

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FLORIDA CABLE
TELECOMMUNICATIONS
ASSOCIATION; COX COMMUNICATIONS
GULF COAST, L.L.C., ET AL.

Complainants,

P.A. No. 00-004

v.

GULF POWER COMPANY,

Respondent.

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FLORIDA PUBLIC
SERVICE COMMISSION
00 SEP 13 AM 8:39
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To: Cable Services Bureau

GULF POWER COMPANY'S
MOTION TO STRIKE AND REPLY TO
COMPLAINANTS' OPPOSITION TO REQUEST FOR
GRANT OF MOTION FOR CONFIDENTIAL TREATMENT

Gulf Power Company ("Gulf Power") files this Motion to Strike and Reply to the Complainants' Opposition ("Opposition") to Gulf Power's Motion for Confidential Treatment of Commercial and Financial Information ("Motion") pursuant to § 1.45(c) of the Commission's Rules.¹ Gulf Power refers the Commission to its previously filed Motion in the above-styled proceeding for a thorough explanation, in conformity with the Commission's Rules, of Gulf Power's right to receive confidential treatment of the

underlying information pursuant to §§ 0.459 and 0.457 of the Commission's Rules.²

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- SEC
- SER
- OTH

Kummer

¹47 C.F.R. § 1.45(c).

²47 C.F.R. §§ 0.459 and 0.457.

DOCUMENT NUMBER-DATE

11386 SEP 13 8

FPSC-RECORDS/REPORTING

I. Overview and Background

The Complainants' Opposition is characterized by misleading statements and a woeful failure to comprehend the current state of affairs in the electric industry. Indeed, the Complainants begin their Opposition with a mischaracterization of the highest magnitude, stating that their Opposition was "timely filed" because "Gulf Power [filed] on August 22, 2000." This is not the case. Gulf Power filed its Motion on August 9, 2000. (Exhibit 1, Time-Stamped Copy of Gulf Power's Motion). Since the Complainants were only allowed ten (10) days to respond to Gulf Power's Motion,³ their Opposition was not timely filed and is hence due to be struck.

Moreover, the Complainants evidence a complete misunderstanding of why Gulf Power is seeking confidential treatment of the concerned information when they state that Gulf Power's purpose is "an effort to derail FCC pole attachment procedures." While Gulf Power admittedly disagrees with the Commission's rate methodologies for pole attachments, that disagreement has nothing to do with why Gulf Power is seeking confidential treatment of the pertinent information. Rather, Gulf Power is seeking confidential treatment because, as discussed in greater detail in the Motion and supporting attachments, electric markets are being increasingly characterized by competition, and public disclosure of this competitively sensitive information would grant Gulf Power's rivals in electric markets a competitive advantage. (Exhibit 2, Affidavit of Mr. Rodney Frame). In addition, disclosure of certain aspects of the information would make it more difficult for Gulf Power to obtain favorable arrangements with vendors. (Exhibit 2).

³47 C.F.R. § 1.45(b).

Accordingly, Gulf Power's seeking of confidential treatment of the underlying data has nothing to do with the cable industry, and Gulf Power has been more than willing to grant the Complainants the information provided that they sign an appropriate confidentiality agreement. Complainants allege that Gulf Power's exercising of its statutory right under the Freedom of Information Act and regulatory right under the Commission's Rules⁴ to protect its competitively sensitive information "delayed needlessly" these proceedings because the "form of confidentiality agreement tendered contained a waiver of the right to proceed to the FCC."⁵ This statement is unfounded. Nowhere in that document is the Commission even mentioned.⁶ If the Complainants desired a clarification in that regard, all they had to do is ask. Indeed, once the Complainants finally expressed interest in this regard—approximately three months after Gulf Power initially tendered a confidentiality agreement—Gulf Power signed an agreement that was largely crafted by the Complainants. Accordingly, whatever "needless delay" has been encountered was due to the Complainants' failure to negotiate in good faith in favor of rushing headlong to litigation.

II. Complainants' Opposition to Gulf Power's Motion Should Be Struck Because It Was Not Timely Filed

Pursuant to § 1.45(b) of the Commission's Rules⁷ the Complainants were afforded ten (10) days to respond to Gulf Power's Motion. Gulf Power filed its Motion on August 9,

⁴5 U.S.C. § 552(b); 47 C.F.R. §§ 0.457, 0.459.

⁵Opposition at 1-2.

⁶See Attachment T (Confidential Agreement) to Exhibit 1 (Affidavit of Michael R. Dunn) of Gulf Power's Answer to Petition for Temporary Stay.

⁷47 C.F.R. § 1.45(b).

2000. (Exhibit 1). The Complainants filed their Opposition on August 29, 2000. Clearly, the Complainants' opposition was filed out of time. Therefore, this Commission should refrain from considering Complainants' allegations in that pleading, and grant Gulf Power's request for confidential treatment of the competitively sensitive commercial and financial information filed in this proceeding.

III. The Commission Should Respect FERC's Jurisdiction and Defer to its Determination of the Confidentiality of the Information

Congress specifically and explicitly committed to the Federal Energy Regulatory Commission ("FERC") authority over all matters pertaining to the collection of specific data concerning electric utilities. 16 U.S.C. §§ 797(a), 825, 825h; 18 C.F.R. § 141.1. Thus, FERC is the agency committed with the task of determining whether the commercially sensitive information Gulf Power submitted in its FERC Form 1 filing is confidential. As explained in Gulf Power's Motion and its Leave to File, some of the information for which Gulf Power requests confidential treatment is contained in its FERC Form 1 for the year ending December 31, 1999, and Gulf Power has requested confidential treatment for this data from FERC.⁸ This information is not currently available to the public. (Exhibit 3, at 3 FERC's Internet Homepage). FERC states as much: "[S]ome companies have selected certain parts of their Form 1 Submission for **Privileged Treatment**. These parts are not available for public distribution pending a decision by [FERC]." Id. Thus, this Commission

⁸See Gulf Power's June 19, 2000 Letter to The Honorable David P. Boergers Secretary of the Federal Energy Regulatory Commission Requesting Confidential Treatment of FERC Form No. 1, Attachment A to Declaration of Ronnie R. Labrato in Gulf Power's Motion.

should respect its fellow agency's authority over this issue and should grant Gulf Power's request for proprietary treatment in this proceeding.⁹

In FOIA cases, courts have held that "information which is confidential in the hands of one agency retains its protected character in the hands of agencies to which it is subsequently furnished." Grumman Aircraft Engineering Corp. v. Renegotiation Board, 425 F.2d 578, 582 (D.C. Cir. 1970) (barring disclosure of inter-governmental memoranda if another agency afforded the information in them confidential treatment). Courts have also consistently emphasized that agencies must respect the jurisdictional boundaries of other agencies. Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 173 (1962) (cautioning agencies not to "trench upon the other's jurisdiction"); see also Local 1976, United Brotherhood of Carpenters and Joiners of America v. NLRB, 357 U.S. 93, 109-10 (1958) (agencies must avoid deciding questions that properly lie within the jurisdiction of another agency); Southern S.S. Co. v. NLRB, 316 U.S. 31, 47 (1942) (agencies must not implement the statutes over which Congress has given them authority "so single-mindedly that [they] may wholly ignore other and equally important Congressional objectives"). When an agency fails to heed the warning not to "trench" on another agency's authority, courts will not afford deference to the agency's decision. See, e.g., New York Shipping Ass'n, Inc. v. Federal Maritime Commission, 854 F.2d 1338, 1363, 1365 (D.C. Cir. 1988) (refusing to defer to the Federal Maritime Commission's interpretation of labor laws and policies; stating that the Commission "should not trench unnecessarily upon the policies

⁹Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 533 (D.C. Cir. 1980) (information that is not publically disseminated and not available from another source is confidential).

of the federal labor laws,” which are not committed to its authority, and should not “create tension between the labor and shipping law obligations of carriers”); Hoffman Plastic Compounds, Inc. v. NLRB, 208 F.3d 229, 239 (D.C. Cir. 2000) (agreeing with the rule applied in New York Shipping and quoting extensively from that case).

FERC currently affords the information privileged, confidential treatment. (Exhibit 3, at 3). As a result, public disclosure in this proceeding before the Commission would jeopardize and compromise Gulf Power’s critical need to protect this information from disclosure in the public realm. The Commission must, at a minimum, defer action until FERC acts upon Gulf Power’s pending request for confidential treatment of its FERC Form 1 filing.

IV. Gulf Power’s Commercial and Financial Information Is Confidential

Under the Freedom of Information Act (“FOIA”)¹⁰ and under the Commission’s Rules,¹¹ the Commission grants confidential and proprietary status to commercial and financial information it requires a party to submit if the party demonstrates that “public disclosure is likely to cause substantial harm to [its] competitive position.” National Parks & Conservation Ass’n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974); Allnet Communication Services, Inc. v. FCC, 800 F. Supp. 984, 988-90 (D.D.C. 1992) (citing and following National Parks & Conservation Ass’n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974)) (the Commission correctly granted proprietary status to a Bell Operating Company for information that would allow those with access to it to estimate the company’s future costs

¹⁰5 U.S.C. § 552(b)(4).

¹¹47 C.F.R. §§ 0.457, 0.459.

of providing service). As discussed in Gulf Power's Motion and in its transmittal letter to FERC for its Form 1 filing that was attached as an exhibit to the Motion,¹² the concerned information is competitively sensitive and hence confidential and privileged. To further demonstrate the confidential nature of that information, attached hereto as Exhibit 2 of the Affidavit of Mr. Rodney Frame.

It is well settled that a person asserting a right to receive confidential treatment of commercial or financial information does not have to show "actual competitive harm." Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1980). Rather, for an entity to meet FOIA's "substantial competitive harm" requirement, "[a]ctual competition and the likelihood of substantial competitive injury is all that need be shown." Id. (emphasis added). Thus, in Gulf & Western, the D.C. Circuit upheld the decision of the Armed Services Board of Contract Appeal not to release a defense contractor's cost and rate data because doing so "would allow competitors to estimate, and undercut, [the company's] bids." Id. The cost and rate information was the type of information a company would not normally release to the public because doing so would cause it to suffer substantial competitive harm; thus, the information fell within the FOIA exemption Id.; see also Continental Oil Co. v. Federal Power Commission, 519 F.2d 31, 35 (5th Cir. 1975) (quoting National Parks, 498 F.2d at 770) (holding that price and sales information compelled by the agency was confidential because disclosure would damage the petitioner's sales and existing relationships by giving its competitors, purchasers, and suppliers information about its prices and supply).

¹²See note 9, supra.

Furthermore, a business that does not face competition in one particular market may meet FOIA's competitive harm requirement by showing that disclosure of the information could damage its ability to compete in another market. National Parks, 498 F.2d at 770. Once the entity establishes that disclosure is likely to injure its competitive position in an enterprise, disclosure is improper. Id. at 770-71 (“[I]t might be shown . . . that disclosure of information about concession activities will injure the concessioner’s competitive position in a nonconcession enterprise. In that case disclosure would be improper.”).

Disclosure of the confidential commercial and financial information Gulf Power submitted to the Commission would, as explained above, in Gulf Power’s Motion and exhibits, and in Mr. Frame’s Affidavit (Exhibit 2), cause it to suffer substantial competitive harm. Consequently, the Complainants have failed to adequately oppose Gulf Power’s request for confidential treatment.¹³ Therefore, the Commission must afford proprietary status to this information and withhold it from public disclosure.

