

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

Supporting Statement for
**FERC-725E, Mandatory Reliability Standards
For the Western Electric Coordinating Council (WECC)**

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve the proposed revisions (in the Notice of Proposed Rulemaking (NOPR; available at eLibrary.ferc.gov RM09-9) in Docket No. RM09-9 to FERC-725E.¹ The current FERC-725E is contained in 18 Code of Federal Regulations (CFR) Part 40.

Background

The Electricity Modernization Act of 2005 was enacted into law as part of the Energy Policy Act of 2005 by President George W. Bush on August 8, 2005. Subtitle A of the Electricity Modernization Act amended the Federal Power Act (FPA) by adding a new section 215, titled “Electric Reliability.” Section 215 of the FPA buttresses the Commission’s efforts to strengthen the reliability of the interstate grid through the grant of new authority which provides for a system of mandatory Reliability Standards developed by the Electric Reliability Organization (ERO)² and reviewed and approved by FERC.

In the aftermath of the 1965 Blackout in the northeast United States, the electric industry established the North American Electric Reliability Council, a voluntary reliability organization and predecessor to the North American Electric Reliability Corporation (NERC). Since its inception, NERC has developed Operating Policies and Planning Standards that provide voluntary guidelines for operating and planning the North American bulk-power system. In April 2005, NERC adopted “Version O” reliability standards that translated the NERC Operating Policies, Planning Standards and compliance requirements into a comprehensible set of measurable standards. While NERC developed a compliance enforcement program to ensure compliance with the reliability standards it developed, industry compliance was still voluntary and not subject to mandatory enforcement penalties. Although NERC’s efforts have been important in maintaining the reliability of the nation’s bulk-power system, NERC itself recognized the need for mandatory, enforceable reliability standards and has been a proponent of legislation to establish a FERC-jurisdictional ERO that would propose and enforce mandatory reliability standards.

1 This package is being submitted after the publication date of the NOPR (December 22, 2010) due to another rulemaking under the same OMB Control No. that was previously under consideration at OMB and has since concluded.

2 “Electric Reliability Organization” or “ERO” means the organization certified by the Commission. The purpose of the ERO is to establish and enforce Reliability Standards for the Bulk-Power System, subject to Commission review.

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.³ In Order No. 672, the Commission certified one organization, NERC, as the ERO.⁴ Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are proposed to the ERO by a Regional Entity.⁵ A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO.⁶ When the ERO reviews a regional Reliability Standard that would be applicable on an Interconnection-wide basis and that has been proposed by a Regional Entity organized on an Interconnection-wide basis, the ERO must rebuttably presume that the regional Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.⁷

On March 16, 2007, the Commission issued Order No. 693⁸, a Final Rule that:

- added 18CFR Part 40
- approved 83 of 107 proposed Reliability Standards, six of the eight proposed regional differences, and the Glossary of Terms Used in Reliability Standards developed by the North American Electric Reliability Corporation (NERC) [which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards]
- applied to all users, owners and operators of the Bulk-Power System within the United States (other than Alaska or Hawaii)
- required that each Reliability Standard identify the subset of users, owners and operators to which that particular Reliability Standard applies
- required each FERC-approved Reliability Standard be maintained on the ERO's Internet website for public inspection.

On March 26, 2007, NERC submitted for approval eight proposed regional Reliability Standards for the Western Electricity Coordinating Council (WECC). These regional Reliability Standards apply to the Western Interconnection in addition to the 83 mandatory Reliability Standards developed by NERC that took effect on a nation-wide basis in June 2007.⁹ In accordance with section 215(d)(2) of the FPA, FERC approved the regional Reliability Standards. The approval of the regional Reliability Standards allows for the continuation of certain reliability practices that were currently in effect in the Western Interconnection. In addition, the Commission directed WECC to develop several specific modifications to the

³ *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁴ *See North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (*ERO Certification Order*), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006).

⁵ 16 U.S.C. § 824o (e)(4).

⁶ 16 U.S.C. §§ 824o(a)(7) and (e)(4).

⁷ 16 U.S.C. § 824o (d)(3); 18 C.F.R. § 39.5 (b).

