

March 15, 2012

Supporting Statement for  
**FERC-516, Electric Rate Schedules and Tariff Filings**  
As Proposed in Docket No. RM01-08-012  
(Notice of Proposed Rulemaking issued March 15, 2012)

The Federal Energy Regulatory Commission (Commission or FERC) requests Office of Management and Budget (OMB) review and approval of **FERC-516, Electric Rate Schedule Filings**, an existing data requirement, regarding **Revised Public Utility Filing Requirements for Electric Quarterly Reports (EQR)** as proposed in the Commission's Notice of Proposed Rulemaking (NOPR) issued March 15, 2012, in Docket No. RM01-08-012.<sup>1</sup>

The subject data collection will be affected by the proposed rule because it revises the filing requirements for the Electric Quarterly Reports under 18 Code of Federal Regulations (CFR), 35. Specifically, the NOPR proposes to revise the EQR Data Dictionary to add "Simultaneous Exchange" to the list of available Product Names in the EQR. This revision would allow for greater transparency in wholesale electricity markets through a greater understanding of these complex transactions.

All of the proposed changes in the subject NOPR are provided for under section 205 of the FPA. We estimate that the annual reporting burden under FERC-516 will be increased by 245 hours if the proposed revisions identified in the subject NOPR are implemented.

## **Background**

On April 25, 2002, the Commission set forth the EQR filing requirements in Order No. 2001.<sup>2</sup> Order No. 2001 requires public utilities to electronically file EQRs summarizing transaction information for short-term and long-term cost-based sales and market-based rate sales and the contractual terms and conditions in their agreements for all jurisdictional services.<sup>3</sup> The Commission established the EQR reporting requirements to help ensure the collection of information needed to perform its regulatory functions over transmission and sales,<sup>4</sup> while making data more useful to the public and facilitating the ability of public utilities to fulfill their

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1 The Commission intends to remove all burden hours for EQR from the FERC-516 and put them into a new collection. This effort began with the NOPR in RM10-12 in 2011 and a new control number was established (1902-0255). The intent is to put all EQR related hours into this new collection at the final rule stage of one of the ongoing EQR proceedings. For now, the hours will be included with the FERC-516.

2 *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 72 FR 56735 (Oct. 4, 2007), 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 73 FR 1876 (Jan. 10, 2008), 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, 73 FR 65526 (Nov. 4, 2008), 125 FERC ¶ 61,103 (2008).

3 Order No. 2001, FERC Stats. & Regs. ¶ 31,127.

4 *Id.* P 13-14.

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responsibility under FPA section 205(c)<sup>5</sup> to have rates on file in a convenient form and place.<sup>6</sup> As noted in Order No. 2001, the EQR data are designed to “provide greater price transparency, promote competition, enhance confidence in the fairness of the markets, and provide a better means to detect and discourage discriminatory practices.”<sup>7</sup> The requirement to file EQRs replaced the requirement to file quarterly transaction reports summarizing a utility's market-based rate transactions and sales agreements that conformed to the utility's tariff.

In Order No. 2001, the Commission also adopted a new section in its regulations, 18 CFR 35.10b, which requires that the EQRs must conform to the Commission's software and guidance posted and available from the Commission website. This obviates the need to revise 18 CFR 35.10b to implement revisions to the software and guidance.

Since issuing Order No. 2001, the Commission has provided guidance and refined the reporting requirements, as necessary, to simplify the filing requirements and to reflect changes in the Commission's regulations.<sup>8</sup> For instance, in 2007 the Commission adopted an Electric Quarterly Report Data Dictionary, which provides in one document the definitions of certain terms and values used in filing EQR data.<sup>9</sup> Moreover, in 2007, the Commission required transmission capacity reassignment to be reported in the EQR.<sup>10</sup> The refinements to the existing EQR requirements proposed in this NOPR build upon the Commission's prior improvements to the reporting requirements and enhance the goals of providing greater price transparency, promoting competition, instilling confidence in the fairness of the markets, and providing a better means to detect and discourage discriminatory and manipulative practices.

