basis, or instead require public utility generators to maintain generator run status information to provide to the Commission on short notice when requested?

c. How is this data currently collected by industry participants? What would be the burden on the electric industry to make this information on generator run status available to the Commission?

d. Is there other information that would be more appropriate to collect, such as that obtained by NERC for their Generator Availability Data System (GADS)?

e. What should be the frequency of reporting/collection? Should the Commission request generator run status information for the peak operating hour each day, or is some other period more appropriate?

f. What real-time data might facilitate a more efficient market by enabling market participants to respond to current conditions?

g. How might the reporting requirements differ between regions with organized markets under RTOs and ISOs versus those without organized markets?

h. Which specifically, of the generator run status data elements could be made available to market participants and which should be withheld due to their commercial sensitivity. Should some of the data originally held confidentially be released publicly after a set time period?

#### Comment Procedures

17. The Commission invites interested persons to submit comments on these matters and any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 15, 2005. Comments must refer to Docket No. RM05-16-000, and must include the commenter's name, the organization represented, if applicable, and their commenter's address.

18. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory

Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

19. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### Document Availability

20. 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 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 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426. E-Mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov) or (202) 502-8371.

21. From the Commission's Home Page on the Internet, this information is available in its eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

22. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

By direction of the Commission.

**Linda Mistry,**

*Deputy Secretary.*

[FR Doc. 05-11535 Filed 6-13-05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[OAR-2002-0073, FRL-7923-8]

**Agency Information Collection Activities: Proposed Collection; Comment Request; Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transshipment, and Feedstock Use of Ozone-Depleting Substances, EPA ICR Number 1432.25, OMB Control Number 2060-0170**

**AGENCY:** Environmental Protection Agency (EPA).

<sup>7</sup>Response of ESC, Generator Run Status: Position Paper Supporting Data Disclosure to the Market Within OASIS Phase II, Attachment 7 at 2 (January 29, 2001).

<sup>8</sup>Response of ESC, Generator Run Status: Position Paper Opposing Data Disclosure to the Market Within OASIS Phase II Attachment 7 at 5 (January 29, 2001).