⁸ The reporting requirements associated with Order 693 are approved by OMB under FERC-725A (OMB Control No. 1902-0244).

⁹ *See Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 118 FERC ¶ 61,218 (March 16, 2007), 72 Fed. Reg. 16,416 (April 4, 2007).

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

regional Reliability Standards when WECC develops, through its Reliability Standards development process, permanent, replacement Reliability Standards.¹⁰

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

EPAAct 2005 added a new section 215 to the FPA, which provides for a system of mandatory and enforceable Reliability Standards. Section 215(d)(1) of the FPA provides that the ERO must file each Reliability Standard or modification to a Reliability Standard that it proposes to be made effective, *i.e.*, mandatory and enforceable, with the Commission. On April 4, 2006, and as later modified and supplemented, the ERO submitted 107 Reliability Standards for Commission approval pursuant to section 215(d) of the FPA.

Section 215(d)(2) of the FPA provides that the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a proposed Reliability Standard if it meets the statutory standard for approval, giving due weight to the technical expertise of the ERO. Alternatively, the Commission may remand a Reliability Standard pursuant to section 215(d)(4) of the FPA. Further, the Commission may order the ERO to submit to the Commission a proposed Reliability Standard or a modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to “carry out” section 215 of the FPA.¹¹ The Commission’s action in this Proposed Rule is based on its authority pursuant to section 215 of the FPA.

A reliability standard defines obligations or requirements of utilities and other entities that operate, plan and use the bulk power system in North America. Meeting these requirements helps to ensure the reliable planning and operation of the bulk power system. Each NERC Reliability Standard details the purpose of the standard, the entities that must comply, the specific actions that constitute compliance, and how the standard will be measured.

Standards address aspects of the operation and planning of the bulk power system such as: real-time transmission operations, balancing load and generation, emergency operations, system restoration and blackstart, voltage control, cyber security, vegetation management, facility ratings, disturbance reporting, connecting facilities to the grid, certifying system operators, and personnel training. Standards detail how the system should perform, but not how the system should be designed. Individual owners, operators and users of the bulk power system determine if the system should be expanded or changed, and how, in order to achieve the standards.

Recent Events

¹⁰ Version One Regional Reliability Standards for Facilities Design, Connections, and Maintenance; Protection and Control; and Voltage and Reactive, 133 FERC ¶ 61,226 at P 87 (2010).

¹¹ See 16 U.S.C. 824o(d)(5) (2006).

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

A common cause of the past three major regional blackouts was violation of NERC's then Operating Policies and Planning Standards. During July and August 1996, the west coast of the United States experienced two cascading blackouts caused by violations of voluntary Operating Policies.¹² In response to the outages, the Secretary of Energy convened a task force to advise the Department of Energy (DOE) on issues needed to be addressed to maintain the reliability of the bulk-power system. In a September 1998 report, the task force recommended, among other things, that federal legislation should grant more explicit authority for FERC to approve and oversee an organization having responsibility for bulk-power reliability standards.¹³ Further, the task force recommended that such legislation provide for Commission jurisdiction for reliability of the bulk-power system and FERC implementation of mandatory, enforceable reliability standards.

Electric reliability legislation was first proposed after issuance of the September 1998 task force report and was a common feature of comprehensive electricity bills since that time. A stand-alone electric reliability bill was passed by the Senate unanimously in 2000. In 2001, President Bush proposed making electric Reliability Standards mandatory and enforceable as part of the National Energy Policy.¹⁴

Congress directed the development of mandatory, Commission-approved, enforceable electricity Reliability Standards. Section 215 of the FPA provides for a system of mandatory, enforceable Reliability Standards. Under the new electric power reliability system enacted by the Congress, the United States will no longer rely on voluntary compliance by participants in the electric industry with industry reliability requirements for operating and planning the Bulk-Power System. The Commission believes that, to achieve this goal, it is necessary to have a strong ERO that promotes excellence in the development and enforcement of Reliability Standards.

A mandatory Reliability Standard should not reflect the "lowest common denominator" in order to achieve a consensus among participants in the ERO's Reliability Standard development process. Therefore, the Commission carefully reviews each Reliability Standard submitted and, where appropriate, later remands if necessary, an inadequate Reliability Standard to ensure that it protects reliability, has no undue adverse effect on competition, and can be enforced in a clear and even-handed manner.