V. Other Utilities Have Sought Confidential Treatment before FERC

Complainants also attempt to paint Gulf Power and its affiliate, Alabama Power Company, as being the only electric utilities who have sought to protect their competitively sensitive information contained in their FERC Form 1s. This is not the case. As evidence, FERC states on its Internet homepage that “some companies have selected certain parts

¹³To the extent the Complainants try to argue that meeting the requirements of FOIA’s fourth exemption does not preclude disclosure, their argument fails. Courts have consistently held that “when a person can show that information falls within Exemption 4, then the government is precluded from releasing it under the Trade Secrets Act.” McDonnell Douglas v. NASA, 180 F.3d 303, 305 (D.C. Cir. 1999); McDonnell Douglas Corp. v. Widnall, 57 F.3d 1162, 1164 (D.C. Cir.1995).

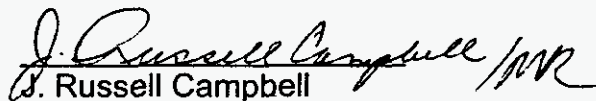
of their Form 1 Submission for *Privileged Treatment*.” (Exhibit 3, at 3). Indeed, electric utilities have launched various efforts to protect that information. Representative of these efforts is the Comments of the Concerned Reporting Companies (“CRC”) filed with FERC regarding FERC Form 1 data and attached as Exhibit 4. In that pleading, over thirty electric utilities, none of whom are affiliated with Gulf Power, sought to obtain confidential treatment of their FERC Form 1s for virtually the same reasons discussed by Gulf Power in its Motion. Likewise, attached as Exhibit 5 is a letter to FERC from the Chief Accounting Officers of most of the major investor-owned utilities requesting that FERC take appropriate action to protect the utilities’ competitively sensitive information. Accordingly, Gulf Power is by no means “tak[ing] an unusual position” in seeking to protect the confidential information contained in its FERC Form 1.

Even if Complainants’ allegation regarding the conduct of other utilities were not erroneous, it is legally irrelevant. The D.C. Circuit has explained that the fact that a company’s “competitors have not attempted to stop the disclosure [of price information] is of no significance in determining the issue” of the company’s right to confidential treatment of commercially sensitive information. McDonnell Douglas v. NASA, 180 F.3d 303, 307 (D.C. Cir. 1999) (release of line item pricing information would cause the company competitive harm because “it would permit its commercial customers to bargain down . . . its prices more effectively and it would help its domestic and international competitors to underbid it” by allowing them to calculate its actual costs; holding that the company showed, “as much as anyone can show before the event, that it [was] likely to suffer substantial competitive harm”). Therefore, even if, as is not the case, other utilities had not asserted the confidential nature of Form 1 data before FERC, this fact would have no

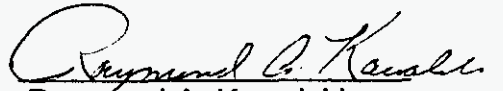
effect on Gulf Power's right to assert confidential treatment and no bearing on Gulf Power's position in claiming this Commission should afford it confidential status.

WHEREFORE, Gulf Power respectfully urges the Commission to enter an order granting its previously filed Motion for Confidential Treatment of Commercial and Financial Information and withholding the confidential information from public disclosure.

Respectfully submitted,



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DATED: September 6, 2000

CERTIFICATE OF SERVICE

I, Cassandra L. Hall, a secretary in the law firm of Keller and Heckman LLP, certify that I have served a copy of this "Motion to Strike and Reply" upon the following on this the 6th day of September, 2000:

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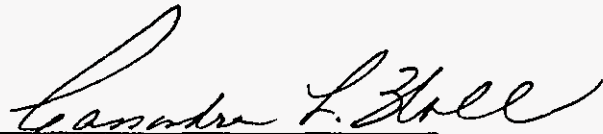
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A handwritten signature in cursive script, reading "Cassandra L. Hall". The signature is written in black ink and is positioned above a horizontal line.

Cassandra L. Hall

EXHIBIT 1

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**PRESIDENT BRUSSELS

August 9, 2000

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BY HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
Room TW-A325
445 12th St., S.W.
Washington, D.C. 20554

Re: Florida Cable Telecommunications Association; Cox Communications Gulf Coast, L.L.C. v. Gulf Power Company, PA No. 00-004

Dear Ms. Salas:

On behalf of Gulf Power Company ("Gulf Power") find enclosed for filing the original and three copies of the following documents:

- (1) Gulf Power Company's Response to Complaint;
- (2) Gulf Power Company's Motion for Leave to File a Motion for Confidential Treatment of Commercial and Financial Information; and
- (3) Gulf Power Company's Motion for Confidential Treatment of Commercial and Financial Information.

In the motions listed above, Gulf Power is requesting confidential treatment of some of the information being filed herewith pursuant to 5 U.S.C. § 552(b)(4) and 47 C.F.R. § 0.459.

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FLORIDA CABLE TELECOMMUNICATIONS
ASSOCIATION; COX COMMUNICATIONS
GULF COAST, L.L.C., *et al.***

AUG 9 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Complainants,

P.A. No. 00-004

vs.

GULF POWER COMPANY,

Respondent.

To: Cable Services Bureau

**GULF POWER COMPANY'S
MOTION FOR LEAVE TO FILE
A MOTION FOR CONFIDENTIAL TREATMENT
OF COMMERCIAL AND FINANCIAL INFORMATION**

Respondent, Gulf Power Company ("Gulf Power"), respectfully files this motion for leave to file the accompanying Motion for Confidential Treatment of Commercial and Financial Information (the "Motion for Confidential Treatment").¹ As set forth below, and in the accompanying Motion for Confidential Treatment, good cause exists for Gulf Power's filing. Both federal law and the Commission require parties seeking confidential treatment to demonstrate that disclosure of the information "is likely to cause substantial harm to the

¹Gulf Power is filing this Motion for Leave in conformity with 47 C.F.R. § 1.1407(2), which provides that "no other filings [*i.e.*, other than the response and the reply] and no motions other than for extensions of time will be considered unless authorized by the Commission."

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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AUG 9 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**FLORIDA CABLE TELECOMMUNICATIONS
ASSOCIATION; COX COMMUNICATIONS
GULF COAST, L.L.C., et al.**

Complainants,

P.A. No. 00-004

vs.

GULF POWER COMPANY,

Respondent.

To: Cable Services Bureau

**GULF POWER COMPANY'S
MOTION FOR CONFIDENTIAL TREATMENT
OF COMMERCIAL AND FINANCIAL INFORMATION**

Gulf Power Company ("Gulf Power") files this Motion for Confidential Treatment of Commercial and Financial Information pursuant to Sections 0.459 and 0.457 of the Commission's Rules¹ regarding requests that materials or information submitted to the Commission be withheld from public inspection.² Gulf Power respectfully requests the Commission to grant confidential treatment to certain information contained in the documents that Gulf Power has filed under seal for inclusion in the record of the

¹47 C.F.R. §§ 0.459 and 0.457.

²In conformity with 47 C.F.R. § 1.1407(a), Gulf Power is contemporaneously filing a Motion for Leave to File Motion for Confidential Treatment of Commercial and Financial Information.

EXHIBIT 2

**BEFORE THE UNITED STATES
FEDERAL COMMUNICATIONS COMMISSION**

FLORIDA CABLE)	
TELECOMMUNICATIONS)	
ASSOCIATION; COX)	
COMMUNICATIONS GULF COAST,)	
L.L.C., <i>et. al.</i>)	
Complainants,)	P.A. No. 00-004
v.)	
GULF POWER COMPANY)	
)	
Respondent,)	
)	
TO: Cable Services Bureau)	

AFFIDAVIT OF RODNEY FRAME

I, Rodney Frame, being duly sworn, depose and say as follows:

1. My name is Rodney Frame. I am a Principal with Analysis Group/Economics (AG/E), a consulting firm that provides economic and financial analysis for complex litigation, regulatory proceedings and corporate strategic planning. My business address is 1747 Pennsylvania Avenue, N.W., Suite 250, Washington, DC 20006. I have been employed by AG/E since January 1998. Prior to my affiliation with AG/E, I was a Vice President with National Economic Research Associates, Inc. (NERA). I was employed by NERA from 1984 to 1998. My professional experience and qualifications are summarized in my résumé, which is included as Exhibit 1 to this affidavit. Most of my work in the last several years, both at NERA and at AG/E, has involved consulting with investor owned electric utility clients on a variety of competition related matters including retail competition and restructuring issues, wholesale bulk power markets and competition, transmission access and pricing, contractual terms for wholesale service, mergers and contracting for generation supplies from nonutility suppliers. I have testified on numerous occasions on these and related topics, before the Federal Energy Regulatory Commission (FERC), state

regulatory commissions, federal and local courts and the Commerce Commission of New Zealand. I frequently speak before industry groups on competition related topics. I am familiar with many of the types of information collected and maintained by electric utilities in the course of their business and the competitive importance of that information.

2. Jurisdictional utilities such as Gulf Power Company (Gulf) are required to file Form 1 reports with FERC on an annual basis. These Form 1 filings contain a variety of financial and statistical data that in most industries would be considered to be competitively sensitive. Heretofore, the Form 1 information has generally been released to the public by FERC. However, the rationale for the public exposure of this information increasingly is becoming suspect as the industry moves toward more and more competition, in both wholesale and retail markets for electricity.

3. Although FERC has historically released Form 1 data over protests from Gulf and others in the electric utility industry, it has recently stated that it is considering changes to its Form 1 data release policies. Specifically, on September 30, 1999, in *PECO Energy Co., et. al.*, 88 FERC ¶61,330, FERC explained: "...we are not unmindful of the [competitive] concerns. In order to address these concerns, we intend to initiate, in the near future, a separate, generic proceeding to explore more generally whether confidentiality of certain Form 1 data may be appropriate in the future, and what, if any, data should be kept confidential in the future. In that proceeding, we will conduct a review to ensure that the Form 1 requirements are fair to all segments of the industry and consistent with the workings of a competitive environment. . ." Gulf has requested that FERC withhold from public release certain of the financial and statistical information in its year 2000 Form 1. FERC has not yet ruled on Gulf's request and so at this time, pending determination by FERC, the year 2000 Form 1 material that Gulf has designated as privileged and confidential in fact is not available to the public. Some of the information that Gulf now is seeking to protect at FERC also is the subject of Gulf's Motion for Confidential Treatment of Commercial and Financial Information before the Federal Communications

Commission (FCC) in this proceeding. I have been asked to address whether some of the information contained in its Form 1, as well as other information for which confidential treatment has been requested before the FCC, should be considered competitively sensitive and potentially could result in competitive harm to Gulf and its customers if it were released publicly. My conclusion is that there are several categories of information that fall into this category.

