

FERC-716 (OMB Control No. 1902-0170)

Supporting Statement for

**FERC-716, Good Faith Request for Transmission Services and Response by Transmitting Utility under Sections 211(a) and 213(a) of the Federal Power Act**

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve **FERC-716, Good Faith Request for Transmission Services and Response by Transmitting Utility under Sections 211(a) and 213(a) of the Federal Power Act**, for a three year period. FERC-716 (OMB Control No. 1902-0170) is an existing Commission data collection (filing requirements), as stated by 18 Code of Federal Regulations, Part 40.

The Commission estimates the annual reporting burden for FERC-716 will be 308 total hours (an average of 102.67 hours per respondent).

**A. Justification**

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

The Energy Policy Act of 1992 amended 16 USC 824j of the Federal Power Act (FPA) which expanded the Commission's authority to order transmission service. Under the revised 16 USC 824j (FPA Section 211), the Commission may order transmission services if it finds that such action would be in the public interest, would not unreasonably impair the continued reliability of electric systems affected by the order, and would meet the requirements of amended 16 USC 824k.

FPA allows any electric utility, Federal power marketing agency or any other person generating electric energy for sale or resale to apply for an order requiring a transmitting utility to provide transmission services to the applicant<sup>1</sup>. The Commission may issue an order only if the applicant has requested the transmission services from the transmitting utility at least 60 days before applying to the Commission. Accordingly, a request for transmission services is a condition upon which the Commission may order service under 16 USC 824j.

FPA requires a response by the transmitting utility to a good faith request<sup>2</sup>. Unless the transmitting utility agrees to provide such services as rates, charges, terms and conditions acceptable to such person, the transmitting utility, within 60 days of its receipt of the request, or other mutually agreed upon period, provides such applicant with a detailed written explanation with specific reference to the facts and circumstances of the

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1 16 USC 824j

2 16 USC 824l

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request including the basis for the proposed rates, charges, terms and conditions of such services as well as any physical constraints which would affect such service. The information is not filed with the Commission, however, the request and response may be analyzed as part of 16 USC 824j

When negotiations are unsuccessful, the FERC-716 good faith request is included in the 16 USC 824j applications<sup>3</sup>. In addition, the Commission applies the good faith standards in order to carry out Congress' objective that, subject to appropriate terms and conditions and just and reasonable rates<sup>4</sup>, access to the electric transmission system for the purposes of wholesale transactions is made widely available.

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

The general policy sets forth standards by which the Commission determines whether and when a valid good faith request for transmission has been made<sup>5</sup>. In developing the standards, the Commission sought to encourage an open exchange of information with a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility. As a result, twelve components of a good faith request are identified under 18 CFR 2.20. Information in the data exchange is not filed with the Commission unless negotiations between the transmission requestor and the transmitting utility have not been successful and the transmission requestor files a Section 211 request with the Commission. The request and response may be analyzed by the Commission as part of the Section 211 proceeding.

The data exchange between the transmission requestor and the transmitting utility may:

- (1) foster a transmission transaction between the parties without Commission action; or,
- (2) assist the Commission in its review of the Section 211 request by ensuring a good faith request has been made pursuant to 16 USC 824l of the FPA.

The requisite information in the good faith request is (1) in the form of a notice suitable for publishing in the Federal Register, the applicant's name, the date of the application, the names of the affected parties, and a brief description of the transmission services sought, and (2) a sworn statement that an actual notice has been served, (including the information above and the proposed dates for initiating and terminating the requested transmission services, the total amount of transmission capacity requested, a

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<sup>3</sup> Good faith requests (previously known as FERC-716A) are combined within the FERC-716; ICR Reference Number: 200907-1902-001

<sup>4</sup> 16 USC 824k

<sup>5</sup> 16 USC 824j

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brief description of the character and nature of the transmission services being requested, and whether the transmission services are firm or non-firm on each affected party. This statement must enumerate each person served. The Commission uses the information from good faith request applications to issue an order requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) to the applicant if it is in the public interest. Without this information, the Commission would be unable to order a transmitting utility to provide transmission services and thus ensure equitable transmission services to all transmitting utilities. Without this information, the Commission would be unable to carry out the provisions of the Act.

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

On November 15, 2007, the Commission issued a Final Rule, RM07-16-000, Order No. 703, “Filing via the Internet”<sup>6</sup> (November 23, 2007) revising its regulations for implementing the next version of its system for filing documents via the Internet, eFiling 7.0. This Final Rule allows the option of filing all documents in Commission proceedings through the eFiling interface except for specified exceptions, and of utilizing online forms to allow “documentless” interventions in all filings.

With the advent of eFiling 7.0, the Commission has expanded its ability to receive electronic filings through its eFiling and eLibrary systems and now includes requests for transmission service filings and their associated documents.

**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 upon initiation by the Commission in order to eliminate duplication and ensure that filing burdens are minimized. Upon submittal of a request<sup>7</sup>, the applicant may file its good faith request and the transmitting utility's response to frame the issues for the Commission's review.