The Commission may approve a proposed Reliability Standard if the Commission finds it is just, reasonable, not unduly discriminatory or preferential, and in the public interest.¹⁵ In addition, the Commission explained in Order No. 672 that "uniformity of Reliability Standards

¹² The Electric Power Outages in the Western United States, July 2-3, 1996, at 76, and WSCC Disturbance Report, For the Power System outage that Occurred on the Western Interconnection August 10, 1996, at 4.

¹³ Maintaining Reliability in a Competitive U.S. Electricity Industry, Final report of the Task Force on Electric System Reliability. Secretary of Energy Advisory Board, U.S. Department of Energy (September 1998), at 25-27, 65-67.

¹⁴ Report of the National Energy Policy Development Group, May 2001, at p. 7-6.

¹⁵ 16 U.S.C. § 824o (d)(2).

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

should be the goal and the practice, the rule rather than the exception.”¹⁶ Yet, the Commission recognized that “the goal of greater uniformity does not, however, mean that regional differences cannot exist.”¹⁷ The Commission then provided the following guidance:

As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential, and in the public interest, as required by the statute: (1) a regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.¹⁸

Western Electricity Coordinating Council (WECC)

WECC was formed on April 18, 2002, by the merger of Western Systems Coordinating Council (WSCC), Southwest Regional Transmission Association (SWRTA), and Western Regional Transmission Association (WRTA). The formation of WECC was accomplished over a four-year period through the cooperative efforts of WSCC, SWRTA, WRTA, and other regional organizations in the West. WECC's interconnection-wide focus is intended to complement current efforts to form Regional Transmission Organizations (RTO) in various parts of the West.

WECC is responsible for coordinating and promoting electric system reliability. In addition to promoting a reliable electric power system in the Western Interconnection, WECC supports efficient competitive power markets, assures open and non-discriminatory transmission access among members, provides a forum for resolving transmission access disputes, and provides an environment for coordinating the operating and planning activities of its members as set forth in the WECC Bylaws.

The WECC region encompasses a vast area of nearly 1.8 million square miles. It is the largest and most diverse of the ten regional councils of the North American Electric Reliability Council. WECC's service territory extends from Canada to Mexico. It includes the provinces of Alberta and British Columbia, the northern portion of Baja California, Mexico, and all or portions of the 14 western states in between. Transmission lines span long distances connecting the Pacific Northwest, with its abundant hydroelectric resources, to the arid Southwest, with its large coal-fired and nuclear resources. WECC and the nine other regional reliability councils were formed due to national concern regarding the reliability of the interconnected bulk power systems, the ability to operate these systems without widespread failures in electric service, and the need to foster the preservation of reliability through a formal organization.

WECC developed a Reliability Management System (RMS) pursuant to which transmission operators in the Western Interconnection agreed by contract to be bound by the

¹⁶ Order No. 672 at P 290.

¹⁷ *Id.* at 291.

¹⁸ *Id.*

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

WECC reliability criteria and sanctions for non-compliance. According to WECC, the criteria are recognized by all WECC members but are contractually binding only on members that signed an RMS Agreement.¹⁹

In general, the WECC regional Reliability Standards do not require responsible entities to file information with the Commission. However, the standards do require responsible entities to file periodic reports with WECC and to develop and maintain certain information for a specified period of time, subject to inspection by WECC.

This NOPR in Docket No. RM09-9

Under section 215 of the Federal Power Act (FPA), FERC proposes to approve four revised regional Reliability Standards (to replace five currently approved standards) developed by WECC and approved by NERC (the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards). The four proposed regional Reliability Standards (and the five currently approved, regional Reliability Standards they are intended to replace) have been designated by WECC as:

- FAC-501-WECC-1(Transmission Maintenance; to replace approved PRC-STD-005-1), addressing transmission maintenance for specified transmission paths in the Western Interconnection; available at http://www.nerc.com/files/FAC-501-WECC-1_Final.pdf
- PRC-004-WECC-1(Protection System and Remedial Action Scheme Misoperation; to replace approved WECC PRC-STD-001-1 and PRC-STD-003-1), addressing the analysis of misoperations that occur on transmission and generation protection systems and remedial action schemes in the Western Interconnection; available at http://www.nerc.com/files/PRC-004-WECC-1_Final.pdf
- VAR-002-WECC-1(Automatic Voltage Regulators; to replace approved WECC VAR-STD-002a-1), meant to ensure that automatic voltage regulators remain in service on synchronous generators and condensers in the Western Interconnection; available at http://www.nerc.com/files/VAR-002-WECC-1_Final.pdf
- VAR-501-WECC-1(Power System Stabilizer; to replace approved WECC VAR-STD-002b-1), meant to ensure that power system stabilizers remain in service on synchronous generators in the Western Interconnection; available at http://www.nerc.com/files/VAR-501-WECC-1_Final.pdf.

Under section 215(d)(5) of the Federal Power Act, the Commission also proposes to direct WECC, through its standard development process, to develop modifications to these regional Reliability Standards to address specific issues, as discussed in the NOPR in RM09-9.

2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION

¹⁹See WECC April 17, 2007 Comments at 16.

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

Prior to enactment of section 215, FERC had acted primarily as an economic regulator of wholesale power markets and the interstate transmission grid. In this regard, the Commission acted to promote a more reliable electric system by promoting regional coordination and planning of the interstate grid through regional independent system operators (ISOs) and regional transmission organizations (RTOs), adopting transmission pricing policies that provide price signals for the most reliable and efficient operation and expansion of the grid, and providing pricing incentives at the wholesale level for investment in grid improvements and assuring recovery of costs in wholesale transmission rates.

Sufficient supplies of energy and a reliable way to transport those supplies to customers are necessary to assure reliable energy availability and to enable competitive markets. Reasonable supply relative to demand is essential for competitive markets to work. Without sufficient delivery infrastructure, some suppliers will not be able to enter the market, customer choices will be limited, and prices will be needlessly volatile. The Commission assists in creating a more reliable electric system by:

- Fostering regional coordination and planning of the interstate grid through ISOs and RTOs;
- Adopting transmission policies that provide price signals for the most reliable and efficient operation and expansion of the grid; and
- Providing pricing incentives at the wholesale level for investment in grid improvements and ensuring opportunities for cost recovery in wholesale transmission rates.

The passage of the Electricity Modernization Act of 2005 added to the Commission's efforts identified above, by giving it the authority to strengthen the reliability of the interstate grid through the grant of new authority pursuant to section 215 of the FPA which provides for a system of mandatory Reliability Standards developed by the ERO, established by FERC, and enforced by the ERO and Regional Entities.

As part of FERC's efforts to promote grid reliability, the Commission created a new Office of Electric Reliability (OER) in 2007. This office oversees the development and review of mandatory Reliability and Security. OER also ensures compliance with the approved mandatory standards by users, owners, and operators of the Bulk Power System, and maintains a situational awareness monitoring tool to provide wide area visibility of the Bulk Power System.

On March 25, 2009, NERC submitted a petition (NERC Petition) to the Commission seeking approval of four WECC regional Reliability Standards. The requirements have been proposed, voted on, and vetted by industry through the ERO process. In general, the data are submitted to, and/or made available for audit by, the Compliance Enforcement Authority or WECC, rather than FERC. For proposed standard PRC-004-WECC-1, the data are retained for five years plus current year to date. For proposed standards FAC-501-WECC-1, VAR-002-WECC-1, and VAR-501-WECC-1, the data are retained for three years plus the current year or since the last audit, whichever is longer.

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

The Commission uses the data to participate in NERC's Reliability Standards Development process. The Commission also uses the data when approving certain regional Reliability Standards such as those produced by WECC. In addition, FERC's Office of Electric Reliability uses the data to engage in studies and other activities to assess the longer-term and strategic needs and issues related to power grid reliability.

If the information collection requirements were discontinued, the Commission would be placed at a disadvantage in not having the data necessary for monitoring its mandated obligations, and the industry would not have the data necessary for ensuring reliability of the western interconnection of the bulk power system.

3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED TECHNOLOGY TO REDUCE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.