4. The information on Form 1 pages 310-311 (Sales for Resale) provides one obvious example where competitive harm could ensue from public release. Among other things, these pages identify each of Gulf's wholesale customers,¹ the quantities of electricity sold to those customers, the nature of the electricity service provided to them and the revenues received. Together this information allows the derivation of average prices charged to each customer for each service type. Entities in ordinary businesses are not required to provide such information on their customers and sales to them. Having access to such information allows Gulf's competitors to know which customers to target in their own sales efforts and what average price levels they need to beat. Information from page 332 (Transmission of Electricity by Others) also is useful in this regard because it provides the prices and quantities of transmission service that Gulf, through SWE, procured from others. Along with the information contained in pages 310-311, this will allow competitors to adjust their own competing price offers to Gulf's customers. Gulf will be harmed because, as a result of the public disclosure, it will lose sales that otherwise it would have made or will be forced to accept lower prices.

5. The information on Form 1 pages 326-327 (Purchased Power) provides another obvious example where competitive harm could ensue if it were released publicly. Virtually all generating utilities, such as Gulf and the other Southern operating

¹ Gulf along with Alabama Power Company, Georgia Power Company, Mississippi Power Company and Savannah Electric and Power Company are wholly owned operating company subsidiaries of Southern Company (Southern). Southern Wholesale Energy (SWE), another of Southern's subsidiaries, acts as agent for Gulf and the other operating company subsidiaries in the sale and purchase of wholesale energy.

company affiliates, through SWE, participate actively in wholesale electricity markets, both as sellers and as buyers. The electricity which they purchase is an input, along with energy that is produced from their own generators, into the package of services that they sell. Among other things, pages 326-327 provide information on the purchases that Gulf made, through SWE, in wholesale electricity markets. The information includes the identity of the seller, the quantity of electricity sold, the nature of the service and the payments made. Having access to such information on purchased inputs will allow vendors more easily to raise the prices that they charge for sales to Gulf (through SWE), with resulting adverse competitive impacts on Gulf (and SWE) in the downstream electricity sales markets where competition exists.

6. Another obvious example of competitively sensitive information is that contained on Form 1 pages 402-411 (Electrical Plant Statistical Data). Among other things, these sheets identify each of Gulf's generating stations and provide their size, the amount of electricity they generated in the prior year, the amount of fuel they used and the cost of that fuel. This information allows competitors to develop an estimate of the marginal costs for Gulf for different supply quantities and, along with similar information from Southern's other operating company affiliates, the marginal cost curve for the entire Southern system. Along with information about load levels (some of which is available on Form 1 page 401), having a good estimate of Southern's marginal costs will allow competitors to estimate the prices at which SWE, acting as agent for Gulf and the other of Southern's operating company affiliates, is likely to buy and sell electricity in the market. This will allow them to raise the prices that they otherwise would charge to SWE and to those that SWE might seek to sell to. Knowing SWE's costs will allow those competitors to make sales that otherwise would have been made by SWE. In either case, Gulf would be harmed.
7. Other examples of competitively sensitive information contained in Form 1 filings include that on pages 214 and 228-229. Page 214 identifies land held for future utility use including the location, cost, when it was acquired and when it is expected to be placed in service. Providing public access to this information could provide an

early signal to competitors about future locations for generating stations. It also could affect the price for purchasing adjacent parcels that might be required whether such land is used for new generating stations or other purposes (e.g., transmission lines or substations). Pages 228-229 provide information on emissions allowances including inventory levels and changes, acquisition costs and selling prices. Public release of this type of information will signal competitors about the company's strategy for complying with the Clean Air Act's Acid Rain provisions.

8. Gulf's concerns with the inappropriate disclosure of confidential information before the FCC go beyond just that which is contained in its Form 1. Gulf and other utilities compete not just to sell electricity (in which case the competition includes many entities other than traditional utilities) but also as purchasers in input markets. Some of the detailed information that supports the Form 1 tables is competitively sensitive and will likely harm Gulf if it were released. For example, the subaccount information for Account 364 (Poles, Towers and Fixtures) provides incremental investment and quantity information for each pole size by type (wood, steel or concrete). Simple division of the dollars of additions by the quantity changes will allow the computation of an average price paid by Gulf for new poles by size and category, e.g., 40 foot wooden poles. To the extent that there is only one supplier (or just a few suppliers) for any pole size/type category, then the release of the subaccount information will effectively provide the prices that the one supplier charged. The release of this information then will make it less likely that Gulf will be able in the future to purchase poles at less than the implicit prices revealed in the subaccount information because if the supplier grants a discount to Gulf then it may be forced also to grant discounts to its other customers. Moreover, knowing what Gulf in the past paid for a particular pole type could make other suppliers less likely to undercut that price significantly. If Gulf has shown a willingness to pay a certain price, there will be little benefit to a supplier from undercutting that price significantly.

-
9. The information for which confidential treatment has been requested before the FCC also includes Gulf's incremental cost of capital. Public disclosure of this information also will harm Gulf competitively. Entities that know Gulf's incremental cost of capital will be better able to estimate the value that Gulf places on any asset that it might be selling or buying or any long term contract that it might be entering into. Knowing that Gulf values a particular asset that it is seeking to purchase at \$1 million, for example, would indicate to competing purchasers that they must go above that level, but just barely, in order to beat out Gulf in the auction. Perhaps they would need to bid \$1.05 million but almost certainly they would not have to bid \$1.5 million. Knowing that Gulf values the asset at \$1 million also indicates to sellers of the asset that they need not offer Gulf any price below \$1 million. Similarly, knowing that Gulf values an asset that it seeks to sell at \$1 million signals buyers that they need not offer much more than this to acquire the asset from Gulf and signals competing sellers that they need not drop much below this level in order to beat Gulf's offer.
10. In sum, both Gulf's Form 1 as well as the other material whose protection is sought in this proceeding contain information that is competitively sensitive and the disclosure of which will harm Gulf competitively.

**BEFORE THE UNITED STATES
FEDERAL COMMUNICATIONS COMMISSION**

_____)
FLORIDA CABLE)
TELECOMMUNICATIONS)
ASSOCIATION; COX)
COMMUNICATIONS GULF)
COAST, L.L.C., *et. al.*

Complainants,

v.

GULF POWER COMPANY

Respondent,

_____)
To: Cable Services Bureau

) P.A. No. 00-004
)
)
)
)
)
)
)

AFFIDAVIT OF RODNEY FRAME

I Rodney Frame, being duly sworn, depose and say that the attached affidavit was prepared by me or under my supervision and that the statements contained therein are true and correct to the best of my knowledge, information, and belief, and I hereby adopt said testimony as if given by me in formal hearing, under oath

Signed this 6th Day of September, 2000

Rodney Frame

Rodney Frame

SUBSCRIBED AND SWORN to before me this 6 day of September 2000.

Dennis A.P. Sedgwick

Notary Public, *District of Columbia*

My Commission Expires:

My Commission Expires: December 14, 2001

EXHIBIT 3

Federal Energy Regulatory Commission

1999 Form 1 Submission Status and Database Availability – UPDATED 8/16/00!!!

The public database has been updated with 1999 filings.

As of 8/15/00 the database contains **209** 1999 filings.

Some companies have requested and received filing extensions. As more filings are submitted, the public database will be updated. The zip files are also available at: <ftp://rimsweb2.ferc.fed.us/f1allyears/>

Form 1 Viewer Instructions and Software Download

The public version of the Form 1 database is available for partial or complete download to client sites and may be viewed with the Form 1 Database Viewer software available for download from the URL listed below. The Database Viewer will permit the selection, viewing and printing of any or all Form 1 submissions for 1994 through the last filing period.

The filing deadline for Form 1 Submissions is May 1st after the filing year. For example, the 1999 Form 1 data would be available after May 1st, 2000. Some companies request a filing date extension which results in a delay of their data appearing in the Form 1 database.

BEFORE downloading the Viewer Application (see link below), PLEASE print and read this page of instructions! You will save yourself a lot of time by referring to this page FIRST, before contacting FERC with problem issues. Most problems will involve Internet communication issues which are addressed below. Of course, we make mistakes – and need to fix things on the server or with the software, so we do not mind emails, questions, and suggestions.

[Click Here to Download the Form 1 Viewer Application](#)

Downloading and Viewing the Form 1 Database

The public version of the Form 1 database is available for partial or complete download to client sites and may be viewed with the Form 1 Database Viewer. The Database Viewer will permit the selection, viewing and printing of any or all Form 1 submissions for 1994 through 1998.

The resulting Form 1 Database downloaded to the local client may be manipulated for specific reporting or analysis needs using Microsoft Visual Foxpro 6.0 (VFP 6.0) or commercially available reporting software such as Crystal Reports or others that support the VFP 6.0 database container structure.

Depending on your browser, you can either download the installation file, or run the installation from within your browser. In any event, the downloaded file is named **Form1v.exe** and can be considered the Installation Disk(s) for the Viewer Application. You must execute this file to install the Viewer Application. Follow the instructions given during the installation process. It will be easier for us to help you with problems if you use the default directory/folder names for the software. The default for the viewer is C:\F1viewer. The software should be installed on the workstation. The database may be installed on a network for multiple user access.

Once the application is installed on the client PC, it is accessed through the Start/Programs menu and is entitled Form 1 Data. There are two sub-items under this heading named Form 1 Data Download and Form 1 Data Viewer. You must first use the Download application to obtain the database. Within the download application, you should select the companies you are interested in and the filing year. (You select multiple companies by highlighting them on the displayed list. To highlight multiple companies, use the standard Windows selection technique of ctrl key/left mouse click.) You have the option of selecting all respondents (Form 1 Filers) for a particular filing year.

The download process may take a few minutes, depending on your connection speed and the number of companies requested. When requesting one or more companies, the server extracts the requested companies from our database and creates a small database with just the requested companies. This database is compressed, sent via Internet to your PC, and decompressed. All this takes some time. So, give it a few minutes before you think something is wrong.

The more companies you select, the **longer** it will take to get the data. If you want many companies, it may be quicker to download the entire database instead of selecting individual companies.

When you use the Viewer, click on ***Company Selected*** to obtain a list of companies download to your PC. Then, select the company you wish to view.

The downloaded information is **not cumulative**. When you download a new selection, the previously downloaded data is replaced by the new download. (Of course, you can always copy it to another directory if you wish to retain it.)

As an alternative, we have an FTP site where you can download a compressed (zipped) copy of the database for particular years. If you want the most current information, you might visit this site just to check the dates on the files. When the date changes, we have probably added more respondents, or made other corrections to the database. If you have problems with this, contact your computer support personnel. They know all about FTP and compressed files.

Download Problems

You should not experience much trouble downloading and installing the Viewer application on your workstation. However, the component of the viewer that downloads the database may not work properly with your workstation or network configuration. In the event that you cannot download data, it is suggested that you download the entire database for the specific year you desire from our FTP site. The downloaded file should be unzipped into the appropriate folder. Then, start the Viewer and use Options/Change DB Location to point to the database folder.

Download Problems – Potential Solutions

The Form 1 Viewer uses HTTP (to get the list of companies) and FTP Receive (to download the selected database data) and notify you of availability of updated Viewer software. These common Internet Communication Protocols may be blocked by your Internet Firewall for security reasons. This will require intervention by your computer or network support personnel. To assist in diagnosing this problem, we make available an Internet Communications Test Application – which you can download and run on your workstation just as you did the Form 1 Viewer. Please see a description of this application below under Forms Communications Test Application. Note that your workstation **only** needs to pass the HTTP send/receive and FTP Receive tests. FTP Send is not necessary for proper operation of the Form 1 Viewer.