### **NOPR in Docket No. RM01-8-012**

The Commission proposes to add the Product Name “Simultaneous Exchange” to the EQR Data Dictionary and to require all EQR filers to use this term, when appropriate, in the Contract Data section and the Transaction Data section. EQR filers engaging in simultaneous exchange transactions must report each transaction as a “Simultaneous Exchange” in the Transaction Data section. In the Contract Data section, appropriate reporting of these transactions depends on the contractual arrangement that governs the particular simultaneous exchange. If an EQR filer engages in simultaneous exchange arrangements under a general

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<sup>5</sup> 16 U.S.C. 824d(c).

<sup>6</sup> Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31.

<sup>7</sup> *Id.* P 31.

<sup>8</sup> See, e.g., *Revised Public Utility Filing Requirements for Electric Quarterly Reports*, 124 FERC ¶ 61,244 (2008) (providing guidance on the filing of information on transmission capacity reassignments in EQRs); *Notice of Electric Quarterly Reports Technical Conference*, 73 FR 2477 (Jan. 15, 2008) (announcing a technical conference to discuss changes associated with the EQR Data Dictionary).

<sup>9</sup> Order No. 2001-G, 120 FERC ¶ 61,270.

<sup>10</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 817, *order on reh'g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 FR 12540 (March 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126.

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power sales contract, the EQR filer would not identify such general power sales agreements as “Simultaneous Exchange” in the Contract Data section, but rather the specific simultaneous exchange arrangements under such power sales contracts would be reported in the Transaction Data section. However, if an EQR filer enters into a contract that specifically sets forth the terms for simultaneous exchange arrangements, the EQR filer would categorize the contract product as “Simultaneous Exchange” in the Contract Data section.

## **A. Justification**

### **1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY**

Section 205(c) of the FPA requires that every public utility have all of its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to FERC and the public of any changes to its jurisdictional rates and tariffs, file such changes with FERC, and make them available for public inspection, in such manner as directed by the Commission.

In an order issued on February 16, 2012 (Docket No. EL10-71-000), addressing a petition for declaratory order filed by Puget Sound Energy, Inc. (Puget), the Commission expressed concerns that certain “simultaneous exchange” transactions may resemble transmission service because they involve a party placing power onto the power grid at one delivery point and then simultaneously receiving power at another delivery point.<sup>11</sup> The Commission defined simultaneous exchanges as:

Simultaneous exchanges occur when a pair of simultaneously arranged (*i.e.*, part of the same negotiations) wholesale power transactions between the same counterparties in which party A sells an electricity product to party B at one location and party B sells a similar electricity product to party A at a different location have an overlapping delivery period. The simultaneous exchange is the overlapping portion (both in volume and delivery period) of these wholesale power transactions.<sup>12</sup>

In addressing Puget’s petition, the Commission determined that when a simultaneous exchange transaction involves the marketing function of a public utility transmission provider, the public utility must seek prior approval from the Commission if the transaction involves its affiliated transmission provider’s system.<sup>13</sup> The Commission concluded that all other simultaneous exchange transactions do not require prior Commission approval beyond the necessary authorization under section 205 of the Federal Power Act for the sale for resale of electric energy.<sup>14</sup> However, due to general concerns<sup>14</sup> regarding the potential for simultaneous

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<sup>11</sup> *Puget Sound Energy, Inc.*, 138 FERC ¶ 61,121, at P 13 (2012).

<sup>12</sup> *Id.* P 12.

<sup>13</sup> *Id.* P 1.

<sup>14</sup> *Id.*

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exchanges to provide what amounts to transmission service without the reservation of service on the transmission system, the Commission stated that it would consider ways to enhance the transparency of these arrangements, including potential modifications to the EQR reporting requirements.<sup>15</sup>

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

The EQR is available to the public and is used by the public, members of the energy industry and by Commission staff to conduct various analyses. The Commission is concerned that simultaneous exchange transactions may be used to circumvent transmission service rules, and by proposing that simultaneous exchange transactions be reported in the EQR using a separate product name, the Commission is attempting to increase transparency in this market segment. Without separately reporting these types of transactions, simultaneous exchange transactions would be lumped in with other types of transactions clouding the ability to understand the nature and complexity of the simultaneous exchange market.