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

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<sup>6</sup> 73 FR 65659

<sup>7</sup> 16 USC 824j

This data collection does not affect small entities.

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

The information is not filed with the Commission. However, the request/response may be analyzed as part of a section 211Error: Reference source not found proceeding. The data exchange between the transmission requestor and the transmitting utility cannot be discontinued due to statutory requirements.

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

There are no special circumstances for this data collection (FERC-716) in accordance with OMB's regulations in 5 CFR 1320.5(d). The circumstances change when the information is filed along with good faith request applications. Then, an applicant may file electronically or make a paper submission as more fully explained in the applications. However, it should be noted that parties that wish to intervene in a proceeding before the Commission, has the option of file their comments electronically or they make a paper submission. If they should make a paper submission, then the Commission requires original and 2 copies. The distribution of multiple hard copies of a filing has been essential so that the required technical reviews and analyses can proceed simultaneously and efficiently.

Likewise, an applicant may respond to the intervention by filing comments electronically rather than make a paper submission.

As noted above, if there is an agreement among the parties then the information does not become part of a section 211<sup>8</sup> proceeding and OMB's guidelines are therefore not applicable.

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

In accordance with OMB requirements<sup>9</sup>, the Commission published a 60-day notice<sup>10</sup> and a 30-day notice<sup>11</sup> to the public regarding this information collection on 3 Jan

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8 16 USC 824j  
9 5 CFR 1320.8(d)  
10 77 FR 98  
11 77 FR 16215

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2012 and 20 Mar 2012 respectively. Within the public notice, the Commission noted that it would be requesting a three-year extension of the public reporting burden with no change to the existing requirements concerning the collection of data. No comments were received.

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

There are no payments or gifts to FERC-716 respondents.

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

The Commission does not consider the information collected in FERC-716 filings to be confidential. However, the Commission will consider specific requests for confidential treatment to the extent permitted by law pursuant to 18 CFR 388.112(a)(1). The Commission will review each request for confidential treatment on a case-by-case basis.

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

The Commission does not consider the questions including within the FERC-716 to be sensitive in nature.

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

The Commission estimates the Public Reporting Burden for this information collection as:

<b>FERC-716 (IC12-4-000): Good Faith Request for Transmission Services and Response by Transmitting Utility under Sections 211(a) and 213(a) of the Federal Power Act</b>					
	<b>Number of Respondents (A)</b>	<b>Number of Responses Per Respondent (B)</b>	<b>Total Number of Responses (A)x(B)=(C)</b>	<b>Average Burden Hours per Response (D)</b>	<b>Estimated Total Annual Burden (C)x(D)</b>
Information exchange between parties	3	1	3	100	300
Application submitted to FERC if parties'	3	1	3	2.5	8 <sup>12</sup>

<sup>12</sup> 2.5 \* 3 = 7.5; rounded to a value of "8"

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negotiations are unsuccessful					
<b>TOTAL</b>	N/AError: Reference source not found	N/AError: Reference source not found	N/AError: Reference source not found	102.5	308

Provided below is a table that outlines the differences between the total requested annual time burden and the previously approved annual time burden.

<b>FERC-716</b>	<b>Total Request</b>	<b>Previously Approved</b>	<b>Change due to Adjustment in Estimate</b>	<b>Change Due to Agency Discretion</b>
Annual Number of Responses	3	3	0	0
Annual Time Burden (Hr)	308	308	0	0
Annual Cost Burden (\$)	0	0	0	0

The format, labels, and definitions of the table above follow the ROCIS system’s “ICR Summary of Burden” for the meta-data.

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

<b>FERC-716</b>	<b>Annual Burden Hours (1)</b>	<b>Estimated Hourly Cost (\$) (2)</b>	<b>Estimated Total Annual Cost to Respondents (\$) (1) X (2)</b>
	308	\$68.4480769 <sup>13</sup>	\$21,082.01

The total estimated annual cost to respondents is \$21,082.01. The cost per respondent is \$7,027.34. There are no start-up costs because FERC-716 is an existing information collection.

<sup>13</sup> \$142,372 (2011 FTE average salary)/2080 hours/year = \$68.4480769 per hour

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The respondent burden includes the total time, effort, and financial resources respondents spend to assemble and file the information. The cost estimate is based on salaries (plus benefits) for professional and support staff.

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

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14 This is based on 2011 calculation upon FTE of \$142,372 and an average of 24 hours per clearance.

15 Not applicable

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The Commission bases its estimate of the cost to the Federal Government on salaries for professional and clerical support.

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

There is no adjustment to the current OMB inventory.

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

The Commission does not publish FERC-716 data. It can, however, be viewed through the Commission's eLibrary as soon as the information is filed and the Commission acts on it.

**17. DISPLAY OF EXPIRATION DATE**

The Commission cannot display the expiration date for OMB approval of the FERC-716 because the information is not collected on a standard form.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

The data collected for this reporting requirement is not used for statistical purposes. Therefore, the Commission does not use as stated in item (i) of the certification to OMB "effective and efficient statistical survey methodology." The information collected is case specific to each information collection.