The easiest and most effective solution is to ask your Firewall Administrator to install a rule in the Firewall permitting HTTP Send/Receive and FTP Receive from IP 208.207.43.25. This presents a minimal or non-existent security risk since all communication requests are issued by the Client (your workstation). The FERC Forms Server does not “push” unsolicited information to your workstation.

Privileged Treatment of Data

Last, but not least, some companies have selected certain parts of their Form 1 Submission for ***Privileged Treatment***. These parts are not available for public distribution pending a decision by the Commission. There will be a very light blue hyphen (-) pattern in the fields where the data would appear if not privileged. So, if you come across this, the application is not broken, but rather the data was redacted for these fields.

Problem Reporting and Assistance

If you have any problems with downloading or using the viewer application, please send an email describing the problem to form1@ferc.fed.us. In order to help in diagnosing a problem, **please attach the file F1view.log to your email**. The Viewer Application writes little notes on how it is feeling about life on your PC to this log file. If you don't attach it, we will send you a reply email asking for it. So, it just saves time for all of us if you do it first off. This file is found in the c:\F1viewer folder. If you see two files called F1view, and can't determine which is the log file, attach and forward the smaller of the two files.

Form Communications Test Application

The FERC Forms Applications use the Internet to download the Form Submission Software (FSS), provide updates to the software on the user's workstation, and allow submission of forms data to the FERC via the Internet. Forms Submission Systems (FSS) include Form 1, Form 423, Form 6, the Form 1 Viewer Application, and others that are currently in development.

To accomplish the above the user's PC communicates with an Internet server at the FERC which is dedicated to supporting the FSS. The FSS uses Internet communication protocols called HTTP and FTP.

Most respondent workstations are connected to a company network that uses Firewall technology to protect and isolate the network from the Internet. Occasionally, the company's Firewall is configured to prevent applications from communicating with foreign servers over the Internet. In these cases, the FERC Form Submission Software cannot communicate with the FERC Forms Server to obtain

software updates, for transmission/submission of completed Forms, and, in the case of Forms Data Viewer software, the download of requested database information. The Form 1 Viewer Application requires passing the HTTP and FTP RECEIVE test only. FTP SEND is only necessary for applications that FILE forms data with the FERC.

The Internet Test Application, which can be downloaded from the FERC Forms site via your Internet Browser, is used to test Internet Communications from your workstation to the FERC Forms Server to determine compatibility with FSS. It is not a requirement to use this application, you will get the same results with the Form Submission Software. However, a number of respondents find it easier to let their network support personnel use this software to test the communications functionality without having to download the entire Form Submission software. When you run this software, it just displays a screen with a checkbox beside each type of communication mode used by the Forms software, and indicates whether each one passed or failed. The software also produces a log file of its activity for review and diagnostic purposes.

You can review the Installation Manual in your Internet Browser, and if you wish, print it from your browser with the following link:

[Click Here to View the Communications Test Installation Manual in your Browser](#)

To download and install the Communications Test Application, click on the link below.

[Click Here to Download the Communications Test Application](#)

To go to the Communications Test Web Page, click on the link below.

[Click Here to go to the Communications Test App Web Page](#)

EXHIBIT 4



Central and South West Corporation

801 Pennsylvania Avenue, N.W.
Suite 352 • Washington, D.C. 20004
202-628-0886 • Fax 202-628-1038

FILED
OFFICE OF THE SECRETARY

98 APR 20 PM 4: 11

FEDERAL ENERGY
REGULATORY COMMISSION

April 20, 1998

Mr. David P. Boergers, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: FERC Form No. 1, "Annual Report of Major Electric Utilities, Licensees
and Others," Proposed Information Collection and Request for Comments,
Docket No. IC98-001-000, 63 Fed. Reg. 7777 (1998)

Dear Mr. Boergers:

Enclosed please find an original and 14 copies of comments of the Concerned Reporting
Companies (CRC), a group of investor owned electric utilities that are required to file the
FERC Form No. 1 each year, response to the above-referenced *Federal Register* notice.

Sincerely,

R. Russell Davis
Controller, Central and South West Services, Inc.

Enclosures

cc: Mr. Michael Miller, FERC Information
Services Division, ED-12.4

98 APR 20 PM 6

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

FERC Form 1, Annual Report)
of Major Electric Utilities,) Docket No. IC98-001-000
Licensees and Others)

COMMENTS OF THE CONCERNED REPORTING COMPANIES (CRC)

I. Summary of CRC Recommendations Regarding the Form 1

The Concerned Reporting Companies (CRC) are a group of investor-owned electric utilities that are required to file the FERC Form No. 1 (Form 1).¹ CRC is submitting these comments in response to the notice by the Federal Energy Regulatory Commission (FERC or the Commission), entitled "Proposed Information Collection and Request for Comments," published at 63 Fed. Reg. 7777 (1998). That notice seeks

1

The Concerned Reporting Companies are Allegheny Energy, Inc. (Allegheny Generating Company, Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company), American Electric Power Company, Inc. (Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company), Central and South West Corporation (Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company), Central Hudson Gas & Electric Corporation, Commonwealth Edison Company, Consolidated Edison Company of New York, Inc., Consumers Energy Company, Duke Energy Corporation, Entergy Corporation (Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Power, Inc., and System Energy Resources, Inc.), Florida Power & Light Company, Florida Power Corporation, Long Island Lighting Company, New York State Electric & Gas Corporation, PECO Energy Company, Puget Sound Energy, Inc., SCANA Corporation (South Carolina Electric & Gas Company, and South Carolina Generating Company), and Wisconsin Public Service Corporation.

comments on the Commission's proposal to continue requiring major public electric utilities and hydropower licensees to compile and to submit to the Commission comprehensive, detailed annual reports of their assets, operations, finances, revenues, costs, staffing, sales and other information.²

As a result of the Commission's pro-competitive policies, the regulatory status of much of the information traditionally required to be filed in the Form 1 is now causing commercial harm to those companies. The Form 1 contains large amounts of commercially sensitive and burdensome information that the Commission is requiring only one class of electricity producers -- investor-owned electric utilities such as the CRC -- to report. As the electricity market is becoming increasingly competitive, this reporting requirement is putting CRC members and others who must file the Form 1 at a competitive disadvantage, interfering with the operation of the electricity market by creating significant asymmetry and inefficiency that the Commission needs to correct.

2

The Form 1 reporting requirement applies to major public utilities and hydropower licensees as defined in the Commission's regulations at 18 C.F.R. Part 101. Part 101 defines public utility as any person (which includes companies) that owns or operates facilities within the Commission's jurisdiction under section 201(e) of the Federal Power Act. In general, this has been interpreted by the Commission as excusing from reporting a variety of state and municipal electric utilities, rural cooperatives that receive federal funding, independent power producers, exempt wholesale generators, and power marketers. This leaves investor-owned utilities, represented here by the CRC, as the primary class of entities required to submit the Form 1. CRC's concerns about Form 1 are shared by many other reporting companies.

CRC Comments on FERC Form 1
Docket No. IC98-001-000
April 20, 1998
Page 3

The Commission's reporting requirements are creating an imbalance in the marketplace that needs to be addressed at this time. CRC recommends that the Commission act now because the continued reporting of unnecessary information and public disclosure of commercially and financially sensitive information -- by just one segment of the electric market -- will significantly damage the market the Commission is trying to create, and will erode the ability of reporting companies to participate in the market on equal footing.

The Commission's reporting requirements need to be adjusted so they are as streamlined as possible, focus on information the Commission needs to do its job, avoid public disclosure of commercially and financially sensitive information, and apply equally to all participants in the marketplace. Otherwise, the reporting requirements will distort the electricity marketplace, resulting in inefficient allocation and use of the nation's energy resources.

Therefore, CRC encourages the Commission to reconsider its proposal for keeping the current Form 1 reporting requirement in place for another three years with no changes. Instead, we request that the Commission adopt changes to improve the Form 1 and management of the Form 1 data as discussed in the remainder of these comments. In particular, CRC requests that the Commission: (1) promptly begin providing

CRC Comments on FERC Form 1

Docket No. IC98-001-000

April 20, 1998

Page 4

confidentiality for the competitively-sensitive commercial and financial information included in the forms, starting with the upcoming round of Form 1's that will be filed April 30, 1998; (2) seek only one year reauthorization of the Form 1 by the federal Office of Management and Budget (OMB) for purposes of this current Paperwork Reduction Act (PRA) proceeding, signaling to OMB that the Commission intends to use that year to revise the form; (3) use that year to minimize the quantity and detail of information reported in the Form 1, streamlining the form to the maximum extent possible; (4) improve the electronic software for filing the Form 1 so it is much more efficient, can be used on all types of personal and business computers, and is much more user friendly than the current software, and (5) collect the reduced, streamlined information from all participants in the marketplace so no one set of participants bears an asymmetric burden.

In section V of these comments and in Attachments 1 and 2, CRC has identified pages of the Form 1 that are of primary concern, though we encourage the Commission to evaluate the form in its entirety. Attachment 1 identifies information that is commercially sensitive or raises security concerns and so merits confidential treatment. Many of the pages listed in Attachment 1, and those listed in Attachment 2, also appear unnecessary. Either those pages should be deleted or, at a minimum, the information they elicit should be collected far more selectively, for example in the form of company-wide totals or in individual merger or rate proceedings if that is where the information is needed.

II. The PRA Requires the Commission to Review its Filing Requirements to Address the CRC's Concerns Now that Form 1 is up for Reauthorization

During the past several years, representatives of CRC and other investor-owned electric utilities have recommended a number of times that the Commission undertake a thorough review of its overall electric utility reporting requirements.³ We have expressed concerns about the volumes of data required to be reported in the Form 1 and about the Commission's continued practice of publicly disclosing the commercially and financially sensitive data contained in the Form 1. We have noted that Form 1 puts reporting utilities and licensees at a competitive disadvantage compared with companies not subject to the same reporting requirements, both because of the continued disclosure of confidential business information and the unequal reporting burden.

3

For example, speaking for investor-owned electric utilities, the Edison Electric Institute (EEI) filed initial comments on the Commission's transmission open access and stranded cost rulemaking several years ago, urging the Commission expeditiously and systematically to review the information currently required to be reported by investor-owned utilities, to determine what data could be eliminated or kept confidential and used only by the Commission for oversight purposes. Initial Comments of the Edison Electric Institute, Docket Nos. RM95-8-000 and RM 94-7-001, August 7, 1995, pp. V-6 - V-7. In reply comments in that proceeding, EEI reiterated its request, expressing concerns about the need for more streamlined and competitively-neutral reporting requirements. Reply Comments of the Edison Electric Institute, October 4, 1995, pp. III-25 - III-26.

During this same time frame, a number of individual companies requested that the Commission treat some or all of the information in their individual Form 1 as confidential, expressing concerns about the commercial and financial sensitivity of the information. For example, Consolidated Edison Company of New York and Central Hudson Gas & Electric Corporation filed such requests in 1995; Long Island Lighting Company, Niagara Mohawk Power Corporation, and Pennsylvania Power & Light Company did so in 1996; and Public Service Electric and Gas Company did so in 1997.