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

The EQR is only accepted electronically and is the vehicle by which public utilities satisfy the requirement under section 205(c) of the FPA to have rates on file with the Commission. In addition, section 220 of the FPA directed the Commission to “facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce” with “due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.”<sup>16</sup> With the need for transparency and the statutory obligation of the Commission to facilitate transparency, we believe that the benefit of increased price transparency stemming from the filing of simultaneous exchange transaction information will outweigh the burden on the market participants that may be affected.

## **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 regulatory responsibilities under the Act in

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<sup>15</sup> *Id.* P 16.

<sup>16</sup> In addition, FPA section 220(b)(1-2) directs the Commission to exempt from disclosure information that is “detrimental to the operation of an effective market or [that would] jeopardize system security,” and “to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of proprietary trading information.” 16 U.S.C. 824t(b)(1-2).

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an effort to alleviate duplication. All Commission information collections are subject to analysis by Commission staff and are examined for redundancy. There is no other source of this information.

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

The proposed rule affects only a small number of small entities and the impact is estimated at \$368 per company. There are no special methods used to minimize the burden of the collection of information on small entities.

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

If the EQR were reported less frequently, the Commission would be unable to perform its mandated oversight and review responsibilities with respect to electric rates. Specifically, not collecting information on simultaneous exchanges on a quarterly basis lessens the transparency of the market and the ability of the Commission to ensure that market rules are being followed.

## **7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION**

The proposed changes to EQR meet all of OMB's 5 CFR 1320.5 requirements.

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

The Commission's procedures require that the rulemaking notice be published in the Federal Register, thereby allowing all public utilities, natural gas and oil pipeline companies, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. The rulemaking procedures also allow for public conferences to be held as required.

The NOPR was issued on March 17, 2012, and requests comments.<sup>17</sup>

## **9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS**

There are no payments or gifts to respondents in the proposed rule.

## **10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS**

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<sup>17</sup> Available electronically on FERC's eLibrary system at: [http://elibrary.ferc.gov/idmws/File\\_list.asp?document\\_id=14004059](http://elibrary.ferc.gov/idmws/File_list.asp?document_id=14004059)

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The Commission generally does not consider the data filed in EQR filings to be confidential. Specific requests for confidential treatment to the extent permitted by law will be entertained pursuant to 18 C.F.R. Section 388.110. Section 205(c) of the FPA requires that every public utility have all of its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to the Commission and the public of any changes to its jurisdictional rates and tariffs, file such changes with the Commission, and make them available for public inspection, in such manner as directed by the Commission.

**11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE**

There are no questions of a sensitive nature associated with the data requirements proposed in this NOPR.

**12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION**

The following table shows the burden hour and cost impact as provided in the proposed rule:

	Number of Respondents Per Year	Number of Responses Per Year	Implementing Burden		Recurring Operating Burden		Average Annual Burden (implementing cost averaged over 3 years)	
			Burden Hours Per Respondent	Cost Per Respondent	Burden Hours Per Respondent	Cost Per Respondent	Burden Hours <sup>18</sup>	Cost
Current Respondents to the EQR collection	1,143	4						
Estimated Respondents Affected by Proposed Rule	46	4	10	\$69/hour	0.5	\$69/hour	245.33	\$16,927.77

<sup>18</sup> This figure is derived by calculating the implementing burden (46 respondents X 10 hours per respondent = 460 hours), dividing it by three (460/3 = 153.33; this annualizes the implementing burden), and adding it to the recurring burden (46 respondents X 4 responses per year X .5 hours per response = 92 hours; 92 hours + 153.33 hours = 245.33 hours).

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In calculating the number of respondents per year, the Commission looked at only those respondents that reported transactions during 2011. There were 1,143 respondents that filed transaction data in the EQR in 2011; therefore, the Commission proposes to use 1,143 as the total number of respondents. Although the Commission estimates the total number of current respondents to be 1,143, this figure overstates the number of corporate families filing the EQR because some of the filings were made separately by affiliates from the same company. For instance, of the 1,143 unique respondent names, 72 were affiliates of NextEra Energy. This trend is common among EQR filers.