The Commission has developed the capability for electronic filing of nearly all submittals to FERC. In Order No. 619 (issued 9/14/2000), the Commission established an electronic filing initiative that permitted over 40 qualified types of documents to be filed over the Internet to its website. Since that time, FERC has expanded its eFiling options in phases to include nearly all document types and security levels (such as privileged information and Critical Energy Infrastructure Information (CEII)). Electronic filing, combined with electronic posting and service over the web site, permits staff and the public to obtain filings in a faster and more efficient manner. More information on FERC's eFiling program is available at <http://www.ferc.gov/docs-filing/efiling.asp>.

In order for the Commission to competently perform its oversight function with regard to the approval of Reliability Standards that are proposed by the ERO, it is essential that the Commission receive timely information regarding all or potential violations of Reliability Standards. While section 215 of the FPA contemplates the filing of the record of an ERO or Regional Entity enforcement action, FERC needs information regarding violations and potential violations at or near the time of occurrence. Therefore, the Commission works with the ERO and eight Regional Entities to obtain access and use the electronically filed information, so that the Commission has timely access to this information.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2

Filing requirements are periodically reviewed as OMB review dates arise or as the Commission may deem necessary in carrying out its responsibilities under the FPA in order to eliminate duplication and ensure that filing burden is minimized. There are no similar sources

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

of information available that can be used or modified for these reporting purposes. All reliability requirements developed by Regional Entities, Regional Advisory Bodies, and the ERO will be subject to FERC approval.

5. METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES

FERC-725E is a filing requirement concerning the implementation of reliability standards by NERC and its responsibilities as well as those of Regional Entities (in this instance, WECC) and Regional Advisory Bodies in the development of Reliability Standards. The Electricity Modernization Act specifies that the ERO and Regional Entities are not departments, agencies or instrumentalities of the United States government and will not be like most other businesses, profit or not-for-profit. Congress created the concept of the ERO and Regional Entities as select, special purpose entities that will transition the oversight of the Bulk-Power System reliability from voluntary, industry organizations to independent organizations subject to Commission jurisdiction.

Section 215(b) of the FPA requires all users, owners and operators of the Bulk-Power System to comply with Commission-approved Reliability Standards. Each proposed Reliability Standard submitted for approval by NERC applies to some subset of users, owners and operators. Each proposed Reliability Standard includes an “applicability” statement that identifies the functional classes of entities responsible for compliance. Such functional classes include reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, interchange authorities, transmission service providers, market operators, planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers.

As explained by NERC, a generator operator, for example, could include any entity that operates a generator interconnected to the grid, be it a large unit in excess of 1,000 MW or a small generator of one MW or less. NERC states that to ensure that Reliability Standards are applied cost effectively and that the applicability of Reliability Standards is focused on entities having a material impact on Bulk-Power System reliability, it provides greater specificity in the applicability section of a Reliability Standard.

In general, while the Commission is mindful of the possible impact on small entities, the Commission is also concerned that Bulk-Power-System reliability not be compromised based on an unwillingness of entities, large or small, to incur reasonable expenditures necessary to preserve such reliability. As the Commission explained in Order No. 672:

A proposed Reliability Standard may take into account the size of the entity that must comply with the Reliability Standard and the cost to those entities of implementing the proposed Reliability Standard. However, the ERO should not propose a “lowest common denominator” Reliability Standard that would achieve

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

less than excellence in operating system reliability solely to protect against reasonable expenses for supporting this vital national infrastructure. For example, a small owner or operator of the Bulk Power-System must bear the cost of complying with each Reliability Standard that applies to it.^[20]

While the Commission cannot rule on the merits until a specific proposal has been submitted, the Commission believes that reasonable limits on applicability based on size may be an acceptable alternative to lessen the economic impact on the proposed rule on small entities. The Commission emphasizes, however, that any such limits must not weaken Bulk-Power-System reliability.