In Order No. 888, the Commission acknowledged the industry's concerns but indicated that it would review the information reporting requirements over time, in separate proceedings, to ensure that "they are needed, fair to all segments of the industry, and consistent with the workings of a competitive environment."⁴

Now that the Form 1 is up for reauthorization by OMB under the PRA, CRC recommends that the Commission take steps to streamline the form and to handle commercially and financially sensitive data as confidential. In fact, one of the primary purposes of the periodic review of agency reporting requirements under the PRA is to reassess whether the information being collected is still needed, and if so whether there is any less burdensome or competitively harmful way of collecting it. The PRA requires federal agencies, among other responsibilities, to "reduce information collection burdens on the public" and "with respect to privacy and security ... implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency." 44 U.S.C. §§ 3506(b)(1) and (g). Therefore, this proceeding under the PRA is

4

"Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities; and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities," 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), preamble section IV.K.

an ideal context for the Commission and its staff to consider the changes CRC is suggesting to the Form 1 and the Commission's handling of data reported in the form.

III. The Generation and Sale of Electricity Are Now Competitive

The Commission's pro-competitive policies implementing the Energy Policy Act of 1992 (EPAAct)⁵, as described in Orders 888 and 889⁶, have created fully competitive wholesale markets. Moreover, retail competition is moving apace. All states and the District of Columbia either have conducted proceedings to address electricity market issues, in particular at the retail level, and already 17 states have set time frames within which they expect to have retail competition.

Additionally, new electric generating and marketing companies are entering the marketplace, and they and existing companies are looking for ways to provide new services and to serve new markets. As of the end of 1996, there were more than 4,000

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Public Law No. 102-486, October 24, 1992.

6

Order No. 888, see Footnote 4 above; *orders on rehearing*, Order No. 888-A, 62 Fed. Reg. 12,274, FERC Stats. & Regs. ¶ 31,048 (1997), Order No. 888-B, 81 FERC ¶ 61,248 (1997), and Order No. 888-C, 82 FERC ¶ 61,046 (1998). Order No. 889, "Open-Access Same-Time Information System and Standards of Conduct," 61 Fed. Reg. 21,737, FERC Stats. & Regs. ¶ 31,035 (1996); *orders on rehearing*, Order No. 889-A, 62 Fed. Reg. 12,484, FERC Stats. & Regs. ¶ 31,049 (1997), and Order No. 889-B, 81 FERC ¶ 62,253 (1997).

non-utility generating projects in the United States. Of these, over 2,200 sold power to utilities. For calendar year 1996, 26 percent of new capacity came from non-utility generation, and non-utility generation accounted for 11 percent of the nation's power. Similarly, power marketers, almost non-existent six years ago, have experienced explosive growth since then. There are now more than 400 power marketers registered to participate in the nation's wholesale markets alone, and approximately 100 of them already are active in those markets. In 1997, power marketers sold nearly 1.2 billion megawatt hours of electricity at wholesale, perhaps 40 to 50 percent of the wholesale market, and enough to power 124.5 million homes for the year. Among suppliers who sell power to ultimate consumers, there are almost 2,000 municipal electric utilities and more than 900 electric cooperatives in addition to 200 investor-owned utilities.

CRC's members face robust, vigorous competition in the generation of electricity and in sales at wholesale and increasingly at retail. Yet, in general, only investor-owned utilities are required to collect and submit to the Commission the volumes of data, much of it commercially sensitive, reported in the Form 1. The Commission does not require competitors who provide the same services to collect and report this information. Nor does the Commission give the reporting utilities or the general public equal access to information about the internal operations of the utilities' competitors, suppliers, and others with whom the reporting utilities must do business. This enables the reporting companies'

competitors, suppliers, and customers access to details about the companies' costs and operations that create asymmetry and inefficiency in the electricity market and harm competition.

IV. A Change in the Commission's Reporting Requirements Is in the Public Interest -- It Will Promote Fair, Efficient Competition in the Market for Electricity

In order for the Commission to achieve its goal of creating and supporting competition in electric power markets, the Commission's information reporting requirements must be guided by two fundamental economic principles: symmetry and efficiency. Symmetry means that all competitors should have the same reporting obligations, so all competitors bear the same burdens and face the same competitive pressures. Efficiency means that information gathering should be done so the benefits to society of making the information available exceed the costs both to government and the entities subject to the requirement.

Furthermore, these two principles need to be applied together. Pure symmetry alone is not enough -- certain commercially and financially sensitive information simply should not be publicly disclosed because access to that information by competitors allows the competitors to game the system, seeking just to match a competitor's marginal costs

and operations rather than trying to offer the best price possible for their own services. Moreover, symmetrical reporting of unnecessary data imposes inappropriate costs on both the reporting community and the Commission, which must manage the data. Similarly, minimizing the reporting burden in the interest of efficiency alone is not enough, if only one class of competitors bears that burden and the associated costs.

In a competitive marketplace, buyers and sellers place significant economic value on information. Key information about amounts of goods and services demanded and supplied, and about buyer and seller prices, are the essential underpinnings of a functioning market, and that type of information is readily available in the marketplace. However, public disclosure of information about company internal operations and costs of production is not needed for the market to function well. On the contrary, a truly competitive marketplace spurs all participants to press for the most efficient operations and lowest costs possible, uncertain what others may be able to accomplish, rather than merely matching or gaming another's known internal practices and costs. Such internal corporate information rightly tends to be closely guarded by competitive industries.

Yet the Commission currently requires investor-owned utilities to report sensitive information -- about company assets, finances, revenues, costs, operations, staffing, and performance -- that allows competitors, suppliers, and even customers inappropriately to

CRC Comments on FERC Form 1
Docket No. IC98-001-000
April 20, 1998
Page 11

affect and game the electricity marketplace. By allowing the marketplace to continue to operate with such asymmetry and inefficiency, the Commission itself is undermining the optimal operation of that market, contrary to the public interest.

Optimal information collection in a competitive market can be achieved by not requiring utilities to report internal operation and cost information -- this would save the reporting companies the burden of collecting and reporting the information, save the Commission from having to manage it, and ensure confidentiality. Alternatively, if needed for regulatory purposes, such commercially sensitive information needs to be accorded confidentiality, to avoid giving it to competitors and others who should not have access to it, and comparable information needs to be collected from all participants in the marketplace in the interest of symmetry.

Federal courts have long recognized the marketplace implications of inappropriate collection and disclosure of information from companies. As the Supreme Court said in *American Column & Lumber Co. v. U.S.*, 257 U.S. 377 (1921), at 410, "[g]enuine competitors do not make daily, weekly, and monthly reports of the minutest details of their business to their rivals ... [or] submit their books to the discretionary audits, and their stocks to the discretionary inspection, of their rivals."

A utility's competitors and suppliers have an inappropriate advantage if they are able to structure and price their services on the basis of other companies' transactions, costs, and operations, rather than on the basis of their own costs and abilities. When "suppliers with whom the utilities have dealt have come to purchase negotiations armed with full information about the power companies' most recent prices, ... bargaining has generally begun at those prices and moved upward." 48 *Geo. Wash. L. Rev.* 671, 689 (1980), *cited with approval in Western Fuels-Illinois, Inc. v. ICC*, 878 F.2d 1025 (7th Cir. 1989), at 1030. Similarly, suppliers may be unwilling to negotiate, and the flexibility of contracting parties may be severely reduced, if they are aware that any concessions will be made public. In addition, as the Commission itself has recognized in the Form 580 context, the public disclosure of commercial and financial information can pose legal problems for any utility contractually obligated not to disclose such information.⁷ The existence of such contractual confidentiality requirements is premised on a recognition by all parties that public disclosure of such information could compromise their position vis-a-vis their competitors.

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Instructions to the Form 580, section VI, recognize that reporting utilities may have contract confidentiality clause constraints on the public disclosure of coal mine and rail transportation cost data. The instructions invite reporting utilities to identify such constraints and seek confidential treatment of the data under the Commission's regulations at 18 C.F.R. § 388.112.

For these reasons, especially in response to the electric industry's move to competition, the Commission needs to adjust its reporting requirements and handling of information: (1) to provide confidential treatment for the commercially and financially sensitive information companies now collect and report to the Commission on Form 1 and other forms; and (2) to minimize the reporting burden. For the market to operate fairly and efficiently, the Commission's rules regarding information disclosure need to be carefully crafted so as not to introduce extraneous elements to the buy-sell decisions that are the foundation of competition. Also, the rules need to be the same for all market participants. Rules that require disclosure by only one set of market participants will distort the outcomes, resulting in inefficient allocation and use of resources.

Requiring investor-owned electric utilities to disclose commercially sensitive information to the public distorts competition. Just as we would not ask, for example, General Electric or Ford Motor Company to disclose information about its internal operations and costs to others, we should not ask electric utilities that are being required to compete with other companies to do so. If competition is not symmetrical and efficient, everyone loses -- customers, who do not get the benefit of fair competition; reporting utilities, who are not able to compete effectively; and the Commission, whose goal of effective, efficient competition is undermined.

To address these concerns, CRC encourages the Commission to perform an extensive review of its reporting requirements and to modify the forms to eliminate or modify reporting and handling of unnecessary and competitively-sensitive information. The Commission should review each of its electric utility reporting requirements as soon as possible, especially when those requirements come up for PRA review as in this case, to adjust to the changing circumstances in the electric utility industry.

V. Data of Particular Concern in the Form 1

According to the Commission's "Guide to Public Information at the Federal Energy Regulatory Commission," May 1996, p. 34, the Form 1 is filed by about 200 privately owned electric companies. The report is 140 pages long, and requires a variety of corporate information, financial statements, supporting information, and operating data for the prior calendar year. Companies are required to file it electronically and on paper by April 30 each year. Another 20 or so privately owned electric companies, whose sales exceed 10,000 megaWatt (MW)-hours but do not exceed the thresholds for the Form 1, file a shorter 58-page version called Form 1-F on March 31 each year. They also must file the report electronically and on paper.

The general corporate information required by Form 1 includes information about officers, directors, and shareholders. The financial information includes a balance sheet, income statement, retained earnings statement, and cash flow information. The supporting information includes detailed lists of electric plant investments, deferred taxes, stock, debt, operating revenues, sales by rate schedule, power purchased for resale, transmission, research projects, numbers of employees, and distribution of salaries and wages, among other information. The operating data include monthly peak power production, output, and information about electric, hydro, and pumped storage generating plant, transmission lines, substations, distribution meters, transformers, and environmental protection facilities.

In Attachments 1 and 2, we are identifying key Form 1 pages of concern to CRC. Attachment 1 identifies pages that contain highly detailed, internal, commercially sensitive information about company operations and costs that a company normally would not share with others, especially competitors, suppliers, and key customers. Attachment 2 lists a number of additional pages whose purpose is not clear. Many of the pages listed in both attachments require very detailed reporting of information that is burdensome to track and compile. We hope that many of the pages listed in the two attachments can be eliminated or vastly simplified. In addition, we request that the Commission provide confidential treatment for any data listed on Attachment 1 that the Commission decides to continue to

collect. We recommend that the Commission focus on these pages, which we will discuss further in the next several paragraphs, grouped by subject. At the same time, we recommend that the Commission review the other pages in Form 1 -- more than two-thirds of the form -- to see if any of them also can be eliminated or simplified.