The Commission recognizes that there will be an increased burden involved in the initial implementation associated with filing simultaneous exchange transactions in the EQR. This burden may include modifying the utility’s software to capture the transaction data from the utility’s internal computer systems and to place that data into a format that captures the new product name “Simultaneous Exchanges” and associated data as required by this order. It is difficult to estimate how many parties use simultaneous exchanges. However, we believe that many parties currently report their simultaneous exchanges using the existing Product Name “Exchange.” Of the 1,143 respondents that filed transaction data in 2011, 21 respondents (or approximately 2 percent of the total respondents) filed transaction data using the Product Name “Exchange.” With such a small portion of the population of respondents using the current “Exchange” Product Name, we estimate that fewer than the 1,143 respondents will be affected if the proposed Product Name were adopted. In an effort to provide a fair estimate, we will assume that the percentage of affected respondents will be twice the current 2 percent that are reporting exchange transactions in the EQR. We estimate that 4 percent of the respondents, or 46 respondents, will be affected by the proposed change. For these estimated 46 respondents, we estimate that the additional data requirement will involve an initial burden of 10 hours.

For the recurring effort involved in filing the EQR each subsequent quarter, we anticipate that the burden will be minimal, particularly as filing transaction data will be automated for companies that have designed their systems to account for the required format. We have estimated that current filers spend about 16 hours to meet the existing recurring requirements of filing EQRs. With the additional proposed Product Name, we estimate that filers’ recurring burden will increase by 0.5 hours.

The FERC-516 collection has several components that are not being affected by the proposed rule. The following table shows the total hours and cost for the FERC-516 after the incorporation of the proposed changes.<sup>19</sup>

FERC-516	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
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<sup>19</sup> As noted previously, the Commission intends to remove all burden hours for EQR from the FERC-516. This effort began with the NOPR in RM10-12 and a new control number was established (1902-0255). The intent is to put all EQR related hours into this new collection at the final rule stage of one of the ongoing EQR proceedings.

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Annual Number of Responses	4,907	4,723	-	+184
Annual Time Burden (Hr)	472,379	472,134	-	+245
Annual Cost Burden (\$)	143,556	143,556	-	-

**13. ESTIMATE OF TOTAL ANNUAL COST OF BURDEN TO RESPONDENTS**

The estimated annualized filing cost to respondents as related only to the data collection requirements as contained in the proposed rule is as follows:

FERC-516	Annual Burden Hours (1)	Estimated Hourly Cost (\$) (2)	Estimated Total Annual Cost to Respondents (\$) (1) X (2)
Implementation and ongoing costs	245.33 hours	\$69	\$16,927.77

The above costs are associated only with hourly wage estimates and therefore will not be reported in ROCIS. The existing cost reported in ROCIS (\$143,556) is from a previous rulemaking.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

The estimated annualized cost to the Federal Government related only to the data collection requirements as contained in the proposed rule is as follows:

	Number of Employees (FTEs) <sup>20</sup>	Estimated Annual Federal Cost <sup>21</sup>
Data Clearance Cost <sup>22</sup>	-	\$1,588
Analysis of Data Cost	0.25	\$35,885
<b>FERC Total</b>		<b>\$37,473</b>

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

20 "FTE" is Full-Time Equivalent and refers to the total number of work hours in a year (40 hrs/wk X 52 wks = 2,080 hrs).

21 Based on 2012 cost per FTE of \$143,540

22 Based on the assumption that it takes one week (40 hours) of work time to do the work to obtain OMB clearance to perform the collection.



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The Commission is proposing to revise the EQR Data Dictionary to add “Simultaneous Exchange” to the list of available Product Names in the EQR. This proposal would allow for greater transparency in wholesale electricity markets through a greater understanding of these complex exchange transactions. The Commission is generally concerned that the complexity of simultaneous exchanges may obscure the true nature of these transactions, and may enable market participants to circumvent market rules. Thus, in order to enhance transparency, the Commission believes it is important that EQR filers report simultaneous exchanges in the EQR. This change will require a minimal amount of time for filers to implement and comply with moving forward.

#### **16. TIME SCHEDULE FOR PUBLICATION OF DATA**

There is no scheduled publication of data associated with this collection. Past data are available for download at <http://www.ferc.gov/docs-filing/eqr/data.asp>.

#### **17. DISPLAY OF EXPIRATION DATE**

The OMB expiration date is displayed on the Forms description/summary page of the Commission website (<http://www.ferc.gov/docs-filing/forms.asp#516>).

#### **18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

This collection does not employ statistical methodology.