6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY

The Electric Reliability Organization will conduct periodic assessments of the reliability and adequacy of the Bulk-Power System in North America and report its findings to the Commission, the Secretary of Energy, Regional Entities, and Regional Advisory Bodies annually or more frequently if so ordered by the Commission. The ERO and Regional Entities will report to FERC on their enforcement actions and associated penalties and to the Secretary of Energy, relevant Regional Entities and relevant Regional Advisory Bodies annually or quarterly in a manner to be prescribed by the Commission. If the information collection requirements were slackened or discontinued, the Commission would be placed at a disadvantage in not having the data necessary for monitoring its mandated obligations, and the industry would not have the data necessary for ensuring reliability of the western interconnection of the bulk power system.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

FERC-725E is a filing requirement necessary to comply with the applicable provisions of the Electricity Modernization Act of 2005 and section 215 of the Federal Power Act.

In accordance with 18CFR 39.5, the ERO must file each Reliability Standard or a modification to a Reliability Standard with the Commission. The filing is to include a concise statement of the basis and purpose of the proposed Reliability Standard, either a summary of the Reliability development proceedings conducted by the ERO or a summary of the Reliability Standard development proceedings conducted by a Regional Entity together with a summary of the Reliability Standard review proceedings of the ERO and a demonstration that the proposed Reliability Standard is “just, reasonable, not unduly discriminatory or preferential, and in the public interest.

20 Order No. 672 at P 330.

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

The ERO must make each effective Reliability Standard available on its Internet website. Copies of the effective Reliability Standards will be available from the Commission's Public Reference Room.

For proposed standard PRC-004-WECC-1, the data are retained for five years plus current year to date. For proposed standards FAC-501-WECC-1, VAR-002-WECC-1, and VAR-501-WECC-1, the data are retained for three years plus the current year or since the last audit, whichever is longer. This exceeds the OMB guidelines in 5 CFR 1320.5(d) (2) (iv) which directs that agencies should require the public to retain records for more than three years. These time periods were found to be necessary, and proposed, by the ERO and industry through their process of proposal, discussion, and voting.

There is no explicit statute of limitations set forth in FPA section 215, and no statute of limitations appears in the FPA. In Order No. 670, the Commission declined to designate a statute of limitations or otherwise adopt an arbitrary time limitation on complaints or enforcement actions that may arise. However, the Commission noted, that when a statutory provision under which civil penalties may be imposed lacks its own statute of limitations, the general statute of limitations for collection of civil penalties, 28 U.S.C. 2462, applies.²¹ Section 2462 in 28 U.S.C. imposes a five-year limitations period on any "action, suit, or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise."²²

8. DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY: SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE TO THESE COMMENTS

The ERO standards process provides opportunity for the affected entities to participate in development, review, and voting on proposed reliability standards before they are approved and submitted to FERC for review and approval.

In addition, each Commission rulemaking (both NOPR and Final Rules) is published in the Federal Register, thereby affording all public utilities and licensees, state commissions, Federal agencies, and other interested parties an opportunity to submit data, views, comments or suggestions concerning the proposed collection of data. Through this NOPR in RM09-9, FERC is requesting public comments.

The notice procedures also allow for public conferences to be held as required. The Commission has held several workshops and technical conferences to address reliability issues including transition to the NERC Reliability Standards, operator tools, and reactive power.

Stakeholders in the electric utility industry have also participated in dialogues on the international implications of the ERO and Cross-Border Regional Entities during three public bilateral workshops held in the United States and Canada.

²¹ See, e.g., United States v. Godbout-Bandal, 232 F.3d 637, 639 (8th Cir. 2000).

²² 28 U.S.C. 2462 (2000). The five-year limitation runs "from the date the claim first accrued." Id.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

No payments or gifts have been made to respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission generally does not consider the data filed to be confidential.

Section 215(e) of the FPA as well as section 39.7(d) of the Commission's regulations regarding enforcement of Reliability Standards provides for public notice and opportunity for a hearing with respect to both the ERO (or Regional Entity) enforcement proceedings and proceedings before the Commission involving review of a proposed penalty for violation of a Reliability Standard. [Section 39.7(b)(4) provides a limited exception to this notice requirement and allows for non-public proceedings for enforcement actions that involve a Cybersecurity Incident,²³ unless FERC determines on a case-by-case basis that such protection is not necessary. The Commission has in place procedures to prevent the disclosure of sensitive information, such as the use of protective orders and rules establishing critical energy infrastructure information (CEII). However, the Commission believes that the specific, limited area of Cybersecurity Incidents requires additional protections because it is possible that system security and reliability would be further jeopardized by the public dissemination of information involving incidents that compromised the cybersecurity system of a specific user, owner or operator of the Bulk-Power System.]