One area of particular concern is the Commission's requirement to report on sales, purchases, and transmission of electricity, especially when companies must divulge information about specific customers or transactions. Such information gives a competitor an open book on a reporting company's primary sources of business and revenues. It also can negatively affect a reporting company's ability to negotiate and administer contracts with suppliers and customers. The information appears unnecessary, especially to report on an ongoing basis and to disclose to the public. If a given customer is concerned about the terms of its purchase of electricity under a rate schedule today, it can raise those concerns with the supplying company or the Commission at any time. Furthermore, at the wholesale level today, and increasingly at the retail level, the customer can shop around for alternatives. In fact, some of the information about customer transactions is commercially sensitive not only for the supplying utility but also for the customer itself, which often does not want its competitors to know its electric operating costs and profile. The sensitive information about transactions includes information about:

- sales of electricity by rate schedules, including revenues, amounts of power sold, numbers of customers by class (page 304);
- sales for resale, identifying individual customers taking electricity for resale, the rate schedule under which they are taking the service, the nature of the service (*e.g.*, short term firm, long term firm), and average monthly billing, amounts sold, and revenues for each customer (pages 310-311);
- power purchases, listing each company from which power was purchased, the nature of the transaction, the rate schedule, average monthly billing demand, amounts purchased, and amounts paid (pages 326-327); and
- transmission of electricity by and for others, including (a) each entity from which and to which energy was transmitted, the nature of the transaction, and amounts of power transmitted (information that is likely to be reported elsewhere as needed for system reliability purposes and that should not have to be reported again on Form 1) and (b) revenues (pages 328-330 and 332).

In addition, CRC's members are particularly concerned about information that discloses their operating capabilities, costs, and practices. Sales of electricity in a competitive marketplace are going to be driven to a very large extent by a company's variable costs. Once capital expenditures are made in generating, transmission, and distribution facilities, those expenditures are relatively fixed and need to be recovered as best a company can. Operating expenses are more often within a company's ability to control year to year, and if a company can recover them plus some portion of capital expenses at a given price of electricity, a transaction at that price may make economic sense to the company. Salary information also can inappropriately be used in other contexts such as labor actions and takeover bids. Thus, information about a company's

operating options, costs, and practices is extremely sensitive. The sensitive information required by Form 1 in this category includes:

- electric energy production figures, including total energy produced by source, monthly peak and total energy, power exchanges, wheeling power received and delivered (page 401);
- steam electric plant operating statistics, including for *each* plant the year constructed, capacity, peak demand, plant hours, net generation, average number of employees, cost per unit of installed capacity, a breakdown of production expenses, quantity of fuel used, heat content, cost, and cost per unit energy (pages 402-403) – a major area of concern;
- large hydro generating plant statistics, pumped storage plant statistics, and small generating plant statistics, listing the same types of information as for steam electric plants discussed in the preceding paragraph (pages 406-407, 408-409, and 410-411) – again, a major area of concern;
- electric operation and maintenance expenses, broken down into expenses for generation (by type of plant), transmission, distribution, customer accounts, customer service, sales, and administration by type (pages 320-323);
- salaries and wages, broken down by operation, maintenance, production, transmission, distribution, customer accounts, sales, and administration (pages 354-355); and
- environmental protection expenses, broken down into depreciation, labor, fuel, replacement power, taxes, administrative, and other (page 431).

CRC members also have expressed concern about having to divulge detailed information about company assets and research and development initiatives. Such information tells a competitor precisely where a company is dedicating its capital resources, both now and in the future, and indicate new services it may make available.

The information also tells a competitor exactly what a company's sunk costs are, showing how constrained a company may be in setting prices in the long run. The future facility plans also are sensitive because they can lead to speculative effects on the prices of sites. Some of this information, such as detailed reports about individual transmission facilities and substations, is burdensome to compile and report. Public disclosure of the transmission and substation information also raises concerns about transmission system security, and the public does not need such information. Asset and research information of concern on the Form 1 includes:

- amounts of investments in each type of generation, transmission, and distribution facility a company owns, and additions, retirements, adjustments and transfers to such facilities during the year (page 204-207);
- depreciation and amortization of electric plant, including accumulated depreciation (pages 219 and 336-337);
- projects under construction and the Construction Work in Progress balances for each (page 216);
- the location of land and property rights for future electric plant and the dates it is expected to be used (page 214);
- research and development expenses for each project, broken down into generation by type, transmission, distribution, environment, electric, and other (pages 352-353);
- transmission line and substation information, including for each line or substation information about location, size, capacity, number of circuits or transformers, type and size of conductors, spare transformers, conversions apparatus, special equipment, and line costs and expenses (pages 422-423 and 426-427); and

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- environmental protection facilities, including the cost of each facility and changes in costs, broken down by type of facility (page 430).

Regarding the environmental information mentioned above and Clean Air Act (CAA) allowance information collected under pages 228-229, there is no need to collect this information from an environmental compliance perspective. The focus of U.S. environmental law is to set standards that companies in an industry must meet, not to specify the internal mechanism for achieving those standards. The U.S. Environmental Protection Agency (EPA) and state counterparts set the standards and enforce compliance, and to the extent they need information about those matters they gather it directly. For example, information about the CAA allowances already is reported to EPA. Form 1 environmental reporting is both unnecessary and duplicative.

CRC members also have raised concerns about other pages within the Form 1. See, for example, Attachment 2. So CRC encourages FERC to undertake a comprehensive review of the form.

VI. Relief Requested

A. The Commission Should Promptly Begin Treating the Information Identified in Attachment 1 as Confidential

As long as the Commission continues to collect the commercially and financially sensitive information identified in Attachment 1, CRC requests that the Commission treat that information as confidential business information (CBI) not subject to public disclosure. Furthermore, if a reporting company views other information contained in the Form 1 as CBI, the Commission should honor such confidentiality requests when submitted by companies in filing the Form 1 and other electric forms. If the Commission needs to collect such information, whether from selected companies or from all companies, the Commission should take great care to avoid the public disclosure of the information, to avoid competitively disadvantaging the reporting companies and unbalancing the market.

The Commission has both the authority and the responsibility to manage the information as confidential under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), the Trade Secrets Act, 18 U.S.C. § 1905, the PRA, and the Commission's related confidentiality regulations at 18 C.F.R. § 388.112.

Though FOIA generally requires federal agencies generally to disclose their records to the public, the statute contains a number of important exemptions. 5 U.S.C. § 551(b). Of particular relevance is exemption b(4) for trade secrets and privileged or confidential commercial and financial information. Also potentially relevant are exemptions b(3), information specifically exempted from disclosure by statute where the statute leaves no discretion for disclosure or establishes particular criteria for withholding the information, and b(6), personnel files, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Under exemption b(4), trade secrets can consist of any formula, pattern, device, or compilation of information used in a business that gives the business opportunity to obtain an advantage over competitors who do not know or use it. *Restatement of Torts* § 757, comment b (1938). FOIA expert James O'Reilly says the basic elements of a trade secret are secrecy (including lack of general knowledge about the information) and the use or opportunity to use the information in one's business. Privileged commercial or financial information, such as information covered by the attorney client privilege, attorney work product privilege, or a self-evaluative privilege, also is exempt. *Federal Information Disclosure, Second Edition*, James O'Reilly, Lawyers Cooperative Publishing Co., June 1996, chapter 14, pp. 12-13, 23-25 (O'Reilly).

If a record does not qualify as a trade secret or privileged, it can still qualify for exemption as confidential commercial or financial information. Relevant criteria are the prospect of substantial harm to the competitive position of the data submitter, or the likelihood that disclosure would impair future data gathering by the government. *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). To quote O'Reilly, a "likelihood of harm, not a certainty, is required. The existence of competition must be actual, though the particular competitor who would benefit need not be established. In economic terms, the harm is a misalignment of economic position which results from redistribution of the asset of information. The relationships among parties would change as the information changed hands." O'Reilly, chapter 14, p. 39.

Courts have held that various types of commercial or financial information can be covered by exemption b(4): short term marketing strategies, market positions, trade sources, customer names, individual customer transactions, high profit activities, profit margins, pricing information, plant employment statistics that effectively disclose plant staffing and equipment use, inventory, and individual employee salaries. See, e.g., *Board of Trade v. FTC*, 627 F.2d 392 (D.C. Cir. 1980), and *Braintree Electric Light Dept. v. Department of Energy*, 494 F.Supp. 287 (D.D.C. 1980). These are just the types of information that CRC members currently are required to submit on the Form 1

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and other Commission reporting requirements and that CRC is asking the Commission to treat as CBI. Continued disclosure of such information will create an inappropriate asymmetry in the electricity marketplace by giving commercially valuable information to companies that compete with or are suppliers or customers of the reporting utilities, creating an imbalance in the market.

The Trade Secrets Act specifies that officers and employees of the United States are subject to fines or imprisonment for divulging information that "concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, ... [or] corporation" except as authorized by law. 18 U.S.C. § 1905. The Act thus imposes a direct obligation on agencies and their staff to protect CBI.

The PRA, in part, directs federal agencies to minimize the paperwork burden resulting from the collection of information for the federal government, and to ensure that the collection and dissemination of information is "consistent with applicable laws," such as FOIA and the Trade Secrets Act. 44 U.S.C. § 3501. Agencies are required to evaluate the need to collect information, eliciting comments on the

relevance of the information to the agency's functions and the burden on the regulated community. 44 U.S.C. § 3506.

The agencies must seek approval of their information reporting requirements at least once every three years from OMB. 44 U.S.C. § 3507. OMB is responsible for reviewing and approving the agency information collection activities, and is charged with developing policies, standards, and guidelines on "privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies." 44 U.S.C. § 3504(g).

The PRA imposes the same responsibility for careful management of data on other agencies as the agency that collects the data. "All provisions of law (including penalties) that relate to the unlawful disclosure of information apply to the officers and employees of the agency to which the information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information." 44 U.S.C. § 3510(b)(2).

When confidential treatment of information is warranted, an agency has several options for avoiding competitive harm to the reporting business. The agency can provide confidential treatment to an entire form, using the form for its own internal

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regulatory or statistical purposes, and releasing only consolidated information or analyses that do not disclose CBI to the public. This approach is often used by statistical agencies, such as the Energy Information Agency (EIA) at the U.S. Department of Energy (DOE), or when so much of a form is CBI that it is impractical to segregate confidential from non-confidential information. A second option is to disclose only "reasonably segregable" portions of a record after deletion of the CBI exempt portions. 5 U.S.C. § 552(b). The Commission's regulations provide for this option by directing reporting companies to file copies of their reports from which confidential information has been deleted. 18 C.F.R. § 388.112(b)(1)(iii). A third option exercised by some state utility commissions is to limit disclosure of CBI through a protective order.

The U.S. Supreme Court has held that the owners of commercially sensitive information are entitled to certain protections including judicial review under the Trade Secrets Act and the Administrative Procedure Act. *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979). These protections have been reinforced by Executive Order No. 12,600, 52 Fed. Reg. 23781 (1987), which requires all Executive Branch agencies to provide parties submitting confidential commercial information with notice and due process in managing the information. If an agency should determine that the confidential protection of information a company has identified as CBI is not warranted, then the

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agency must notify the person or company who submitted the information before disclosing it, allowing that person or company to seek review of that decision under the Administrative Procedure Act and other applicable law.

These legal requirements are compelling reasons for the Commission to treat the information we have identified in Attachment 1, and any other information reporting companies may identify as CBI, as confidential. We request that these comments be treated as an expression of the views of our members that: the data we have identified in Attachment 1 are proprietary commercial and financial information; but for the collection and dissemination of this information by the Commission (and in some cases other agencies), it would be held by our members in confidence; and if the Commission continues to release the information, such action will cause our members substantial harm.⁸ We hope that this provides the Commission with sufficient basis under its regulations to rely on these comments as substantiating the need to treat the data we have identified in Attachment 1 as confidential. In any case, if the Commission should

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CRC and its members are taking steps to have commercially and financially sensitive information that is reported to other agencies in addition to the Commission also treated by those other agencies as confidential. For example, on behalf of its members, EEI has recently filed comments with the EIA asking them to treat similar data as confidential, in response to a notice published at 63 Fed. Reg. 1960 (1998) requesting comments on EIA's confidentiality policy. In addition, a number of investor-owned electric utilities have requested state utility commissions to provide confidentiality, in some cases successfully, in others not successfully specifically because "the Commission is still publicly disclosing the information."

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receive requests in the future to release any of the information, it would still need to elicit the submitting companies' views under its regulations before releasing the information. 18 C.F.R. § 388.112(d).

Either the Commission should treat the listed pages (or Form 1 in its entirety) as confidential, or the Commission should allow reporting companies to file redacted copies of the Form 1 from which CBI has been deleted for public disclosure. If helpful, to assist the Commission in providing confidentiality for such information, EEI has indicated to CRC that it would be willing to compile and analyze the information for disclosure to the public in a format that would not disclose commercially sensitive information -- EEI already performs such a function in providing analyses of statistical information on the overall electric utility industry to its own members and the public.

B. The Commission Should Seek Only a One-Year Reauthorization from OMB

This proceeding has arisen because the Commission needs to obtain reauthorization under the PRA from OMB every three years for each information collection requirement the Commission imposes. The PRA requires federal agencies to reevaluate their information reporting requirements by taking public comments on the

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requirements and submitting those comments along with copies of the agency forms and other background information to the OMB.

CRC encourages the Commission to signal to OMB in seeking reauthorization for the Form 1 that the Commission intends to make changes in the form in the coming year as discussed in the following section C. We also encourage the Commission to seek reauthorization of the Form 1 for just one year, rather than the current proposed three years, to place a deadline on proposing changes to the Form 1. That subsequent PRA review process would give the Commission a means to elicit and address public comments on proposed changes to the Form 1, which the Commission and the industry would first have identified.

The leading purpose of the PRA is to "minimize the paperwork [*i.e.*, reporting] burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local, and tribal government, and other persons resulting from the collection of information by or for the Federal Government." 44 U.S.C. § 3501. The Act directs federal agencies to "manage information resources to reduce the information collection burdens" (*id.* § 3506(b)(1)) and directs the OMB to "minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected." *Id.* § 3504(c)(3). Furthermore, the Act sets a goal of a

"Governmentwide reduction of information collection burdens by at least 10 percent during each of fiscal years 1996 and 1997 and 5 percent during each of fiscal years 1998, 1999, 2000, and 2001." *Id.* § 3505(a)(1). OMB regulations under the Act require agencies to demonstrate that they have "taken every reasonable step to ensure that the proposed collection of information ... [i]s the least burdensome necessary ..." 5 C.F.R. § 1320.5(d)(1).

As the Act recognizes, the reporting burden involves not just preparing and filing a report, but also: reviewing the reporting requirements; adjusting business practices to collect the information; acquiring, installing, and using technology for capturing and managing the information; searching data sources; preparing forms; reviewing and editing the forms; transmitting them; and answering further questions about the information submitted. Furthermore, when the information being reported is commercially sensitive, it has substantive impacts on the ability of the reporting company to conduct its business, retain customers, negotiate contracts, honor past commitments, and compete effectively in the market. Taken together, these burdens are real and substantial. No company operating in a competitive environment can take them lightly.⁹

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EEI recently surveyed its member companies on how many hours it currently takes them to prepare Form 1 for their companies each year. Sixty-eight companies responded. The average time spent preparing the forms was 1,337 hours -- 120 hours more per company than the Commission's estimate. Also, using the Commission's estimate of the cost this represents, at \$52.63 per hour, the average member company spends over \$70 thousand a year on this process, six thousand dollars

C. The Commission Should Identify Form 1 Data That Can Be Eliminated or Reduced

CRC urges the Commission to review Form 1, and the Commission's other electric utility reporting requirements, searching for the best ways to simplify the collection and handling of information the Commission needs to perform its regulatory responsibilities. We recommend starting with the information identified in Attachments 1 and 2 to these comments. Attachment 1 identifies pages that require reporting of information that is commercially sensitive and in many cases burdensome to prepare. Attachment 2 identifies pages that appear unnecessary and again in many cases are burdensome to prepare.¹⁰ By deleting reporting requirements in these areas, the Commission could achieve positive results by addressing confidentiality concerns and reducing the reporting burden.

To the maximum extent possible, CRC requests that the Commission not collect information unless the Commission truly needs the information to perform its statutory responsibilities -- taking into account the changing nature of those responsibilities as generation and sale of electricity move to a competitive market. We would ask a basic question: In light of competition in the generation and sale of electricity, what minimum

more than the Commission's estimate.

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For example, the miscellaneous deferred debits and accumulated deferred income taxes information reported on pages 233 and 234 is extremely detailed information that requires a lot of company staff time to track and compile for the Form 1. But the information appears unnecessary.

information does the Commission actually need to accomplish its responsibilities under the Federal Power Act (FPA), recognizing that those responsibilities are changing from regulating the rates of reporting companies to ensuring efficient competition in the marketplace for electricity?

Our goal in raising this question is not in any way to impede the Commission's ability to do its job under the FPA. On the contrary, our goal is to encourage the Commission to rethink its role as moves the industry away from government rate regulation toward competitive market regulation, and to look for ways to streamline the reporting process. In evaluating the need for the information, the model should be a competitive marketplace, and the focus should be on information needed to ensure that the marketplace functions efficiently and rules applied to one participant apply fairly to all.

We are confident that taking such a fresh look at the current reporting requirements can lead to a significant reduction in the overall quantity of information that needs to be reported, especially commercially sensitive information. Not only would this address the commercial sensitivity of the information, it also would save reporting companies and Commission staff the burden of collecting, reporting, and managing the information.

As for the information the Commission demonstrably needs to collect, we ask the Commission to collect it on an as-needed, when-needed basis. For example, if information is needed for rate approval purposes, we recommend that it be collected from individual companies in the context of a rate proceeding, rather than from all companies on a regular, periodic basis such as the current requirement to file Form 1 annually.

D. The Commission Should Vastly Improve the Software Currently Used to File the Form 1 Electronically

The format of the software the Commission requires reporting companies to use in filing the Form 1 is very cumbersome and difficult to use. It often requires a special, dedicated computer and cannot generally be used on typical work-station oriented business computers. Furthermore, it is awkward to use for data entry and printing the Form 1 report. CRC requests that the Commission allow use of more standard software programs, such as LOTUS or EXCEL, rather than the DOS-based software the Commission now requires companies to use. More flexible software would reduce the reporting burden by making it easier to enter data, copy from other sources to the Form 1 file, and complete the Form 1 report each year. Some state commissions, such as the New York Public Service Commission, already have taken steps to allow use of such standard, commercially available software programs. This has yielded substantial savings of time and effort that we would like carried over to the Form 1.

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E. The Commission Should Take Steps Necessary to Impose Equal Reporting Requirements on All Participants in the Market

CRC requests that the Commission collect the same streamlined information from other participants in the marketplace for electricity -- including municipalities, public power districts (PUDs and PPDs), state projects, federal projects, rural electric cooperatives, independent power producers, and electricity marketers -- as the Commission ultimately collects from investor-owned utilities, so that the reporting burden is borne equally and in a competitively neutral manner by all participants in the marketplace. We believe that the Commission has the authority to level the playing field in this way using its general investigative authority under sections 309 and 311 of the Federal Power Act (FPA).

VII. Contact Person

The person to contact for further information or mailings regarding these comments is: R. Russell Davis, Controller, Central and South West Services, Inc., P.O. Box 21928, Tulsa, OK 74121-1928, (918) 594-2065.

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VIII. Conclusion

In closing, CRC appreciates the opportunity to submit these comments. We request and urge the Commission: (1) promptly to begin treating the commercially and financially sensitive information we have identified in Attachment 1 as confidential; (2) to seek only one-year reauthorization from OMB of the Form 1 in its current state; (3) to use this time period to identify ways to minimize and streamline the reporting burden by eliminating unnecessary pages and simplifying the information being reported; (4) to improve the electronic software for filing the Form 1 so it is much more efficient and user friendly than the current software, and (5) to apply the same ultimate reporting requirement to all participants in the market.

FERC FORM 1
PAGES FOR WHICH CONFIDENTIAL TREATMENT IS REQUESTED.

Page	Title	Competitively Harmful Info.	Burdensome to Prepare	Comments
204-207	Electric Plant in Service	X		Provides plant refurbishment history. If only one nuclear plant, that individual plant gross book value can be derived.
214	Electric Plant Held for Future Use	X		Can reveal business plans to competitors and strategy for future plant locations. Can affect cost of adjacent real estate purchases.
216	Construction Work in Progress - Electric	X	X	It is a window to strategic planning by requiring the disclosure of new capital investments.
219	Accumulated Provision for Depreciation of Electric Utility Plant	X		If only one nuclear plant that individual plant net book value can be derived.
228-229	Allowances	X		Discloses emission allowances strategy to competitors. Contracts between buyers/sellers of emission allowances are confidential.
304	Sales of Electricity by Rate Schedules	X		Aids competitors by providing competitive level of detail.

Page	Title	Competitively Harmful Info.	Burdenome to Prepare	Comments
310-311	Sales for Resale	X	X	Provides highly competitive information by listing names of customer (column a), actual demand (columns e and f), and revenue (columns h, I, and j). Knowledge of this data can be used by competitors to calculate a utility's average rate for resales to customers. Competitors can develop marketing strategies to invade the public utilities' markets since buyers names are provided on these pages . Utilities that must file this data are put at a competitive disadvantage in the wholesale electricity markets since not all electricity providers are required to make this information public.
320-323	Electric Operation and Maintenance Expenses	X		Costs by functions, particularly production, reveal sensitive data to competitors. Using the data provided on these page, it is possible to determine the efficiency of a company's generation, transmission, and distribution operations, maintenance activities, and administrative activities. This data puts reporting companies at a competitive disadvantage with companies that are not required to report such data. This data can also be used to a reporting company's disadvantage in the case of an organized labor movement or a hostile takeover attempt.

Page	Title	Competitively Harmful Info.	Burdensome to Prepare	Comments
326-327	Purchased Power	X	X	Reveals sensitive contract and pricing information. The information includes the vendors (column a), megawatt hours purchased (columns g and h), and the costs (columns j, k, and l). Knowledge of this data reveals sensitive contract and pricing information for the power purchased which may impact future negotiating strategies. This data should be viewed as proprietary information since knowledge of the data can be used by competitors, especially the electricity providers that are not required to make public this same detailed level of information, to gain a competitive advantage.
328-330	Transmission of Electricity for Others	X	X	Extremely detailed data by customer and rate. The information provided includes the energy provider (column b), energy receiver (column c), megawatt hours transported, (columns I and j), and the revenues received (columns k, l, m, and n). Such information supplies competitors with the data needed, along with purchased power costs, to calculate delivered cost to gain a competitive advantage.
332	Transmission of Electricity by Others	x		Supplies competitors with rate information by provider which may impact negotiation of future agreements. The information on this page includes the name of the company providing the transmission service (column a), megawatt hours received (column b) and delivered (column c), and the cost paid (columns d, e, f, g). Such information supplies competitors with the data needed, along with purchased power costs, to calculate a delivered cost of power to gain a competitive advantage.