In addition, additional information provided with a filing may be submitted with a specific request for confidential treatment to the extent permitted by law and considered pursuant to 18 C.F.R. 388.112 of FERC's regulations.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE.

There are no questions of a sensitive nature that are considered private.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The proposed standards in the NOPR in RM09-9 do not modify or otherwise affect the burdens related to the collection of information already in place (for the five standards being replaced by the four proposed standards). Thus, the proposed replacement Reliability Standards will neither increase the reporting burden nor impose any additional information collection requirements. The burden and cost figures of FERC-725E are not being modified at this time.

²³ The term "Cybersecurity Incident" is defined as a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

However, Commission staff is currently analyzing the burden for each standard under FERC-725E and expects to update the burden and cost estimates, possibly at the final rule stage.

Burden Estimate: The Public Reporting burden for the requirements in the approved current inventory follows:

FERC Data Collection, FERC-725E	No. of Respondents (1)	Average No. of Responses per Respondent (2)	Average Burden Hours per Response (3)	Total Burden Hours (1)x(2)x(3)
Reporting				
Balancing Authorities	34	1	20	680
Generator Operators	206	1	10	2060
Load-Serving Entities	149	1	10	1490
Transmission Operators/ Owners	83	1-7 each (total of 83)	40	3320
Record-keeping	Balancing Authorities			68
	Generator Operators			206
	Load-Serving Entities			149
	Transmission Owners/Operators			332
	Recordkeeping Total			755
TOTAL	472 respondents and responses per year			8305 hours per year

Total Annual hours for the Information Collection: 7,550 reporting hours + 755 recordkeeping = 8,305 hours.

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The proposed standards in the NOPR in RM09-9 do not modify or otherwise affect the cost related to the collection of information already in place (for the five standards being replaced by the four proposed standards). Thus, the proposed replacement Reliability Standards will neither increase the reporting cost nor impose any additional information collection requirements.

The average annualized cost for the existing requirements is estimated to be \$936,200 as shown below:

Reporting = 7,550 hours @ \$120/hour = \$906,000

Recordkeeping = 755 hours @ \$40/hour = \$30,200

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

Total Costs = Reporting (\$906,000) + Recordkeeping (\$30,200) = \$936,200

(The hourly rate figure is a composite figure. For reporting, the Commission has set a rate that combines time for legal, technical and administrative support. With regard to recordkeeping, the hourly rate represents both supervisory and support staff hourly rates.)

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The proposed standards in the NOPR in RM09-9 do not modify or otherwise affect the federal costs related to the collection of information already in place (for the five standards being replaced by the four proposed standards).

The estimate of the cost to the Federal Government for the existing requirements is based on salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

Direct Costs = \$137,874 x .26 FTE = \$35,847.

15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

The proposed standards in the NOPR in RM09-9 do not modify or otherwise affect the burdens related to the collection of information already in place (for the five standards being replaced by the four proposed standards).-

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

There are no other publications or tabulations of the information.

17. DISPLAY OF THE EXPIRATION DATE

It is not appropriate to display the expiration date for OMB approval of the information collected because the information, standards, and requirements are posted on the website of the ERO and WECC (rather than an FERC website, form, or regulations).

The information will not be collected on a standard, preprinted form which would avail itself to that display. Rather selected transmission owners and operators, generator owners and operators, WECC, and the ERO must prepare and submit filings or retain records that reflect unique or specific circumstances related to the Reliability Standards. In addition, the information contains a mixture of narrative descriptions and empirical support that varies depending on the nature of the transaction.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

FERC-725E (1902-0246), NOPR in RM09-9 (issued 12/16/2010; RIN 1902-AE19)

The data collected for this reporting requirement is not used for statistical purposes. Therefore, the Commission does not use as stated in item no. 19(i) "effective and efficient statistical survey methodology." The information collected is case specific to each Reliability Standard.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS.

This is not a collection of information employing statistical methods.