Page	Title	Competitively Harmful Info.	Burdensome to Prepare	Comments
336-337	Depreciation and Authorization of Electric Plant	X		Provides insights on depreciation practices not provided by non-filing companies.
352-353	Research, Development and Demonstration Activities	X	X	Provides insight of future strategic plans and current problem areas. This information could be used against a reporting company when competing against non-reporting companies in a situation that requires expertise and investment in new technologies or equipment. The requirement to report these activities in great detail is burdensome as it is very time consuming to split out by required classifications.
354-355	Distribution of Salaries and Wages	X	X	Salaries and wages by function provides details on a cost component to competitors. With the data found on these pages, it is possible to determine the average salary of the company's work force, by function, division, and in total. Data such as this puts reporting companies at a severe competitive disadvantage in competing against companies that are not required to report such information. Additionally, such data could be used to a company's disadvantage in the case of an organized labor movement or a hostile takeover attempt. Also, allocation of common costs is time consuming.
401	Monthly Peaks and Outputs	X		Discloses monthly operating data and sources and disposition of energy.

Page	Title	Competitively Harmful Info.	Burdensome to Prepare	Comments
402-411	Electric Plant Statistical Data	X	X	Extremely sensitive operating cost data by plant. Very useful to competitors in determining how plants operate at the margin. Fuel and other costs give competitors a clear picture of operations and efficiencies. Pages are very time consuming to compile.
422-423	Transmission Line Statistics	X	X	Industry questions the value of this information. Very time consuming and detailed pages. May provide insights on retail wheeling capability and strategy.
426-427	Substations	X	X	Industry questions the value of this information. Very time consuming and detailed pages. Reveals capacities and location of individual substations to competition.
430	Environmental Protection Facilities		X	This page provides a window as to dollars reporting utilities have invested in pollution control equipment and their plans for pollution control. Very time consuming page. Classification of costs may be out of date. Information may not be comparable to other companies.
431	Environmental Protection Expenses	X	X	These production costs should be confidential. Lines 6 and 7 require disclosure of fuel related costs, particularly the cost of environmentally clean fuels and replacement power costs. This information is very time consuming to prepare and may not be comparable to other companies.

Additional Form 1 Schedules that the Commission
Should Consider Deleting as Unnecessary

Page	Title
104	Officers
105	Directors
106-107	Security Holders and Voting Powers
233	Miscellaneous Deferred Debits *
234	Accumulated Deferred Income Taxes*
250-251	Capital Stock
252	Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock and Installments Received on Capital Stock
253	Other Paid-In Capital
254	Discount on Capital Stock and Capital Stock Expense
256-257	Long-Term Debt
261	Reconciliation of Reported Net Income with Taxable Income for Federal Income Taxes*
269	Other Deferred Credits*
276-277	Accumulated Deferred Income Taxes - Other *
335	Miscellaneous General Expense
340	Particulars Concerning Certain Income Deductions and Interest Charges Accounts
429	Electric Distribution Meters and Transformers

* These pages are especially burdensome - if they are not eliminated the required detail should be reduced.

EXHIBIT 5



**EDISON ELECTRIC
INSTITUTE**

DAVID K. OWENS
Executive Vice President
Business Operations

April 27, 2000

Mr. John M. Delaware
Chief Accountant & Deputy Director, Office
of Finance, Accounting and Operations
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Mr. Delaware:

The upcoming annual deadline for submission of FERC Form 1 data renewed the concern of many investor-owned utilities about the confidential treatment of certain Form 1 data in a competitive environment. EEI and its members are looking forward to our dialogue on this issue and appreciate the opportunity for an exchange of views. In connection with the upcoming Form 1 deadline, the signatories to the enclosed letter requested that EEI forward it to FERC on their behalf.

Sincerely,

A handwritten signature in cursive script that reads "David K. Owens".

David K. Owens

DKO:ds

Encl.

April 27, 2000

Mr. John M. Delaware
Chief Accountant & Deputy Director, Office of
Finance Accounting and Operations
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Mr. Delaware:

As Chief Accounting Officers for major U.S. investor-owned electric utilities, we are concerned about the approaching annual deadline for submittal of the FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others. In view of the significant changes in the electric industry over the past few years, we believe that disclosure of certain information in the Form 1 places us at a competitive disadvantage. We appreciate the opportunity you have given us to begin a dialogue with FERC on changes we believe need to be made to Form 1 and look forward to meaningful discussions in the near future. In consideration of these upcoming discussions, the FERC may not receive as many individual requests for confidentiality of Form 1 data as in the past. If so, this reflects only our industry's hopefulness that our dialogue will lead to needed changes to Form 1, and should not be interpreted as a diminished concern about Form 1 confidentiality. We continue to believe that the competitive disadvantage we are placed under due to the current Form 1 disclosure requirements is one of the major issues for investor-owned electric utilities.

Based on our prior discussions, we understand that our informal dialogue is currently planned between members of the FERC accounting staff and representatives of filing electric utilities on the information required in the Form 1. If possible, it is our request that this dialogue include all interested areas within FERC to ensure that there is a frank discussion of the filing electric utilities' concerns on the publicly disclosed Form 1 information with the objective of a consensus on needed change in the current Form 1 requirements. We believe that the Commission can change its filing requirements to eliminate the negative effects on competition, yet continue to meet its regulatory responsibilities.

As Chief Accounting Officers of shareholder-owned electric utilities that are required to file the Form 1, we appreciate the opportunity to make our views known. We hope that a dialogue will restart in the near future to allow an exchange of views that would lead to needed changes in the Form 1.

Sincerely,

Chief Accounting Officers
Shareholder-owned Electric Utilities
(See attachment)

SIGNATORIES

Darrel T. Anderson
Idaho Power Company

Leonard V. Assante
Appalachian Power Company
Columbus Southern Power Company
Indiana Michigan Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company

Richard M. Bange, Jr.
Baltimore Gas and Electric Company

Phil L. Barringer, Jr.
Tampa Electric Company

Warner L. Baxter
Central Illinois Public Service Company
Union Electric Company

Art P. Beattie
Alabama Power Company

James L. Benjamin
The United Illuminating Company

Robert E. Berdelle
Commonwealth Edison Company
Commonwealth Edison Company of
Indiana

M. Stuart Bolton, Jr.
Virginia Electric and Power Company

Jeffrey L. Boyer
Duke Energy Corporation

Daniel Brudzynski
The Detroit Edison Company

William A. Carlson
Minnesota Power

Michael W. Caron
Central Maine Power Company

Earl K. Chism
Potomac Electric Power Company

Stephen D. Crapo
Alaska Electric Light and Power
Company

Dennis DaPra
Consumers Energy Company

K. Michael Davis
Florida Power and Light Company

R. Russell Davis
Central Power and Light Company
Public Service Company of Oklahoma
Southwestern Electric Power Company
West Texas Utilities Company

Daniel A. Doyle
IES Utilities Inc.
Interstate Power Company
Wisconsin Power and Light Company

Donna S. Doyle
Central Hudson Gas and Electric
Corporation

Michael J. Egan
PECO Energy Company

James W. Eldredge
Puget Sound Energy, Inc.

Scott Forbes
Texas-New Mexico Power Company

Diane L. Ford
Wisconsin Public Service Corporation

SIGNATORIES

Nancy E. Frankenhauser
Savannah Electric and Power Company

Chris N. Froggatt
Arizona Public Service Company

Robert J. Griffin
Green Mountain Power Corporation

Jana Hanson
Northwestern Public Service

M. Susan Hardwick
Vectren Corporation

Gary R. Hedrick
El Paso Electric Company

Gary A. Hoffman
Superior Water, Light and Power Co.

Craig A. Keller
Montana-Dakota Utilities Company

Karen G. Kissinger
Tucson Electric Power Company

Anne K. Klisurich
Wisconsin Electric Power Company

Thomas J. Kloc
Allegheny Generating Company
Monongahela Power Company
The Potomac Edison Company
West Penn Power Company

Nathan E. Langston
Entergy Arkansas, Inc.
Entergy Gulf States, Inc.
Entergy Louisiana, Inc.
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Power, Inc.
System Energy Resources, Inc.

Ronnie R. Labrato
Gulf Power Company

James P. Lavin
Atlantic City Electric Company
Delmarva Power and Light Company

Jeffrey J. Legge
Otter Tail Power Company

John P. Loyack
Public Service Company of New Mexico

Teresa S. Madden
Public Service Company of Colorado
Southwestern Public Service Company

Peter E. Maricondo
Jersey Central Power and Light
Company
Metropolitan Edison Company
Pennsylvania Electric Company

Joseph J. McCabe
PPL Electric Utilities

Elizabeth M. McCarthy
The Dayton Power and Light Company

Thomas M. Noonan
Southern California Edison Company

Jerry W. Pinkerton
TXU SESCO Company
TXU Electric Company

Stephen J. Plunkett
Indianapolis Power and Light Company

Robert A. Pulaski
Cleco Corporation

Patricia A. Rado
Public Service Electric and Gas Co.

SIGNATORIES

Sherwood J. Rafferty
New York State Electric and Gas
Corporation

William J. Reddy
Rochester Gas and Electric Corporation

Neil A. Roadman
Kansas City Power and Light Company

Bernard F. Roberts
The Cincinnati Gas and Electric
Company
PSI Energy, Inc.

Michael D. Robinson
Kentucky Utilities Company
Louisville Gas and Electric Company

John J. Roman
The Connecticut Light and Power
Company
Holyoke Power and Electric Company
Holyoke Water Power Company
Public Service Company of New
Hampshire
Western Massachusetts Electric Co.

Donald R. Rowlett
Oklahoma Gas and Electric Company

Roger D. Sandeen
Northern States Power Company-
Minnesota
Northern States Power Company-
Wisconsin

John Scardino, Jr.
Florida Power Corporation

Hyman Schoenblum
Consolidated Edison Company of New
York, Inc.
Orange and Rockland Utilities, Inc.

Ernest T. Shiraki
Hawaiian Electric Company, Inc.

Mary O. Simmons
Nevada Power Company
Sierra Pacific Power Company

Larry M. Smith
Carolina Power and Light Company

Thomas B. Specketer
MidAmerican Energy Company

Steven W. Tasker
Niagara Mohawk Power Corporation

Cliff S. Thrasher
Georgia Power Company

Frances V. Turnage
Mississippi Power Company

Leroy P. Wages
Kansas Gas and Electric Company
Western Resources Inc.

Harvey L. Wagner
The Cleveland Electric Illuminating
Company
Ohio Edison Company
Pennsylvania Power Company
The Toledo Edison Company

Robert J. Weafer, Jr.
Boston Edison Company
Cambridge Electric Light Company
Canal Electric Company
Commonwealth Electric Company

John P. Weisensee
St. Joseph Light and Power Company